No. 160, Original

In the Supreme Court of the United States

STATE OF UTAH, PLAINTIFF

v.

UNITED STATES OF AMERICA

ON MOTION FOR LEAVE TO FILE A BILL OF COMPLAINT

BRIEF FOR THE DEFENDANT IN OPPOSITION

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JURISDICTION

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the United States Constitution and 28 U.S.C. 1251(b)(2).

STATEMENT

A. Federal Ownership Of Public Lands

1. The United States has owned public lands since its founding. Starting in 1781, the original States ceded, and the United States accepted, claims to land west of the Appalachian Mountains. See Bureau of Land Mgmt., U.S. Dep't of the Interior, *Public Land Statistics 2023*, at 1 (July 2024) (*Public Land*). The United States continued to acquire public lands as the Nation expanded westward during the 19th century. See *ibid.* Through the cession of territory by foreign sovereigns —as in the Louisiana Purchase, the Mexican Cession, and the Alaska Purchase—and subsequent negotiations with Indian tribes, the United States acquired not only

sovereignty over the region, but also title to the public lands within it. See *United States* v. *Percheman*, 7 Pet. 51, 86-87 (1833).

The United States has since transferred many of those lands to new owners. See *Public Lands* 1. During the 19th century, for example, Congress granted lands to newly admitted States, opened lands to homesteaders, transferred lands to railroads, and sold lands to pay off debts. See *ibid.* Those transfers "built the country's economic foundation, opened the West to settlement, and united the vast expanses of land into one nation." *Ibid.*

At the same time, the United States has retained ownership of other lands. Today, the United States administers roughly 640 million acres of surface land—approximately 28% of the 2.27 billion acres in the United States. See Carol Hardy Vincent et al., Cong. Research Serv., *Federal Land Ownership: Overview and Data*, R42346, at 1 (updated Feb. 21, 2020). The United States administers that land for a variety of purposes, ranging from military bases, national parks, and national forests to leasing for the production of oil and gas and other resources that generate revenue for the government. See *id.* at 4-6.

2. The Bureau of Land Management (BLM) administers the lands at issue here under the Federal Land Policy and Management Act of 1976 (FLPMA), Pub. L. No. 94-579, 90 Stat. 2743 (43 U.S.C. 1701 *et seq.*). In FLPMA, Congress declared that "it is the policy of the United States that * * * the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest." 43 U.S.C. 1701(a)(1).

Federal ownership by itself neither removes land from a State's territory nor exempts it from the State's jurisdiction. See *Surplus Trading Co.* v. *Cook*, 281 U.S. 647, 650 (1930). On federally owned lands, as elsewhere, a State may not enforce laws that conflict with federal law. See *Kleppe* v. *New Mexico*, 426 U.S. 529, 543 (1976). And under the doctrine of intergovernmental immunity, a State may not regulate, tax, or discriminate against the federal government. See *United States* v. *Washington*, 596 U.S. 832, 838-839 (2022); *McCulloch* v. *Maryland*, 4 Wheat. 316, 425-437 (1819). But subject to those limits, a State retains the power to enforce its laws on federal lands that do not constitute federal enclaves under the Constitution. See *California Coastal Commission* v. *Granite Rock Co.*, 480 U.S. 572, 581-582 (1987). For example, a State may "punish public offenses, such as murder or larceny, committed on such lands, and may tax private property, such as live stock, located thereon." *Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 404 (1917). A BLM regulation confirms that, "[e]xcept as otherwise provided by Federal law or regulation, State and local laws and ordinances shall apply" on BLM-administered lands. 43 C.F.R. 8365.1-7. "This includes, but is not limited to, State and local laws and ordinances governing" "[o]peration of motor vehicles," "[h]unting and fishing," "[u]se of firearms," "[i]njury to persons," and "[a]ir and water pollution." *Ibid.*

Congress has authorized the federal government to pay substantial sums "to compensate States and local governments for burdens created as a result of the immunity of Federal lands from State and local taxation." 43 U.S.C. 1701(a)(13). For instance, under the Payment

in Lieu of Taxes program, the United States makes annual payments to localities with federal lands located within their borders. See 31 U.S.C. 6902. Congress also has granted States and localities a share of the United States' revenues from national forests, see 16 U.S.C. 500; national wildlife refuges, see 16 U.S.C. 715s; mineral leases, see 30 U.S.C. 191; and grazing districts, see 43 U.S.C. 315j.

