

In the  
**Supreme Court of the United States**

— ◆ —  
AMERICAN FOREST RESOURCE COUNCIL, ET AL.,  
*Petitioners,*

*v.*

UNITED STATES OF AMERICA, ET AL.,  
*Respondents*

— ◆ —  
*On Petition for Writ of Certiorari to the  
United States Court of Appeals for the  
District of Columbia Circuit*

— ◆ —  
**BRIEF OF *AMICI CURIAE* ROSEBURG AREA  
CHAMBER OF COMMERCE AND NFIB SMALL  
BUSINESS LEGAL CENTER, INC. IN SUPPORT OF  
PETITION FOR CERTIORARI**

— ◆ —  
Ivan L. London  
*Counsel of Record*  
MOUNTAIN STATES  
LEGAL FOUNDATION  
2596 South Lewis Way  
Lakewood, Colorado 80227  
(303) 292-2021  
ilondon@mslegal.org

December 15, 2023

*Attorney for Amici Curiae*

---

---

**QUESTIONS PRESENTED**

1. Whether the President in the last days of a lame-duck presidency can use an Antiquities Act proclamation to override Congress's plain text in another act to repurpose vast swaths of statutorily described timberlands as a national monument where sustained-yield timber production is prohibited.
2. Put another way in *Murphy Company v. Biden*, No. 23-525, whether the Antiquities Act authorizes the President in the last days of a lame-duck presidency to declare federal lands part of a national monument where a separate federal statute reserves those specific federal lands for a specific purpose that is incompatible with national-monument status.

## TABLE OF CONTENTS

	<u>PAGE</u>
QUESTIONS PRESENTED .....	i
TABLE OF CONTENTS .....	ii
TABLE OF AUTHORITIES .....	iii
IDENTITIES AND INTERESTS OF <i>AMICI CURIAE</i> .....	1
SUMMARY OF THE ARGUMENT .....	5
ARGUMENT .....	7
I.    In the O&C Act, Congress wanted revenue from forest production to go to Oregon counties like Douglas County .....	7
II.   Proclamation 9564 imposes a significant revenue loss on counties like Douglas County and towns like Roseburg .....	10
III.  The President’s decision to leave these communities behind was unnecessary .....	18
CONCLUSION .....	21

**TABLE OF AUTHORITIES**

<u>CASES</u>	<u>PAGE(S)</u>
<i>Buffington v. McDonough</i> , 143 S. Ct. 14 (2022) .....	12, 13
<i>Garfield County, Utah v. Biden</i> , No. 4:22-CV-59, 2023 WL 5180375 (D. Utah) .....	14, 15
<i>Marbury v. Madison</i> , 5 U.S. 137 (1803) .....	13, 14
<i>Mass. Lobstermen’s Ass’n v. Raimondo</i> , 141 S. Ct. 979 (2021) .....	6, 11
<i>Mass. Lobstermen’s Ass’n v. Ross</i> , No. 1:17-cv-406 (D.D.C. 2019).....	14
<i>Murphy Co. v. Biden</i> , 65 F.4th 1122 (9th Cir. 2023).....	5, 13, 14, 15
<u>STATUTES</u>	
43 U.S.C. § 2601 .....	5, 7, 11, 17, 19
43 U.S.C. § 2605 .....	5, 8
Pub. L. No. 106-393, 114 Stat. 1607 (2000) .....	16

**OTHER AUTHORITIES**

U.S. Dep't of the Interior, Bureau of Land Management, O&C Sustained Yield Act: the Land, the Law, the Legacy, 1937-1987 (1987) .....	8, 9
Oregon: Presidential County Results, THE NEW YORK TIMES (Dec. 9, 2008), <a href="https://archive.nytimes.com/www.nytimes.com/elections/2008/results/states/president/oregon.html">https://archive.nytimes.com/www.nytimes.com/elections/2008/results/states/president/oregon.html</a> .....	10
Oregon Presidential Results, POLITICO (Nov. 19, 2012), <a href="https://www.politico.com/2012-election/results/president/oregon/">https://www.politico.com/2012-election/results/president/oregon/</a> .....	10
Oregon Presidential Election Results, POLITICO (Dec. 13, 2016), <a href="https://www.politico.com/2016-election/results/map/president/oregon/">https://www.politico.com/2016-election/results/map/president/oregon/</a> .....	10
Oregon Election Results 2020   Live Map Updates   Voting by County & District, POLITICO (Jan. 6, 2021), <a href="https://www.politico.com/2020-election/results/oregon/">https://www.politico.com/2020-election/results/oregon/</a> .....	10
THE FEDERALIST NO. 78 .....	13

