**No. 160, Original**

In the

# Supreme Court of the United States

STATE OF UTAH,

*Plaintiff*,

v.

UNITED STATES,

*Defendant*.

## BRIEF FOR THE STATE OF UTAH IN OPPOSITION TO MOTION TO INTERVENE OF THE UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION


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## INTRODUCTION

The Ute Indian Tribe of the Uintah and Ouray Reservation ("Tribe") has no basis to intervene in this sovereign dispute between Utah and the United States. While the Tribe may have an interest in the status of federal lands within the boundaries of the Uintah and Ouray Reservation, Utah's claims against the United States do not implicate any of those lands. That is because Utah challenges only the United States' indefinite retention of *unappropriated* public lands—i.e., lands that have not been specifically reserved by Congress or the President for a designated purpose and are not being used to carry out any of the federal government's constitutionally enumerated powers. Federal lands on the Uintah and Ouray Reservation do not meet that definition because those lands have been specifically set aside as an Indian reservation. The Tribe thus lacks any cognizable interest in the outcome of this lawsuit—much less the "compelling interest" that this Court's precedents require. *See, e.g.*, *South Carolina v. North Carolina*, 558 U.S. 256, 270 (2010).

The Tribe's contrary arguments lack merit. In asserting that 1.5 million acres of Indian Country lands are "directly at stake" in this litigation, Tribe.Br.11-13, the Tribe flatly misreads Utah's complaint and overlooks the well-established principle that "[t]he Constitution vests the Federal Government with exclusive authority over relations with Indian tribes." *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 764 (1985). Because the Uintah and Ouray Reservation was created (and is being managed) under that constitutionally enumerated authority, it

is simply not at issue in this lawsuit. *See* Compl.¶¶1, 43.

The Tribe's contention that this case raises an issue that is currently being litigated in *Ute Indian Tribe v. United States*, No. 1:18-cv-00546 (D.D.C.), fails for similar reasons. That pending district-court case involves a dispute over whether the 1.5 million acres of federal lands within the exterior boundaries of the original Uncompahgre Reservation in Utah "are or should be tribal trust lands." Tribe.Br.3. As explained, Utah's claims against the United States in this case do not implicate those lands, or any other federal lands designated and managed as Indian Country—whether or not they are "tribal trust lands." Nor do Utah's claims in any way "attempt to remove Ute land from the definition of Indian Country," Tribe.Br.19. Again, Utah challenges the federal government's perpetual retention of *unappropriated* lands, which do not include (among other things) National Parks, military installations, or Indian Country.

Finally, the complaint's discussion of the Utah Enabling Act, Compl.¶¶27-31, provides no basis for intervention. The complaint merely observes that the Enabling Act contemplates that the federal government will dispose of *unappropriated* lands; the complaint in no way suggests that the "Enabling Act requires the United States to dispose of *all* federal land within Utah," Tribe.Br.15 (emphasis added). And the State plainly has not "ask[ed] this Court to issue a precedential interpretation of … the Utah Enabling Act" that would "do away with Indian Country and with tribes as governments." *Contra*

Tribe.Br.3. In short, the Tribe's asserted grounds for intervention are completely untethered from Utah's complaint. The Tribe's motion to intervene should be denied.

## BACKGROUND

On August 20, 2024, Utah initiated this original action by moving for leave to file a bill of complaint against the United States. As the complaint explains, the federal government is holding roughly one third of the territory within Utah without even arguably using that territory in the service of any constitutionally enumerated federal power. *See* Compl.¶¶1-2. To make matters worse, the United States has adopted a formal policy that it will continue to retain virtually all of those vast lands indefinitely—despite the negative consequences for Utah and its people and Utah's strenuous objections. *See* 43 U.S.C. §§1701(a)(1), 1713(a).

That state of affairs is flatly unconstitutional. It not only expands the federal government's power far beyond what the Framers intended, but also severely diminishes Utah's sovereignty both in absolute terms and as compared to its sister States. *See* Compl.¶¶36-37, 44-50. Utah accordingly "seeks a declaratory judgment that the federal government has no constitutional authority to indefinitely retain lands within a State, over the State's objection, without reserving or using those lands to carry out any enumerated federal power," Compl.¶56, as well as an injunction "directing the United States to begin the process of disposing of its unappropriated lands within Utah," Compl.¶61. Utah's motion for leave to file is fully briefed and remains pending.

On November 21, 2024, the Tribe filed a motion "to intervene for the limited purpose of moving to dismiss some or all of Utah's claims," Tribe.Br.1, which is alternatively styled as an amicus brief in opposition to Utah's motion for leave to file. According to that filing, the Tribe's members live on the Uintah and Ouray Reservation in northeastern Utah, which is actually "a union of two contiguous reservations: the Uintah Valley Reservation and the Uncompahgre Reservation." Tribe.Br.5. The Tribe avers that the Uncompahgre Reservation includes 1.5 million acres of federally owned land and seeks to intervene in this litigation to protect its asserted interest in that land. Tribe.Br.1.