B. Federal Ownership Of Lands In Utah

1. Federal ownership of lands in Utah began with the treaty that ended the Mexican-American War, the Treaty of Guadalupe Hidalgo. See Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico, Feb. 2, 1848, 9 Stat. 922. In that treaty, Mexico ceded a vast region, including all of present-day Utah, to the United States. See *id.* Art. V, 9 Stat. 926-928. In return, the United States paid $15 million to Mexico and assumed some of Mexico's debts. See *id.* Arts. XII, XIV, 9 Stat. 932-933. Through the treaty, the United States acquired title to the public lands in the ceded area. See *More* v. *Steinbach*, 127 U.S. 70, 78 (1888).

Soon afterwards, as part of the Compromise of 1850, Congress established the Utah Territory. See Act of Sept. 9, 1850, ch. 51, 9 Stat. 453. When a rebellion broke out among settlers in the territory, President Buchanan issued a proclamation reaffirming federal ownership of the land. See Proclamation No. 50, 11 Stat. 796. President Buchanan declared to the settlers: "The land you live upon was purchased by the United States and paid for out of their treasury; the proprietary right and title to it is in them, and not in you." *Id.* at 797.

Several decades later, Congress admitted Utah into the Union as a State. See Act of July 16, 1894, ch. 138, 28 Stat. 107. In the statehood act, Congress granted hundreds of thousands of acres of federal land to Utah for government buildings, public education, hospitals, and other purposes. See §§ 7-13, 28 Stat. 109-110. At the same time, Congress required Utah, as a condition of statehood, to "forever disclaim all right and title" to the remaining federal lands in the State. § 3, 28 Stat. 108. The state constitution accordingly declares that the people of Utah "forever disclaim all right and title to the unappropriated public lands" in the State. Utah Const. Art. III. Congress has imposed similar conditions in other statehood acts since the admission of Ohio in 1802. See Compl. ¶¶ 25-26.

In the early 20th century, Congress considered bills to cede certain lands—including the lands at issue in this case—to the States. See Benjamin Kiser, *Bucking the White Elephant: Utah's Fight for Federal Management of the Public Domain, 1923-1934*, 88 Utah Historical Quarterly 165, 165 (2020). Utah Governor George H. Dern led the fight against those proposals. See *ibid.* Governor Dern "testified that Utah could not adequately manage these lands and that, indeed, the state was not interested in accepting them." *Ibid.*; see *Granting Remaining Unreserved Public Lands to the States: Hearings on H.R. 5840 Before the House Comm. on the Public Lands*, 72d Cong., 1st Sess. 9-37 (1932). The proposals were never adopted, and the lands remained federal property.

In more recent years, however, the State of Utah has begun to express dissatisfaction with federal ownership of lands within its borders. In 2012, for example, the

state legislature enacted a statute purporting to require the United States to cede public lands to the State by 2014. See Utah Code Ann. § 63L-6-103(1) (Lexis Nexis 2019). And in 2016, the legislature created a special fund to finance suits challenging federal ownership of public lands. See Utah Code Ann. § 63C-4a-404 (Lexis Nexis 2023).

2. In August 2024, Utah filed a motion in this Court for leave to file a bill of complaint against the United States. Utah alleges that the United States currently owns "about 69 percent of the land" in the State, or "roughly 37.4 million of Utah's 54.3 million acres." Compl. ¶ 1. BLM administers around 22.8 million acres of that land. See *Federal Land Ownership: Overview and Data* 10. Utah describes "roughly 18.5 million acres" of that BLM land—shown in a map appended to its motion—as "'unappropriated' land." Compl. ¶ 1; see Mot. for Leave App. 4. FLPMA does not use or define the term "unappropriated land," but Utah uses it to refer to land that the federal government allegedly has not "formally reserv[ed]" for a "designated purpose." Compl. ¶ 1. Utah states that the United States "earns significant revenue by leasing [the lands at issue] to private parties for activities such as oil and gas production, grazing, and commercial filmmaking, and by selling timber and other valuable natural resources." *Ibid.*

Utah claims that the United States lacks the constitutional power to "retain" those "unappropriated lands" "in perpetuity" "over the State's objection." Compl. ¶ 52. It seeks a declaration that "the United States' policy and practice of indefinitely retaining its unappropriated lands" violate the Constitution. *Id.* at 28. It also seeks an injunction that would require the United

States "to begin the process of disposing of its unappropriated federal lands within Utah." *Ibid.*

ARGUMENT

The Constitution vests this Court with original jurisdiction over cases "in which a State shall be party." U.S. Const. Art. III, § 2, Cl. 2. By statute, the Court's original jurisdiction is "exclusive" in "controversies between two or more States," but is "not exclusive" in "controversies between the United States and a State." 28 U.S.C. 1251(a) and (b)(2).