**IDENTITIES AND INTERESTS OF  
*AMICI CURIAE*<sup>1</sup>**

The Roseburg Area Chamber of Commerce, which also works under the assumed business name Douglas County Chamber of Commerce (referred to together in this brief as the Chamber), is a mutual-benefit nonprofit corporation that has a long and distinguished history of service in southern Oregon to Roseburg and Douglas County businesses, and to the City of Roseburg and Douglas County themselves. Today, as it has been in one form or another for more than a century, the Chamber is the leading business-advocacy organization in Roseburg and the County.

The Chamber began supporting local businesses in 1908, and officially organized as a chamber of commerce and became incorporated in 1932—a few years before Congress enacted the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937 (O&C Act), which is one of the legislative actions under review in this case.

Roseburg is the “Timber Capital of the Nation.” And Douglas County is no stranger to the timber industry. Approximately fifteen percent of Douglas County’s labor force works in the forest products

---

<sup>1</sup> Per Supreme Court Rule 37.6, the undersigned affirms that no counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief. And as required by Rule 37.2, *amici*’s counsel notified counsel of record for all parties of *amici*’s intention to file this brief at least 10 days prior to the due date for the brief.

industry. Which is not to undersell public recreation: Douglas County's "Parks Department" was the first in Oregon, and it has over fifty parks in the system. They range from large facilities with overnight camping to small boat-launching points. And as for the Chamber, its diverse membership includes timber/natural resource-based companies, and businesses ancillary to the "wood products" industry; recreation and tourism-based companies; manufacturers; distributors; retailers; professional-services providers; utilities; non-profits; education providers (including Roseburg Public Schools and Umpqua Community College); healthcare providers; government entities (*including* the City of Roseburg and Douglas County); special districts and more. At bottom, Roseburg, Douglas County, and the greater southern-Oregon region that the Chamber serves form together a natural-resource-based community where people are tied to the land for their livelihoods, leisure, and recreation.

In its role, the primary work of the Chamber has always been the promotion, protection, and advancement of business in the Roseburg and Douglas County to create a strong local economy. Among other things and aside from advocacy, the Chamber is an information resource for residents, visitors, businesses, and individuals considering moving to the Roseburg and Douglas County. The Chamber positively affects and advances this community every day, actively supporting and working to ensure Roseburg's, the County's, and even the region's economic success and long-term sustainability.

But the Chamber's efforts have often met hurdles—as the relevant example here, the federal government owns over fifty percent of the land in Douglas County. These lands do not generate tax revenue for local governance. So the businesses and citizens have relied on active management of forest lands, including timber sales on O&C Act lands, as a vital revenue source to support fundamental social services like education and public safety.

And despite the help that Congress long ago promised to the people who rely on the Chamber, the federal government's *executive branch* has decided to make this hurdle higher still by reneging on *Congress's* promise. The Court should not let the President renege on Congress's promise in this case.

The Chamber has long worked to deal with hurdles raised by the federal government. And the progression of the Chamber and its services to the business communities in Roseburg and Douglas County is a credit to the Chamber's understanding of the need to evolve and its ability to bring together the best professionals and volunteer resources. Whether through staff, the thousands of volunteer committee and task-force members, or committed volunteer-board leadership, the Chamber's strength has been formed by its grassroots alliance of business leaders. For the Chamber, it is all about strength in numbers uniting as a common voice—especially in the face, once again, of a federal bureaucratic steamroller.

NFIB Small Business Legal Center, Inc. (NFIB Legal Center) is a nonprofit, public-interest law firm



established to provide legal resources and be the voice for small businesses in the Nation's courts through representation on issues of public interest affecting small businesses. It is an affiliate of the National Federation of Independent Business, Inc. (NFIB), which is the Nation's leading small-business association. NFIB's mission is to promote and protect the rights of its members to own, operate, and grow their businesses. To fulfill its role as their voice, NFIB Legal Center frequently files *amicus curiae* briefs in cases that will impact small businesses.