## ARGUMENT

This Court's standard for allowing a nonstate entity to intervene in an original action is demanding: The putative intervenor must show that it has "a compelling interest in the outcome of th[e] litigation" and that its interest is not sufficiently represented by the existing parties. *North Carolina*, 558 U.S. at 270; *see also id.* at 268 (noting that this standard applies to "Indian tribes"). The Tribe plainly fails to satisfy this "heightened standard for intervention," *id.* at 276 n.8, because it has no cognizable interest in the outcome of this litigation.

### I. The Tribe Has No Cognizable Interest In This Litigation.

This original action challenges the United States' authority to permanently retain "unappropriated" lands. Compl.¶1. The 1.5 million acres of federal land located within the boundaries of the original Uncompahgre Reservation in Utah, by contrast, are

*appropriated* lands. By their designation as Indian Country, these lands serve an enumerated federal power. *See Ute Indian Tribe v. Utah*, 773 F.2d 1087, 1096-97 (10th Cir. 1985) (en banc) (Seymour, J., concurring). Accordingly, as the Utah Attorney General's Office has repeatedly assured the Tribe's representatives over the past several months, Utah's claims against the United States do not implicate any lands owned by the Tribe, lands held in trust by the United States for the benefit of the Tribe, or lands over which the Tribe exercises jurisdiction. *See* Reply.3 n.1. Rather, this lawsuit concerns only *unappropriated* federal lands within Utah—lands that do not include the Uncompahgre Reservation, and lands in which the Tribe asserts (and has) no interest. The Tribe thus has no basis to intervene in this litigation.

## II. The Tribe's Contrary Arguments Lack Merit.

The Tribe's various efforts to establish a basis for intervention all suffer from the same basic flaw: They simply mischaracterize the scope of Utah's claims.

1. As an initial matter, the Tribe misstates the legal issue that Utah's complaint presents. Utah does not challenge the constitutionality of *all* "federal public lands," Tribe.Br.1-2; it instead challenges the federal government's explicit policy of perpetual retention of *unappropriated* federal lands in Utah. *See, e.g.*, Compl.¶¶1, 43. Neither Utah nor the United States has claimed—or could credibly claim—that lands within the boundaries of the Uintah and Ouray Reservation are "unappropriated" as that term is used in Utah's complaint. The federal government expressly designated those lands pursuant to its

constitutionally enumerated "authority over relations with Indian tribes." *Blackfeet Tribe*, 471 U.S. at 764 (citing U.S. Const., art.I, §8, cl.3). And there is nothing "vague" (let alone "delusive") about Utah's clear statement that it is not "challeng[ing] the federal government's constitutional authority to retain lands that it is using to carry out its enumerated powers." Compl. ¶43. *Contra* Tribe.Br.12. That statement, and numerous other statements throughout Utah's complaint, make clear beyond cavil that more than half of all federal land in Utah—including National Parks, National Conservation Areas, military installations, and all federally owned lands within the Uintah and Ouray Reservation—is simply not at issue in this litigation.[1] *See, e.g.*, Compl. ¶¶1, 38, 44-45, 52-56, 58.

The Tribe likewise errs in suggesting that Utah's claims implicate "all land currently managed by BLM," Tribe.Br.11 & n.2. By the federal government's own account, BLM "manages nearly 22.8 million acres of public lands in Utah." BLM, *What We Manage In Utah*, https://tinyurl.com/mwe8cpyc (last visited Dec.

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[1] There is also nothing "confusing," *contra* Tribe.Br.12 n.4, about the complaint's reference to the roughly "1.8 million acres in Utah that are devoted to federal military installations." Compl.¶43. As the Tribe recognizes, "[t]he Department of Defense alone controls 1.8 million acres of land in Utah." Tribe.Br.12 n.4. Utah does not dispute the United States' constitutional authority to retain these federal military installations, *see* U.S. Const., art.I, §8, cls.1, 11-14; nor does it dispute the United States' authority to retain its millions of additional acres of "lands held in trust for Indian tribes, federal courthouses and office buildings, and the like," including any lands designated as Indian Country. Compl.¶43.

16, 2024). As Utah's complaint makes clear, however, several million acres of those BLM lands are "appropriated" lands not covered by Utah's claims. *See, e.g.*, Compl.¶1. For example, this case does not involve BLM-administered National Conservation Areas, National Monuments, or Indian reservations. Compl.¶43; *see* BLM, *Utah National Conservation Lands*, https://tinyurl.com/3t5w9fjy (last visited Dec. 16, 2024) (noting that BLM manages three National Conservation Areas and three National Monuments in Utah). To the extent that one of the maps attached to Utah's complaint may have inadvertently marked some appropriated BLM lands as unappropriated, *see* Tribe.Br.11-12 (citing Compl.App-4), that is no basis for disregarding the plain text of Utah's filings. Regardless of whether they are owned or managed by BLM, none of the lands within the boundaries of the Uintah and Ouray Reservation (or any other federal Indian reservation) are at issue in this case. Compl.¶43; Reply.3 n.1.