The exercise of this Court's original jurisdiction is a matter of "discretion." *Ohio* v. *Wyandotte Chemicals Corp.*, 401 U.S. 493, 499 (1971). The Court exercises its discretionary power to sit as a tribunal of first and last resort only "sparingly." *Mississippi* v. *Louisiana*, 506 U.S. 73, 76 (1992) (citation omitted). That approach reflects the Court's appreciation that its original jurisdiction is "so delicate and grave" that it should be invoked only "when the necessity [i]s absolute." *Louisiana* v. *Texas*, 176 U.S. 1, 15 (1900). It also reflects the practical reality that the Court is structured "as an appellate tribunal" and is "ill-equipped for the task of factfinding." *Wyandotte*, 401 U.S. at 498. Finally, the Court's approach prevents "abuse of the opportunity" to file original-jurisdiction cases. *Massachusetts* v. *Missouri*, 308 U.S. 1, 19 (1939).

This Court should deny Utah's motion for leave to file a bill of complaint. Utah's complaint does not satisfy the Court's usual criteria for entertaining an original case; it faces significant jurisdictional and procedural barriers; and it plainly lacks merit.

A. Utah's Complaint Does Not Satisfy This Court's Usual Criteria For Hearing Original Suits

A plaintiff that seeks to initiate an original action must show that it would be "appropriate" for the Court to exercise original jurisdiction. *Mississippi*, 506 U.S. at 76 (citation omitted). The Court considers two factors to determine whether the exercise of original jurisdiction would be appropriate: the availability of an alternative forum and the nature of the State's interest. See *ibid.* Neither factor supports exercising jurisdiction here.

1. In deciding whether to hear an original case, this Court considers the "availability of an alternative forum." *Mississippi*, 506 U.S. at 77. The Court is "particularly reluctant to take jurisdiction" when the plaintiff has "another adequate forum" available. *United States* v. *Nevada*, 412 U.S. 534, 538 (1973) (per curiam). As discussed above, this Court's original jurisdiction over suits between the United States and a State is not exclusive; such cases can also be heard in federal district court. See p. 7, *supra*. For the past half century, therefore, the Court has "summarily denied" leave in most original cases filed by States against the United States or its agencies or officers. *Nebraska* v. *Wyoming*, 515 U.S. 1, 27 n.2 (1995) (Thomas, J., concurring in part and dissenting in part); see, *e.g.*, *Alaska* v. *United States*, 144 S. Ct. 546 (2024).

Utah acknowledges (Br. in Support 7) that it could have brought this suit in district court. Utah's suit no doubt faces significant jurisdictional and procedural barriers, see pp. 14-20, *infra*, but those barriers exist regardless of whether Utah sues in district court or this Court. Utah would have an adequate opportunity to lit-

igate those threshold issues—and, if it prevails on those issues, to litigate the merits—in district court. As a result, no sound basis exists for this Court to depart from its usual practice of denying leave when a State seeks to sue the United States.

Utah (Br. in Support 11) and some of its amici (Iowa Amicus Br. 3-6) question this Court's decisions expressing reluctance to exercise original jurisdiction over suits that could be brought elsewhere. But the Court has adhered to that approach for the past half century. See, *e.g.*, *Nevada*, 412 U.S. at 538; *Illinois* v. *City of Milwaukee*, 406 U.S. 91, 93-94 (1972). Utah cites (Br. in Support 11) Chief Justice Marshall's statement that a court may not "decline the exercise of jurisdiction which is given," *Cohens* v. *Virginia*, 6 Wheat. 264, 404 (1821), but that statement "is not universally true," *Massachusetts*, 308 U.S. at 19. For example, the doctrine of *forum non conveniens* allows courts to decline jurisdiction over cases that are more conveniently litigated in foreign tribunals, see *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235, 248 & n.13 (1981), and abstention doctrines allow federal courts to decline jurisdiction over cases that belong in state courts, see *Railroad Commission* v. *Pullman Co.*, 312 U.S. 496, 501 (1941). Indeed, the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, 701 *et seq.*, provides that nothing in that Act "affects * * * the power or duty of the court to dismiss any action or deny relief on any * * * appropriate legal or equitable ground." 5 U.S.C. 702. So too, this Court may decline to exercise jurisdiction over a case, including a putative suit in equity such as this, on appropriate equitable grounds, such as when it could be brought in district court. See *Massachusetts*, 308 U.S. at 19.