With respect to NFIB Legal Center's interests, the Presidents' unrestrained uses of the Antiquities Act are harmful to businesses and local communities that depend on timber production for their livelihoods. The success or failure of small businesses often depends on the stability of longstanding congressional mandates—as in this case. And if the President tries to undo them via executive fiat, then business owners will suffer harm.

And as specifically relevant to this case and the similar case docketed, No. 23-525, NFIB Legal Center writes to emphasize that Murphy Company, the lead petitioner in the other case is a family-owned business. Small and independent businesses like Murphy Company should not be forced to the sidelines by executive overreach. Murphy Company is also a major employer in the State of Oregon, supplying work for hundreds of people. Abuses of the Antiquities Act that negatively affect job-creating small businesses will necessarily harm the towns, counties, and States that rely on them.

That is why the Chamber and NFIB Legal Center write as *amici* in this case. In this brief, the Chamber and NFIB Legal Center hope to bring the Court’s attention to relevant matters not already brought to its attention by the parties, both in this case and the similar *Murphy Company* case.

As Judge Tallman said in his partial dissent in the *Murphy Company* case, “[T]he unfortunate back-end cost of conservation is that small, local communities reliant on the cultivation of natural resources to generate revenue to sustain them are often left behind.” *Murphy Co. v. Biden*, 65 F.4th 1122, 1143 (9th Cir. 2023) (Tallman, J., dissenting in part).<sup>2</sup> The Chamber and NFIB Legal Center are uniquely well-suited to help the Court appreciate and understand this “back-end cost,” and they hope that the Court will take the cost into consideration while granting certiorari and reviewing this case and the *Murphy Company* case.

---

◆

---

## SUMMARY OF THE ARGUMENT

There is no doubt that in the O&C Act, Congress intended that substantial revenue from forest production be directed to Oregon counties, like Douglas County, where the Act’s reserved land is found. 43 U.S.C. §§ 2601, 2605. But Antiquities Act Proclamation 9564, which President Obama issued eight days before his two-term presidency ended,

---

<sup>2</sup> In the *Murphy Company* docket, the quote is at Pet.App.44a.

imposes a significant revenue loss on those counties, and on towns like Roseburg, by choking off that forest production and preventing them from supporting the other forest activities that have given this collective community so much strength over the past century. The President's decision to leave these communities behind was not only unlawful, but it was also unnecessary. The O&C Act's conservation-minded provisions do not merely support the timber/wood-products industries and related local revenues derived from those industries, they also plainly support the conservation supposedly at the heart of the Proclamation.

A few years ago, the Chief Justice expressed hope that the Court would find a seaworthy vessel for the Court's examination of the Antiquities Act's devastating "myriad restrictions on public use" that a President's "purely discretionary" Antiquities Act "designation can serve to justify." *Mass. Lobstermen's Ass'n v. Raimondo*, 141 S. Ct. 979, 981 (2021) (Roberts, C.J., statement respecting the denial of certiorari). And the Chamber and NFIB Legal Center here write as *amici* to supply the following argument in hopes that the Court will accept the Chief Justice's challenge and undo the President's abuse of the limited authority that Congress granted to him in the Antiquities Act.

## ARGUMENT

### I. **In the O&C Act, Congress wanted revenue from forest production to go to Oregon counties like Douglas County.**

The purpose of the O&C Act was to reserve millions of acres of land in Oregon for “permanent forest production.” 43 U.S.C. § 2601. Why? Congress explained that it wanted to supply a permanent source of timber supply in the area and protect and regulate waters in the area to “contribut[e] to the economic stability of local communities and industries[] and provid[e] recreational facilities.” *Id.*

This was not a vague directive. Congress was specific. It created a special fund to collect timber revenues and distribute them, annually, as follows:

(a) Fifty per centum to the counties in which the lands revested under the Act of June 9, 1916 (39 Stat. 218), are situated, to be payable on or after June 30, 1938, and each year thereafter to each of said counties in the proportion that the total assessed value of the Oregon and California grant lands in each of said counties for the year 1915 bears to the total assessed value of all of said lands in the State of Oregon for said year, such moneys to be used as other county funds . . . .