2. The Tribe's assertion that this lawsuit presents "the same issue that Utah is currently litigating" in *Ute Indian Tribe v. United States*, No. 1:18-cv-00546 (D.D.C.), is also baseless. *See* Tribe.Br.2-3, 8-9. To be clear, the United States and Utah have not "lost or conceded most of the issues" in that litigation, Tribe.Br.8; to the contrary, four of the Tribe's five claims against the federal government in that case have been dismissed. *See Ute Indian Tribe*, Dkt.76 at 11; Dkt.90 at 6. The lone remaining claim is an Administrative Procedure Act challenge to a 2018 Department of Interior decision denying the Tribe's request to "restore" approximately 1.5 million acres of federally owned land on the Uintah and Ouray

Reservation "to tribal trust ownership." *Ute Indian Tribe*, Dkt.102 at 16 (Tribe's motion for summary judgment); *see* Tribe.Br.3, 8, 13.

Utah's present lawsuit against the United States has nothing to do with the Tribe's challenge to that Department of Interior decision. It instead concerns the extent of the federal government's constitutional authority to indefinitely retain unappropriated land within a State. *See, e.g.*, Compl. ¶¶1-6. That constitutional question does not turn on whether the 1.5 million acres at issue in the ongoing *Ute Indian Tribe* litigation are "tribal trust lands." *Contra* Tribe.Br.3. If those lands are public lands that are also Indian Country, as the United States and Utah contend, *see Ute Indian Tribe*, Dkts.103, 105, then they are *appropriated* federal lands that are outside the ambit of this original action. *See supra* pp.4-5. On the other hand, if the Tribe itself has title to those 1.5 million acres, as the Tribe contends, then the lands "are not federal public lands" at all. Tribe.Br.9. Either way, the Tribe's contention that this original action involves "the same issue" being litigated in that district court case, Tribe.Br.2, is specious.

The same goes for the Tribe's claim that there is "overlap" between the present case and *Ute Indian Tribe v. Utah*, No. 2:75-cv-408 (D. Utah). *See* Tribe.Br.4, 9-11, 17-19. Again, Utah's claims do not remotely suggest that "the United States is required to relinquish title and all jurisdiction over the Ute Indian Tribe's Indian Country," Tribe.Br.11, nor do they "attempt to remove Ute land from the definition of Indian Country," Tribe.Br.19. To the contrary, Utah's complaint repeatedly acknowledges that the

federal government *may* indefinitely hold land in service of its constitutionally enumerated powers, *e.g.*, Compl.¶13, and does not dispute the federal government's "exclusive authority over relations with Indian tribes," *Blackfeet Tribe*, 471 U.S. at 764. Accordingly, the Tribe's asserted interest in these legal issues provides no basis for intervention.[2]

3. The Tribe's assertion that paragraphs 27 to 29 of Utah's complaint "ask[] this Court to install termination of tribes as federal policy," Tribe.Br.14, is similarly unmoored from the plain text of the complaint. Those three paragraphs merely explain that the Utah Enabling Act of 1850—like the U.S. Constitution—contemplated that the federal government would "dispos[e]" of "unappropriated public lands lying within the boundaries" of the new State. 28 Stat. 107, 108 (July 16, 1894); *see id.* at 110. That straightforward reading of the Utah Enabling Act does not remotely suggest that "the United States must dispose of *all* federally owned land in Utah." Tribe.Br.14. As the complaint makes abundantly clear, the duty to dispose of *unappropriated* public lands does not extend to lands that Congress or the President has appropriated pursuant to an

[2] Nor do Utah's claims require this Court to "review the specific legal and factual history" of any particular parcel of federal land. *Contra* Tribe.Br.10. Utah instead asks the Court to perform its role as "the ultimate expositor of the constitutional text" by delineating the extent of the federal government's authority to perpetually hold land within a State. *United States v. Morrison*, 529 U.S. 598, 617 n.7 (2000). Any disputes about whether a particular parcel of federal land is "unappropriated" can be resolved by a special master after the Court decides that constitutional question. Reply.3.

enumerated federal power—including designated Indian reservations such as the Uintah and Ouray Reservation. *See, e.g.*, Compl.¶¶1, 3-5, 11-15, 38-40, 43. The notion that Utah's complaint somehow seeks to "do away with Indian Country and with tribes as governments," Tribe.Br.3, 15, is fanciful.

* * *

This dispute between Utah and the United States does not implicate any of the 1.5 million acres of federally owned land within the borders of the Uintah and Ouray Reservation. The Tribe's contrary arguments rest on gross mischaracterizations of Utah's complaint. Far from "represent[ing] an existential threat to the Tribe and [its] Reservation," Tribe.Br.20, this original action challenges the federal government's power to perpetually retain lands in which the Tribe does not have any cognizable (let alone compelling) interest. There is accordingly no basis for the Tribe to intervene in this dispute.

## CONCLUSION

This Court should deny the Tribe's motion to intervene.

Respectfully submitted,

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