No. 22O160, Original

In the Supreme Court of the United States

STATE OF UTAH

Plaintiff,

v.

UNITED STATES OF AMERICA

Defendant.

ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

BRIEF OF IOWA, ALABAMA, ARKANSAS, MISSISSIPPI, NEBRASKA, NORTH DAKOTA, SOUTH CAROLINA, SOUTH DAKOTA, AND TEXAS AS AMICI CURIAE IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

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INTEREST OF AMICI CURIAE[1]

Amici curiae States of Iowa, Alabama, Arkansas, Mississippi, Nebraska, North Dakota, South Carolina, South Dakota, and Texas have a fundamental interest in the proper scope of this Court's original jurisdiction and call on this Court to exercise its jurisdiction consistent with the original understanding of Article III and 28 U.S.C. § 1251(a).

This Court's practice of treating jurisdiction over disputes between States and the United States as discretionary leaves States without adequate recourse in many instances. But the Framers gave this Court jurisdiction over such disputes because of their importance, not to treat States as second-class litigants.

This case demonstrates the pitfalls of the Court's practice. The federal government controls almost 70 percent of the land in the State of Utah. Utah's allegations involve claims that relate to almost half of that land—"unappropriated" land that serves no federal purpose. Few issues are as fundamentally important to a State as control of its land. *See Sackett v. EPA*, 598 U.S. 651, 679 (2023) ("Regulation of land and water use lies at the core of traditional state authority."); *see also The Volant*, 59 U.S. 71, 75 (1855) ("This power results from the ownership of the soil, from the legislative jurisdiction of the State over it, and from its duty to preserve unimpaired those public uses for which the soil is held."); *Pollard's Heirs v. Kibbe*, 39 U.S. 353, 414 (1840) ("Every government has, and from the nature of sovereignty must have, the

[1] Pursuant to Rule 37.2, *amici* provided timely notice of their intent to file this brief to all parties.

exclusive right of distribution and grants of the public domain within its boundaries, until it yields it up by compact or conquest.").

This Court's obligation under the Constitution and laws is to adjudicate Utah's claim and "say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

The Amici States respectfully ask this Court to take this case out of respect for the sovereign dignity inherent in a State's dispute against the United States.

SUMMARY OF ARGUMENT

The State of Utah is not allowed to control most of the land in the State of Utah. And not because that land is privately owned. Instead, that land—much of which is being used for no duly authorized federal purpose and has not been since its arrogation by the United States—is controlled by the federal government.

There are many important policy considerations to consider in deciding whether such control by the United States to Utah's exclusion, in Utah's own sovereign territory, is appropriate or just. But the only way for Utah's claim to be adjudicated is for a court to hear it. As there is a live case-or-controversy under Article III of the United States Constitution, and given the fundamental sovereign concerns at issue between Utah and the United States, this Court should hear the case.

ARGUMENT

I. THE CONSTITUTION AND FEDERAL LAW TASK THIS COURT WITH ADJUDICATING DISPUTES BETWEEN STATES AND THE UNITED STATES.

A. The Court should assert jurisdiction over original actions in suits between states and the United States. *See* 28 U.S.C. § 1251(b)(2). The Framers "vested" "[t]he judicial Power of the United States . . . in one supreme Court[] and in such inferior Courts as the Congress may from time to time ordain and establish." U.S. Const., art. III, § 1. And the Constitution provides that this Court's "judicial power *shall* extend . . . to controversies in which a State shall be Party." U.S. Const. art. III, § 2. Such suits fall within this Court's original jurisdiction. *See United States v. Texas*, 143 U.S. 621, 644 (1892). Having this Court adjudicate such cases is part of what the States signed up for when they ratified the Constitution. This Court's "role in these cases is to serve as a substitute for the diplomatic settlement of controversies between sovereigns and a possible resort to force." *Texas v. New Mexico*, 583 U.S. 407, 412 (2018). The Court's original jurisdiction may not be exclusive but it is explicit. 28 U.S.C. § 1251(b)(2).

Not surprisingly, given the importance of that task, this Court has been assigned by Congress to have an explicit authority to hear such suits. The relevant statute, which dates from the Judiciary Act of 1789, provides that this Court "*shall* have original but not exclusive jurisdiction" of "[a]ll controversies between the United States and a State." 28 U.S.C. § 1251(b)(2) (emphasis added).