(b) Twenty-five per centum to said counties as money in lieu of taxes

accrued or which shall accrue to them prior to March 1, 1938, under the provisions of the Act of July 13, 1926 (44 Stat. 915), and which taxes are unpaid on said date, such moneys to be paid to said counties severally by the Secretary of the Treasury of the United States, upon certification by the Secretary of the Interior, until such tax indebtedness as shall have accrued prior to March 1, 1938, is extinguished.

43 U.S.C. § 2605(a)–(b). As the federal Bureau of Land Management—a party here—candidly admitted decades ago, this resulted in no small sum payable to the counties, like Douglas County. “By 1986 over 1.4 billion dollars in ‘return revenues’ passed to Oregon counties.” U.S. Dep’t of the Interior, Bureau of Land Management, *O&C Sustained Yield Act: the Land, the Law, the Legacy, 1937-1987*, at 14–15 (1987) (here, *O&C Sustained Yield*).<sup>3</sup> Congress did this because its own actions had caused “hard times” in “western Oregon.” *Id.* at 15. The “financially strapped” counties could not “meet their school or port obligations,” *id.* at 11, and Congress wanted to direct money to improve “the quality of life and the economy” in the area it had devastated, *id.* at 15.

By that time, the Chamber was already several years old, and it had been advocating for local businesses. The Chamber, in its role supporting the City of Roseburg and Douglas County, has relied on

---

<sup>3</sup> Available at [https://www.blm.gov/or/files/OC\\_History.pdf](https://www.blm.gov/or/files/OC_History.pdf), and last visited December 7, 2023.

Congress’s statement of intent—*in* the legislative text—for nearly a century. And the Chamber and its members, as well as NFIB members, have delivered for this country. The O&C Act was not a mere handout; the “sustained yield” of timber protected by the Act “was an extremely valuable resource for a nation eager to build new houses,” especially on the heels of the Great Depression. *O&C Sustained Yield* 13–14. And the bet on Oregon’s communities paid off, as the “tapping and sustaining of those forests was closely linked to America’s booming economy of the 1950’s.” *Id.*

Nor have the funds been wasted. The O&C Act revenues have helped the counties “construct new courthouses,” “make major renovations to existing buildings,” and build “county fairgrounds,” “museums,” and “library systems.” *O&C Sustained Yield* 15. The funds helped “to construct, pave, and maintain county roads and bridges”; and in Douglas County, they “helped to construct . . . the popular Dunes Overlook for tourists.” *Id.*

The O&C Act has worked for Chamber and NFIB members, as Congress intended. It was a promise too, but the President has used the Antiquities Act to renege on that promise. *Amici* hope that the Court will review the President’s action and strike down the January 12, 2017 lame-duck betrayal of *amici* and their members.<sup>4</sup>

---

<sup>4</sup> In this case, Judge Leon flagged the lame-duck nature of President Obama’s action. Pet.App.42a (“On January 12, 2017,

## II. Proclamation 9564 imposes a significant revenue loss on counties like Douglas County and towns like Roseburg.

The difference between Congress's promise and the President's unlawful revocation could not be clearer. Congress said that the relevant lands

*shall* be managed . . . for permanent forest production, and the timber thereon *shall* be sold, cut, and removed in conformity with the principal of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, . . . and contributing to the economic stability of local communities and industries, and providing recreational [facilities.]

---

shortly before he left office, President Obama issued Proclamation 9564, which added approximately 47,660 more acres of O&C land to the Cascade-Siskiyou National Monument.”).

Of course, the Proclamation does not describe any political animus. But for context: Douglas County, Oregon, in 2008 went 59% for Mr. McCain over Mr. Obama; in 2012, 62% for Mr. Romney over Mr. Obama; in 2016, 66% for Mr. Trump over Ms. Clinton; and in 2020, 67% for Mr. Trump over Mr. Biden. <https://archive.nytimes.com/www.nytimes.com/elections/2008/results/states/president/oregon.html> (2008); <https://www.politico.com/2012-election/results/president/oregon/> (2012); <https://www.politico.com/2016-election/results/map/president/oregon/> (2016); Oregon Election Results 2020 | Live Map Updates | Voting by County & District (politico.com) (2020), all last visited December 7, 2023.