Utah argues (Br. in Support 13) that this case raises issues of "nationwide importance." But almost all cases that this Court hears raise important issues. See Sup. Ct. R. 10 (criteria for certiorari). Yet this Court usually resolves those cases only after both the district court and the court of appeals have addressed them. The Court ordinarily refrains from granting certiorari before judgment, skipping the court of appeals, even in important cases. See Sup. Ct. R. 11 (criteria for certiorari before judgment). The Court should be even more reluctant to exercise original jurisdiction, skipping both the court of appeals and the district court, when the case could just as easily have been brought in district court. Cf. *Moyle* v. *United States*, 144 S. Ct. 2015, 2022 (2024) (Barrett, J., concurring) ("We should not jump ahead of the lower courts, particularly on an issue of such importance.").

Utah urges (Br. in Support 12) this Court to leapfrog the lower courts because this case presents "only a purely legal issue." That characterization is incorrect. Utah alleges that the United States is "simply holding" "18.5 million acres" of land in Utah without "using it to execute any of its enumerated powers." Compl. ¶ 1. Before a court could determine whether that assertion is correct and craft appropriate relief, it would need to resolve any factual disputes about how those 18.5 million acres are being used. This Court is poorly suited to perform that task in the first instance.

In any event, the benefits of litigation in the lower courts go beyond the district court's superior capacity to find facts. For example, the lower courts can sort through threshold jurisdictional and procedural issues, such as those raised here. See pp. 14-20, *infra*. The

process of litigating in the lower courts can also sharpen the dispute between the parties. See *Moyle*, 144 S. Ct. at 2021 (Barrett, J., concurring). And even when this Court addresses purely legal issues, it benefits from the insights of its "thoughtful colleagues on the district and circuit benches." *Maslenjak* v. *United States*, 582 U.S. 335, 354 (2017) (Gorsuch, J., concurring in part and concurring in the judgment).

Finally, Utah observes (Br. in Support 10) that, in *South Carolina* v. *Regan*, 465 U.S. 367 (1984), this Court granted South Carolina leave to file an original action challenging federal taxation of state bonds, even though the State could have filed that case in district court. In that case, however, the Court emphasized that "24 States" had submitted an amicus brief supporting South Carolina. *Id.* at 382 (plurality opinion); see *id.* at 384 (Blackmun, J., concurring in the judgment). In this case, by contrast, only three States—Idaho, Alaska, and Wyoming—have filed an amicus brief supporting Utah on the merits. See Idaho Amicus Br. 6-27; see also Iowa Amicus Br. 3-6 (arguing in favor of granting leave but taking no position on the merits).

In fact, the attorneys general of other western States have recognized that challenges to the United States' ownership of public lands in the western States are without foundation. For example, in 2016, the Conference of Western Attorneys General—which includes the attorneys general of Idaho, Alaska, and Wyoming, the three States that now support Utah's suit—concluded that this Court's precedents "provide little support for the proposition that the principles of equal footing or equal sovereignty * * * compel transfer of public lands to the western states." Peter Michael et al., *Report of*

the Public Lands Subcommittee, Western Attorneys General Litigation Action Committee, Conference of Western Attorneys General 47 (2016). Similarly, Idaho's Office of the Attorney General has stated that "[t]his premise has no support in the law." Letter from Steven W. Strack, Deputy Att'y Gen., Natural Res. Div., Idaho Office of the Att'y Gen., to Rep. Ilana Rubel 2 (Mar. 14, 2016), https://perma. cc/3EYV-DW6T. And Wyoming's Office of the Attorney General has concluded that "Utah's attempt to take control of federal lands within its borders is highly unlikely to succeed in court because its legal theories rest on weak foundations." Memorandum from Jeremiah I. Williamson, Assistant Att'y Gen., Water & Natural Res. Div., Wyo. Office of the Att'y Gen., to Jerimiah L. Rieman, Natural Res. Policy Advisor 6 (May 4, 2012), https:// perma.cc/2RNV-RPH2.