Those words are devoid of ambiguity. The word "shall" "normally creates an obligation impervious to judicial discretion." *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998). The word "all" is expansive. Combining the two yields a directive that is "as clear as statutes get." *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 205 (2023) (Gorsuch, J., concurring). The result is an obligation at least to hear such a suit when a State chooses to bring it in this venue. *See*, *e.g.*, *Texas v. California*, 141 S. Ct. 1469, 1469 (2021) (Alito, J., dissenting); *Arizona v. California*, 140 S. Ct. 684, 684 (2020) (Thomas, J., dissenting); *cf. California v. West Virginia*, 454 U.S. 1027, 1027–28 (1981) (Stevens, J., dissenting).

Similar considerations undergird the principle that federal courts ordinarily have "a virtually unflagging obligation to hear and resolve questions properly before [them]." *FBI v. Fikre*, 601 U.S. 234, 240 (2024) (quotation marks omitted). And on the rare times a federal court may decline to exercise jurisdiction, it is usually because there is some other important constitutional interest at stake, like showing due respect to the States. *See, e.g., Younger v. Harris*, 401 U.S. 37, 44 (1971).

Here, that respect counsels in favor of exercising original jurisdiction. Indeed, the States consented to their disputes being heard in this Court when they ratified the Constitution. *See* U.S. Const., art. III, § 2.

Congress's choice of words further counsels in favor of this Court exercising its original jurisdiction here. While Congress has made this Court's jurisdiction non-exclusive in suits between a State and the United States, that does not negate the Court's great responsibility to hear important cases that fall within

its original jurisdiction. Especially pertinent here, the certiorari statute, which was enacted precisely to confer discretion on this Court over its own docket, *see* William Howard Taft, *The Jurisdiction of the Supreme Court Under the Act of February 13, 1925*, 35 Yale L.J. 1, 1–2 (1925), is phrased in expressly discretionary terms. *See* 28 U.S.C. §§ 1254, 1257 (this Court "may" review cases by certiorari from the federal courts of appeals and from state courts of last resort).

Other statutes explicitly conferring discretion over whether to exercise jurisdiction abound. The Court should construe "that difference in language to convey a difference in meaning." *Bittner v. United States*, 598 U.S. 85, 94 (2023).

Not only is there a meaningful difference in statutory text, the original-jurisdiction statute reflects the opposite tradition. "For the first 150 years after the adoption of the Constitution, the Court never refused to permit the filing of a complaint within its original jurisdiction." *Texas*, 141 S. Ct. at 1470 (Alito, J., dissenting). The Court seems to have moved away from that tradition out of concern about its "'increasing duties with the appellate docket.'" *Id.*, at 1471 (quoting *Illinois v. City of Milwaukee*, 406 U.S. 91, 94 (1972)). The appellate docket today, however, is quite small. And policy concerns are no warrant for departing from the language of the statute anyway.

B. The Court has hesitated to assert its original jurisdiction in part because it "is structured to perform as an appellate tribunal, ill-equipped for the task of factfinding" and because the cases are inordinately complex. *Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493, 498 (1971). But there are no fact disputes at issue here between Utah and the United States.

Many disputes between a State and the United States can be disposed of on cross-motions for judgment on the pleadings. *Cf. New York v. New Jersey*, 598 U.S. 218, 223 (2023). Those proceedings are nearly identical to how this Court handles appeals—the parties submit briefs, and this Court then holds oral arguments on pure questions of law. Indeed, these types of disputes are even easier to dispose of than appeals because there is no underlying record to review. The Court need only apply the law to agreed-upon facts.

Hearing original actions when States occasionally sue the United States will not clog this Court's docket either. This Court's mandatory docket is small. In the past few years, only four parties have taken appeals as of right to this Court. *See Trump v. New York*, 592 U.S. 125 (2020); *FEC v. Cruz*, 596 U.S. 289 (2022); *Allen v. Milligan*, 599 U.S. 1 (2023); *Alexander v. S.C. State Conf. of the NAACP*, 144 S. Ct. 1221 (2024). In terms of the burden they impose, original actions often are not meaningfully different from direct appeals. Indeed, direct appeals often require review of voluminous statistical data required to create a congressional map. And no docket management concerns against Congress's admonition that this court "shall have original but not exclusive jurisdiction" of controversies "between the United States and a State." 28 U.S.C. § 1251(b)(2).

All told, the concerns that exercising original jurisdiction will clog up this Court's appellate docket are simply untrue. Many State high courts have much larger mandatory dockets, and not one has said that the mandatory dockets have interfered with handling discretionary appeals.

CONCLUSION

Given the authorizing language of jurisdiction, this Court should grant the State of Utah's Motion for Leave to File a Bill of Complaint.

Respectfully submitted,

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APPENDIX

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