43 U.S.C. § 2601 (emphasis added). But with only eight days left in his presidency, President Obama proclaimed the opposite. Building on a prior President's (President Clinton's) prohibition on "commercial harvest of timber or other vegetative material," in neighboring lands, Pet.App.93a, President Obama pushed that prohibition into O&C Act lands, Pet.App.106a (added lands to be managed "under the same laws and regulations that apply to the rest of the monument").

The President's action raises important structural questions about the separation of powers, executive discretion, and the rights of local governments and businesses. Accordingly, *amici* hope that in granting review of this case, the Court will also answer the question whether the judiciary is willing to scrutinize *any* Antiquities Act proclamation. As the Chief Justice has remarked,

Somewhere along the line, [a] statute permitting the President in his sole discretion to designate as monuments "landmarks," "structures," and "objects"—along with the smallest area of land compatible with their management—has been transformed into a power without any discernible limit to set aside vast and amorphous expanses of terrain above and below the sea.

*Mass. Lobstermen's Ass'n*, 141 S. Ct. at 981 (Roberts, C.J., statement respecting the denial of certiorari).



It is worth mentioning that merely applying judicial scrutiny to Antiquities Act proclamations does not necessarily hamstring the executive branch from making large territorial designations under the Act. For example, President Theodore Roosevelt designated the entire Grand Canyon “an object of unusual scientific interest” under the Act (in one of its very first uses). See Proclamation No. 794, 35 Stat. 2175, 2175 (Jan. 11, 1908). But in that designation, there can be little doubt of the justification for designating the entire Grand Canyon in the proclamation, because the entire area was itself the interest to be protected.

We are now far afield from President Theodore Roosevelt and the Grand Canyon, however, and that designation is not this case. Instead, with Presidents increasingly wielding their Antiquities Act power for political reasons, the Chamber, the small businesses which rely on NFIB Legal Center, and others under the federal thumb need courts to help.

The federal courts’ deference to the President in this respect “has profound consequences for how our government operates.” See *Buffington v. McDonough*, 143 S. Ct. 14, 20 (2022) (Gorsuch, J., dissenting from the denial of certiorari). And this case lays it plain: the courts’ reflexive deference to the President in Antiquities Act matters “encourages executive officials to write ever more ambitious” monument designations “on the strength of ever thinner statutory terms . . .” See *id.* In this case, it supposedly even enabled the President to renege on a congressional promise.

There can be no question that the Article III courts have a key duty to step into disputes between the government and the governed to “say what the law is.” *Marbury v. Madison*, 5 U.S. 137, 177 (1803). Yet the Circuit Courts in this case and the *Murphy Company* case, as several courts have done recently, have “abdicate[d their] duty to curtail unlawful executive action.” See *Murphy Co.*, 65 F.4th at 1141 (Tallman, J., dissenting in part).<sup>5</sup> This “kind of judicial abdication disserves both” local communities “and the law.” See *Buffington*, 143 S. Ct. at 16 (Gorsuch, J., dissenting from the denial of certiorari).

A President’s desire to designate or expand monuments for political reasons cannot nullify Congress’s limits on executive-branch authority. And in this case and the similar one docketed, the Circuit Courts’ “deference to the political branches of government . . . is contrary to [their] commitment to the rule of law.” *Murphy Co.*, 65 F.4th at 1141 (Tallman, J., dissenting in part).<sup>6</sup> But “[i]n this country, we like to boast that persons who come to court are entitled to have independent judges, not politically motivated actors, resolve their rights . . . we promise, individuals may appeal to neutral magistrates to resolve their disputes about ‘what the law is.’” *Buffington*, 143 S. Ct. at 18 (Gorsuch, J.,

---

<sup>5</sup> In the *Murphy Company* docket, the quote is at Pet.App.39a, where Judge Tallman cites THE FEDERALIST NO. 78 (Alexander Hamilton), for the explanation that constitutional limits “can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void.”

<sup>6</sup> In the *Murphy Company* docket, the quote is at Pet.App.40a.

dissenting from the denial of certiorari). The Court should review this case and the *Murphy Company* case to address this misplaced deference directly.