2. The propriety of exercising original jurisdiction also depends on the "nature of the interest of the complaining State." *Mississippi*, 506 U.S. at 77 (citation omitted). Article III grants original jurisdiction to this Court "as a substitute for the diplomatic settlement of controversies between sovereigns and a possible resort to force." *North Dakota* v. *Minnesota*, 263 U.S. 365, 372-373 (1923). The Court therefore exercises that jurisdiction only in cases of sufficient "seriousness and dignity." *Mississippi*, 506 U.S. at 77 (citation omitted). The "model case" for invoking that jurisdiction is a dispute "of such seriousness that it would amount to *casus belli* if the States were fully sovereign." *Texas* v. *New Mexico*, 462 U.S. 554, 571 n.18 (1983).

This Court most often exercises original jurisdiction in cases "sounding in sovereignty and property"—*e.g.*, disputes between States about boundaries, title to land,

or water rights. Stephen M. Shapiro et al., *Supreme Court Practice* § 10-2, at 10-7 (11th ed. 2019). The Court also has exercised original jurisdiction over "cases sounding in contract," such as suits to enforce interstate compacts. *Id.* at 10-9.

This case does not fall in any of those categories. This case does not involve a dispute about boundaries. Cf. *California* v. *Nevada*, 447 U.S. 125, 126 (1980) (exercising original jurisdiction to determine "the true boundary between the States of California and Nevada"). There is no dispute that the lands at issue form part of Utah, or that Utah may enforce its criminal and civil laws against private parties on those lands.

Nor does this case involve an inter-sovereign dispute over title to land. Cf. *United States* v. *Alaska*, 521 U.S. 1, 4 (1997) (exercising original jurisdiction to resolve a "dispute between the United States and the State of Alaska over the ownership of submerged lands"). Utah concedes that the United States "owns" the lands at issue. Compl. ¶ 1. Utah does not assert its own claim to those lands; rather, it has "forever disclaim[ed] all right and title" to those lands. Utah Const. Art. III.

This case instead involves a claim that Congress has exceeded its enumerated powers with respect to the United States' own land. See Compl. ¶ 1. Unlike a dispute over boundaries or title, Utah's enumerated-powers claim does not involve distinctively sovereign interests. Private litigants, too, may argue that Congress has overstepped its constitutional authority. See *Bond* v. *United States*, 564 U.S. 211, 214 (2011).

Nor is Utah's suit the type of case that is typically litigated only in this Court. States often bring suits in district court claiming that Congress has exceeded its

enumerated powers. See, *e.g.*, *Haaland* v. *Brackeen*, 599 U.S. 255, 271 (2023); *NFIB* v. *Sebelius*, 567 U.S. 519, 540 (2012); *New York* v. *United States*, 505 U.S. at 154. One of this Court's landmark cases concerning the scope of Congress's authority under the Property Clause, *Kleppe* v. *New Mexico*, 426 U.S. 529 (1976), was brought by a State in district court. See *id.* at 534 & n.4. The nature of Utah's claim accordingly weighs against exercising original jurisdiction.

B. Utah's Complaint Faces Imposing Jurisdictional And Procedural Barriers

This Court ordinarily denies leave to file a bill of complaint if the case faces "jurisdictional" obstacles or other "threshold barriers." *Federal Republic of Germany* v. *United States*, 526 U.S. 111, 112 (1999) (per curiam). For example, the Court has denied leave when the case is not justiciable, see *Mississippi* v. *Johnson*, 4 Wall. 475, 501 (1867); when the plaintiff lacks standing, see *Texas* v. *Pennsylvania*, 141 S. Ct. 1230, 1230 (2020); when the defendant enjoys sovereign immunity, see *Principality of Monaco* v. *Mississippi*, 292 U.S. 313, 331-332 (1934); and when the suit is untimely, see *Germany*, 526 U.S. at 112. The Court need not definitively resolve such threshold issues before denying leave to initiate an original case; even serious "doubt[s]" can justify declining to exercise jurisdiction. *Ibid.* The Court should deny leave here because Utah's suit is not justiciable, Utah lacks standing, the United States is immune from Utah's suit, and Utah's suit is untimely.

1. A federal court may exercise only "judicial Power." U.S. Const. Art. III, § 1. It may not exercise "legislative Powers," which the Constitution vests in Congress

alone. *Id.* Art. I, § 1. Yet Utah's suit asks this Court to exercise (or to direct Congress to exercise) a legislative power: the power to dispose of public lands.

