



TO: Prospective Amicus Brief Partners in Support of Utah’s Public Land Case

FROM: Jennifer Fielder, CEO - American Lands Council

DATE: 08/24/2024

RE: Court Stage – Amicus Request – *The State of Utah, Plaintiff, v. United States of America, Defendant – not yet docketed. (Utah’s proposed bill of complaint, motion for leave to file the same, and brief in support all lodged in the Supreme Court of the United States on August 20, 2024.)*

Call to Action:

The American Lands Council invites friendly states, scholars, organizations, elected officials, local governments, and others to support Utah’s legal action by filing an Amicus Brief as described herein, or by signing on to an Amicus Brief being prepared by American Lands Council.

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Case Background:

After decades of legal analysis and attempts to seek relief through other means, the State of Utah filed a landmark public lands lawsuit on August 20, 2024 asking the Supreme Court of the United States to address whether the federal government can constitutionally hold unappropriated lands within a State indefinitely.

Currently, the federal government controls nearly 70% of the land in Utah. In comparison, the federal government controls less than 1% of the land in Connecticut, New York, and Rhode

Island, and less than 3% of the land in Delaware, Maine, Massachusetts, Ohio, and Pennsylvania. While half of the federally held public land in Utah has been designated as national parks, national forests, national conservation areas, or the like, the other half is “unappropriated” land, meaning that the United States simply holds the land without any designated purpose.

The scope of this lawsuit does not include the millions of “appropriated” acres of public lands in Utah already designated as national parks, national monuments, wilderness areas, national forests, Tribal lands, or military properties. The “unappropriated” land in question is approximately 18.5 million acres, or 34% of land in Utah, currently controlled and managed by the United States Bureau of Land Management (BLM) under the Federal Land Policy Management Act (FLPMA).

The prayer of the proposed bill of complaint expressly asks that this Court issue the following relief:

- A. Declare that the United States’ policy and practice of indefinitely retaining its unappropriated lands in Utah over Utah’s objection is unconstitutional.
- B. Declare that 43 U.S.C. §1701(a)(1), which expresses the United States’ official policy of indefinitely retaining unappropriated public lands, and 43 U.S.C. §1713(a), to the extent it implements that policy, are unconstitutional.
- C. Order the United States to begin the process of disposing of its unappropriated federal lands within Utah, consistent with existing rights and state law.
- D. Grant the State of Utah such other relief as the Court deems just and proper.

The far-reaching impact of this original jurisdiction court action is reflected in the fact that FLPMA governs the 245 million acres of federal public land overseen by the BLM that are spread across the 11 Western states, Alaska, the Dakotas, and a few Eastern states.

The Constitution never intended a federal agency to hold onto so much land in any state. At stake are the following foundational principles:

- A. The principle of limited and enumerated powers within the United States Constitution;
- B. the principle that the federal government can exercise only those powers explicitly granted by the Constitution;
- C. the principle that the Constitution gave the Federal government no general police power nor authority to indefinitely retain ownership of unappropriated public lands in a State;
- D. the principle that States retain their sovereignty and the ability to govern matters affecting their citizens, thus preserving individual liberties; and

- E. the principle that new states entering the Union, like Utah, did so on equal footing with original states, a concept vital to the functioning of the Republic.

That is why the state of Utah is asking the U.S. Supreme Court to weigh in on this critical constitutional question that it and so many other states have had for years.

Potential Amicus Topics:

1. **Briefs from legal scholars and legal foundations.** We would love to see a few amicus briefs from legal scholars (especially originalists) or groups like the Cato Institute. If there is enough interest, perhaps one brief could argue that Utah is correct about the Framers' limited view of the federal government's authority to retain land; a second brief could argue that this is precisely the type of state-federal dispute that the Framers intended the Supreme Court to hear in the first instance; and a third brief could tackle the equal sovereignty issue.
2. **Briefs discussing the negative consequences of the federal government's expansive landholdings in the western States.** For example, there could be one brief from local officials who use/manage lands in Utah and one or more briefs from relevant advocacy groups. Is there any chance of finding a sympathetic former federal official (maybe from BLM?) who shares Utah's view that sweeping federal land ownership in the West is a bad thing—whether a former career civil servant who was involved in the day-to-day management of federal lands or a political appointee like Ryan Zinke?
3. **Briefs from other western States / Alaska.** Regardless of whether they entirely agree with Utah, the more Western states that tell the Court this case is worthy of an exercise of original jurisdiction, the better. We would welcome not only State amicus briefs expressing full-throated support for Utah's claims but also briefs saying something like, "We don't share Utah's concerns about the federal government being a good partner or want to force it to dispose of unappropriated land in our State, but we do share Utah's view that States have the prerogative to do so." Indeed, the latter type of brief could assuage potential concerns that other Western states will be following in line if the Court entertains Utah's claims.
4. **Briefs from any other States.** States east of the Rockies are probably less great candidates to weigh in on the merits. Still, hopefully, we could get a group of them to file a brief arguing that the Court should not disregard/nullify the constitutional and statutory grants of original jurisdiction over cases between a State and the United States and that if any case has sufficient "seriousness and dignity" to warrant an exercise of that jurisdiction, it is this one (irrespective of the merits). Perhaps Florida, Texas, or Ohio would be interested in spearheading that effort.
5. **Briefs from Utah / Western state politicians.** Depending on who is interested, perhaps it makes sense to have one brief from state politicians and another from Senator Lee and

Utah's broader congressional delegation. If politicians from other Western states want to join, so much the better. As for substance, perhaps the brief from Utah's federal delegation could flesh out how the current legal regime has hamstrung their efforts to advance Utah's interests and why it's so important for the Court to deal with the threshold legal issue presented by our complaint.

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Amicus Due: Estimated on or about October 22, 2024, depending on the date a docket number is assigned to this case.

Court of Appeals Opinion: Not applicable as this is an original jurisdiction action brought by a State against the United States.

Trial Court Opinion: See above.

Links:

[Utah's Motion for Leave to File Bill of Complaint, Bill of Complaint, and Brief in Support](#)
[Stand for Our Land Explainer Video](#)

Visit www.standforourland.utah.gov for more information from the State of Utah.

Visit www.AmericanLandsCouncil.org and join the nationwide network for better management of public lands throughout the United States.