Take, for example, another case pending on appeal at a Circuit Court, *Garfield County, Utah v. Biden*, No. 4:22-CV-59, 2023 WL 5180375 (D. Utah), which is docketed at the Tenth Circuit as Case Nos. 23-4106, 23-4107. There, out of deference to the President, the district court refused to interpret the Antiquities Act's limits on executive-branch authority at the pleadings stage, leaving no path for claims that the President acted unlawfully by exceeding those limits. To be sure, the district court acknowledged that "when Congress has wished to restrict the President's Antiquities Act authority, it has done so expressly." *Id.* at \*2 (quoting the Panel's opinion in the *Murphy Company* case, which is at Pet.App.22a in that docket). But given a chance to interpret and apply the Act's express restrictions on the President's authority, that district court balked, as others have repeatedly done. *See, e.g., Mass. Lobstermen's Ass'n v. Ross*, No. 1:17-cv-406 (D.D.C. Oct. 5, 2018).

Instead of saying "what the law is," *see Marbury*, 5 U.S. at 177, the district court just shrugged its shoulders. *See Garfield County*, 2023 WL 5180375, at \*8. Why? Because, according to the district court, "No court of appeals has addressed how to interpret the" statutory limit at issue in that case. *Id.* That sort of reasoning fails Article III's requirements. The district court went further though. Rather than step in to interpret the statutory limit and apply it to that case, the district court put its

thumb on the scale in favor of the President. It said that because no court of appeals has interpreted the statutory limit on the President's power and because the district court would not interpret the limit there, therefore the President must have stayed *within* the limit. *Id.* ("without additional guidance from Congress or a higher court, the President's actions are not *ultra vires*").

How could the district court in *Garfield County* have decided that the President acted within the limits to his authority under the Antiquities Act while simultaneously refusing to interpret the limits and apply them to that case? Under that court's approach, no local government or other person could ever bring the President into court for an unlawful Antiquities Act designation. The President's uninformed, unlawful, unreasonable—even spiteful—*decision* to designate a monument would be sufficient for a court to kill any challenge, rubberstamping the President's action. That cannot be the right path.

And these cases have real, negative impacts for the communities that a President has decided can be "left behind." *See Murphy Co.*, 65 F.4th at 1143 (Tallman, J., dissenting in part).<sup>7</sup> That is so here.

Taking first the harms directly tied to the President's decision to chop down the local timber/wood-products industry, the Chamber's and NFIB's members in and around the industry require reliable, consistent sources of timber to support

---

<sup>7</sup> In the *Murphy Company* docket, the quote is at Pet.App.44a.

operations, employ citizens, invest in their businesses, invest in the community, and keep the local economy workable and growing.

Chamber members Roseburg and Douglas County in turn rely on the businesses' having consistent sources of timber too. Insufficient timber harvest leads to loss of jobs in the local timber/wood-products industry, which in turn adversely affects the Chamber's and NFIB's members. The timber/wood-products and ancillary industry jobs account for fifteen percent of Douglas County's employment. Jobs in the industry are family-wage positions held by citizens who then patronize the community's many small businesses and use local services. Thus, a dollar lost in the timber/wood-products industry equals multiple dollars lost in the broader local community.

The loss of industry dollars also increases the burden on public services, straining already fragile county budgets. Roseburg has faced increased financial burden due to Douglas County's lost revenue. For example, Roseburg, like other Douglas County communities have done, assumed library operations when Douglas County was forced to close all countywide libraries.

Chamber educational-institution members also have suffered financially due to lack of management of O&C Act forestland and related loss of revenue. Since Congress enacted the Secure Rural Schools & Community Self-Determination Act, P.L. 106-393 (2000), the federal government has been making payments to Douglas County, in part, for operations

of its schools. However, these payments have declined significantly over the years. And against this backdrop, the President decided that these schools and their students could be “left behind” in favor of expanding a monument. Loss of revenue has resulted in the reduction or loss of educational, vocational, arts, and extra-curricular programs and opportunities for Douglas County students.

Similarly, Roseburg’s police department has suffered from the President’s action. With lost revenue, Douglas County has needed to raise Roseburg’s fees by nearly double to keep up with technology needed for the dispatch system. The loss of O&C Act revenues has also resulted in an overall reduction of law officers.

The injuries stemming from being “left behind” extend further. Lack or complete absence of management of O&C Act lands burdened by the monument negatively affects tourism and recreation in Roseburg, Douglas County, and the region. Chamber members in recreational and tourism-related industries, also tied to the land, need public lands that are well-managed for *all purposes* under the O&C Act, *see* 43 U.S.C. § 2601, for the environmental health of the forests, rivers, streams, and wildlife in addition to the timber harvest benefits. The Chamber advocates on behalf of these member interests too.