The Property Clause grants "Congress" the "Power to dispose of" the "Property belonging to the United States." U.S. Const. Art. IV, § 3, Cl. 2. This Court has recognized that the Clause grants Congress the "exclusive right to control and dispose of" public lands, *Van Brocklin* v. *Tennessee*, 117 U.S. 151, 168 (1886); and that the power to dispose of public lands belongs "to Congress and to it alone." *United States* v. *Celestine*, 215 U.S. 278, 284 (1909). "No appropriation of public land can be made for any purpose, but by authority of Congress." *United States* v. *Fitzgerald*, 15 Pet. 407, 421 (1841).

Utah "seeks an order directing the United States to begin the process of disposing of its unappropriated lands within Utah." Compl. ¶ 61. But a court may not order Congress to legislate. See *Franklin* v. *Massachusetts*, 505 U.S. 788, 827-829 (1992) (Scalia, J., concurring in part and concurring in the judgment). Judicial review is "the negative power to disregard an unconstitutional enactment," *Massachusetts* v. *Mellon*, 262 U.S. 447, 488 (1923), not the affirmative power to direct Congress to enact new statutes. A court therefore could not order Congress to enact legislation disposing of federal lands. See *Light* v. *United States*, 220 U.S. 523, 537 (1911) ("The courts cannot compel [Congress] to set aside lands for settlement.").

Nor could a court order the Executive to dispose of federal lands without congressional authorization. "Since the Constitution places the authority to dispose of public lands exclusively in Congress, the executive's power to convey any interest in these lands must be traced to

Congressional delegation of its authority." *Sioux Tribe* v. *United States*, 316 U.S. 317, 326 (1942). A court may not make up for the lack of a statutory delegation by issuing a judicial decree. Cf. *Reeside* v. *Walker*, 11 How. 272, 291-292 (1851) (explaining that a court may not order the Executive to pay money from the Treasury without a congressional appropriation); *OPM* v. *Richmond*, 496 U.S. 414, 424-434 (1990) (same).

Utah also seeks a declaration that the United States' retention of lands in the State violates the Constitution. See Compl. 28. But this Court could not issue a declaration that Congress must legislate, just as it could not issue an injunction compelling Congress to legislate. See *Franklin*, 505 U.S. at 827-828 (Scalia, J., concurring in part and concurring in the judgment). In addition, a declaratory judgment may be proper if it would have "preclusive effect on a traditional lawsuit that is imminent." *Brackeen*, 599 U.S. at 293 (citation omitted). For example, if an individual faces a credible threat of a criminal prosecution, the individual could seek a declaratory judgment that his conduct is lawful, precluding prosecution. See *Steffel* v. *Thompson*, 415 U.S. 452, 458-460 (1974). Here, however, Utah points to no imminent lawsuit in which a declaratory judgment would have preclusive effect. "Without preclusive effect, a declaratory judgment is little more than an advisory opinion." *Brackeen*, 599 U.S. at 293.

History and tradition, which "offer a meaningful guide to the types of cases that Article III empowers federal courts to consider," confirm that this case is not justiciable. *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 424 (2021) (citation omitted); see, *e.g.*, *Raines* v. *Byrd*, 521 U.S. 811, 826-828 (1997). An official state govern-

ment website about this case lists the following question on its "Frequently Asked Questions" page: "Has any state ever attempted legal action like this in the past?" Utah, *Stand for Our Land*, https://perma.cc/J4NU-BCDS. It answers: "No[.]" *Ibid.*

2. The judicial power vested by Article III extends only to "Cases" and "Controversies." U.S. Const. Art. III, § 2, Cl. 1. A case or controversy exists only if the plaintiff has standing—that is, only if the plaintiff has suffered a judicially cognizable injury, the injury was likely caused by the defendant, and the injury would likely be redressed by judicial relief. See *TransUnion*, 594 U.S. at 423.

Utah has not established standing here. Utah raises no claim that *it* owns the "18.5 million acres" of land at issue. Compl. ¶ 1. Utah instead agrees that the United States owns that land, but argues that the Constitution requires Congress to convey that land to it or to third parties whom Utah can then tax and regulate. See Compl. ¶ 50. Utah alleges that Congress's failure to convey the land injures it by depriving it of tax revenue, the ability to exercise eminent domain, and the power to decide how the land is used. See Compl. ¶¶ 45-49.

Utah has failed to show, however, that judicial relief would redress those asserted injuries. Utah concedes that the United States may own land within a State so long as it "formally reserv[es]" the land for a specific purpose. Compl. ¶ 1. Even if this Court were to accept Utah's theory, therefore, Congress would not be required to sell off the 18.5 million acres at issue, opening that land up to state taxation, condemnation, and regulation. Congress could choose to retain the land and formally reserve it for purposes that Utah concedes are

constitutionally permissible—such as national parks, post offices, or military training ranges. If Congress chose to do so, Utah would still be unable to tax, condemn, or control the land, and Utah's asserted injuries would remain unredressed. Utah might speculate that Congress would choose to dispose of rather than reserve the land, but a plaintiff cannot establish standing through "guesswork as to how independent decisionmakers will exercise their judgment." *Clapper* v. *Amnesty International USA*, 568 U.S. 398, 413 (2013).

3. Sovereign immunity poses a third barrier to this suit. As a sovereign, the United States is immune from being sued without its consent. See *United States* v. *Sherwood*, 312 U.S. 584, 586 (1941). The United States' immunity extends to suits brought by States, whether in this Court or in district court. See *Block* v. *North Dakota ex rel. Board of University & School Lands*, 461 U.S. 273, 280 (1983); *Kansas* v. *United States*, 204 U.S. 331, 342-343 (1907). Utah's suit may proceed, therefore, only if Congress has "unequivocally" waived the United States' immunity. *United States* v. *Nordic Village, Inc.*, 503 U.S. 30, 33 (1992) (citation omitted). But Utah cites no statute that waives the United States' immunity from this suit, much less one that does so unequivocally. Nor are we aware of such a statute.

In particular, this case falls outside the scope of the waiver of immunity in the APA. The APA provides: "An action in a court of the United States seeking relief other than money damages and stating a claim that *an agency or an officer or employee thereof* acted or failed to act * * * shall not be dismissed nor relief therein be denied on the ground that it is against the United States." 5 U.S.C. 702 (emphasis added). Utah does not

state a claim that "an agency" has acted or failed to act—*e.g.*, a claim that BLM has issued or failed to issue a rule or order. Utah's theory, at bottom, is instead that *Congress* has failed to act by failing to authorize the widespread disposal of federal land in Utah. But the term "'agency,'" as used in the APA, "does not include" "the Congress." 5 U.S.C. 701(b)(1)(A).

This case also falls outside the scope of the waiver of immunity in the Quiet Title Act, 28 U.S.C. 2409a. That waiver applies only if the plaintiff "dispute[s]" the United States' title to real property and "claims" its own interest in that property. 28 U.S.C. 2409a(a) and (d); see *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians* v. *Patchak*, 567 U.S. 209, 221-222 (2012). Utah does not dispute the United States' title to the lands at issue; to the contrary, it accepts that the United States "currently owns" those lands. Compl. ¶ 1. Utah also does not claim any present interest of its own in the lands; rather, it wants the United States to transfer the lands to the State or to sell them to third parties whom Utah can then regulate and tax. See Compl. ¶ 50.

Nor can Utah rely on the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), which allows a plaintiff, in some circumstances, to sue a state or federal official for an injunction preventing the official from violating federal law. See *Armstrong* v. *Exceptional Child Center, Inc.*, 575 U.S. 320, 326-327 (2015). That doctrine applies only to suits against officials, not to suits against the sovereign itself. See *Pennhurst State School & Hospital* v. *Halderman*, 465 U.S. 89, 101 (1984). The doctrine also does not apply when the judgment sought would "expend itself on the public treasury or domain," *Land* v. *Dollar*, 330 U.S. 731, 738 (1947), or would require the

sovereign to relinquish "public lands," *Idaho* v. *Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 282 (1997). This suit, which Utah has brought "against the United States" and in which it seeks to compel the United States to dispose of "federal lands," transgresses those limits. Compl. 1, 28.

4. Finally, Utah's suit is untimely. Under the default statute of limitations for civil actions against the United States, a plaintiff must sue "within six years after the right of action first accrues." 28 U.S.C. 2401(a). Under the doctrine of laches, a plaintiff's unreasonable and prejudicial delay in prosecuting a claim precludes the plaintiff from obtaining equitable relief. See *SCA Hygiene Products Aktiebolag* v. *First Quality Baby Products, LLC*, 580 U.S. 328, 333 (2017).

Utah has brought this suit 176 years after the United States acquired the lands at issue, 128 years after Utah joined the Union, and 48 years after Congress adopted the statutory provisions that Utah challenges. Utah's delay in bringing the suit has prejudiced the United States, which has granted oil-and-gas leases, issued grazing permits, entered into contracts, authorized recreational and scientific activities, and made other arrangements in reliance on its ownership of the lands at issue. Until recently, Utah acquiesced in federal possession of the lands; indeed, its state constitution disclaims any interest in the lands, and in the early 20th century, its governor rejected an offer to cede the lands to the State. Whether viewed through the lens of the statute of limitations or the doctrine of laches, Utah's suit comes far too late.