The hundreds of Chamber members and the thousands of county businesses for which the Chamber advocates are diverse entities with diverse

interests. Likewise, the small businesses NFIB represents within the county have their own industries and business priorities. The common ground for all of *amici*'s members in the area is that they have ties to, and are being adversely affected by, the lack of effective management of public forestland in Douglas County and southern Oregon. And this lack is a direct result of the President's choice to leave this part of America behind.

### **III. The President's decision to leave these communities behind was unnecessary.**

The O&C Act's conservation-minded provisions do not merely support the timber/wood-products industries and related local revenues derived from those industries, they also plainly support the conservation at the heart of the Proclamation.

As the court below recognized, the O&C Act is not a handout to the timber/wood-products industry; rather, "the O & C Act contemplates a flexible concept of sustained yield management that permits the BLM to consider conservation values in making timber harvest decisions." Pet.App.20a. The court undersold the statute's text—Congress said that the lands

shall be managed . . . for permanent forest production, and the timber thereon shall be sold, cut, and removed *in conformity with the principal of sustained yield* for the purpose of providing a permanent source of timber supply, *protecting watersheds,*

*regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational [facilities.]*

43 U.S.C. § 2601 (emphasis added). In the Proclamation, the President wrongly assumed that the O&C Act gave license to the timber/industrial-products industry to clearcut the forest. But the statute belies the assumption—it directs that the industry must follow “**sustained**” yield, and that the activities in the region support conservation and promote recreation in the forest.

Under the O&C Act, Chamber member Douglas County could develop a strong, resilient business base. While the region supported by the Chamber is well known for its world-class timber/wood-products industry, the region is also diversified with a growing tourism industry long led by outdoor recreation, which is now complemented by esteemed wineries and popular Wildlife Safari destinations.

Entrepreneurism, professional services, and retail industries have grown under the O&C Act. The service industries seeing the most growth in the past two decades have been hospitality and recreation, and the Chamber’s members did not need the President’s Proclamation to grow these industries. The O&C Act already gave them that support.

But by extending the monument into O&C Act lands, the President has felled the effective management of public forestland in Douglas County and southern Oregon necessary to promote



conservation and recreation in the area. Lack of active management on O&C Act lands is detrimental to forest health, and the social and economic health of the individual communities in Douglas County. Said differently, the President's action is inconsistent with the Chamber's interests in effective management of natural resources on public lands on which Chamber members, other Douglas County businesses, and Douglas County residents depend for their livelihoods and well-being.

It is important also to remember that timber businesses like Murphy Company (see 23-525) are employers as well as entrepreneurs. When family-owned businesses are prevented from engaging in long-established business practices by nothing more than presidential proclamations, the upstream and downstream effects spell catastrophe for local communities.

Yet there is another problem made worse by the Proclamation: wildfires. Wildfires are an unfortunate fact in this part of Oregon. Active management on O&C Act lands has helped the region protect itself and prepare for the inevitable fire, making it less likely that a fire-start might explode into a catastrophic wildfire that spreads far and fast, destroying natural resources, killing wildlife, and threatening people and property in the process.

In the aftermath of a wildfire, it is imperative to salvage burned trees promptly to avoid a fuel-laden forest that is primed for a later, more destructive wildfire. Approximately 350,000 acres in Douglas

County alone have burned in wildfires in the past ten years. And once an area of a forest is lost to wildfire, it takes many years to restore the environment to the point that the land supports habitat, recreation, and timber harvest.

But the President has undercut the region's ability to actively manage the forestlands to support conservation, recreation, and *sustained* yield. Catastrophic wildfire concerns implicate all Chamber and NFIB members—and all citizens in the region, for that matter. And for its part, it is difficult for the Chamber to promote the region as a visitor destination for outdoor recreation or for the region's residents to enjoy outdoor leisure activities when smoke from wildfires is choking the region.



## CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of certiorari.

Respectfully submitted,  
Ivan L. London  
*Counsel of Record*  
MOUNTAIN STATES  
LEGAL FOUNDATION  
2596 South Lewis Way  
Lakewood, Colorado 80227  
(303) 292-2021  
ilondon@mslegal.org

December 15, 2023     *Attorney for Amici Curiae*