C. Utah's Claim Lacks Merit

This Court has declined to grant leave to file original complaints that fail to raise substantial claims on the merits. See, *e.g.*, *Alabama* v. *Texas*, 347 U.S. 272, 273 (1954) (per curiam) (denying leave to file a meritless claim that Congress had exceeded its power under the Property Clause). Utah's claim here—that Congress is exceeding its enumerated powers by retaining ownership of federal lands in Utah—is insubstantial.

1. The Constitution empowered the United States to acquire the 18.5 million acres at issue in this case. Article II grants the President, with the consent of two-thirds of the Senate, the power to "make Treaties." U.S. Const. Art. II, § 2, Cl. 2. The treaty power includes the power to acquire land from foreign sovereigns and Indian tribes. See *Hooven & Allison Co.* v. *Evatt*, 324 U.S. 652, 673 (1945). The United States exercised that power in the Treaty of Guadalupe Hidalgo, in which it paid Mexico $15 million and assumed some of its debts in return for (among other things) the lands at issue. See p. 4, *supra*.

The Constitution also permits the United States to hold those lands today. The Property Clause empowers Congress to make "all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. Art. IV, § 3, Cl. 2. The FLPMA provision establishing a general federal policy that "the public lands be retained in Federal ownership," 43 U.S.C. 1701(a)(1), falls squarely within that grant of authority. That provision is, on any plausible interpretation of the Clause's terms, a rule or regulation respecting property belonging to the United States. And while Utah might dispute whether the pro-

vision is needful, the Constitution entrusts the responsibility of judging needfulness to Congress, not to the courts. See *Kleppe*, 426 U.S. at 539.

The Property Clause also empowers Congress "to dispose of" the United States' property. U.S. Const. Art. IV, § 3, Cl. 2. That power includes "the absolute right to prescribe the times, the conditions, and the mode" of the transfer. *Gibson* v. *Chouteau*, 13 Wall. 92, 99 (1872). Congress exercised that power in FLPMA, authorizing disposal only if, "as a result of the land use planning procedure provided for in th[at] Act, it is determined that disposal of a particular parcel will serve the national interest." 43 U.S.C. 1701(a)(1). The term "dispose of," moreover, encompasses more than sale. The "power of disposal was early construed to embrace leases, thus enabling the Government to derive profit through royalties." *Ashwander* v. *TVA*, 297 U.S. 288, 331 (1936); see *United States* v. *Gratiot*, 14 Pet. 526, 538 (1840). Utah's own complaint—which alleges that the United States "earns significant revenue by leasing [its] lands to private parties for activities such as oil and gas production, grazing, and commercial filmmaking," Compl. ¶ 1—establishes that the United States is exercising that power here.

Reinforcing that interpretation, the Property Clause authorizes Congress to dispose of and regulate both "Territory" and "other Property." U.S. Const. Art. IV, § 3, Cl. 2. The Clause thus encompasses not only public lands, but also federal territories, see *United States* v. *Vaello Madero*, 596 U.S. 159, 162 (2022), and personal property, see *Ashwander*, 297 U.S. at 331. Yet Utah does not dispute that the United States may hold territories, such as Puerto Rico, Guam, or Utah itself before

Congress admitted it to the Union. It also does not dispute that the United States may hold personal property, such as the gold in Fort Knox, the oil in the Strategic Petroleum Reserve, or the art in the Smithsonian. The Clause's text provides no basis for treating federal retention of public lands any differently.

This Court's precedents confirm that Congress may decide whether to retain or dispose of federal lands. The Court has explained that "Congress exercises the powers both of a proprietor and of a legislature over the public domain." *Kleppe*, 426 U.S. at 540. In its capacity as "an ordinary proprietor," Congress "may deal with [federal] lands precisely as a private individual may deal with his farming property." *Camfield* v. *United States*, 167 U.S. 518, 524 (1897). "It may sell *or withhold them from sale*." *Ibid.* (emphasis added).

Separately, in its capacity as a legislature, Congress "has a power over its own property analogous to the police power of the several States." *Camfield*, 167 U.S. at 525. The Court has described that power as "complete," *United States* v. *San Francisco*, 310 U.S. 16, 30 (1940); "plenary," *Sinclair* v. *United States*, 279 U.S. 263, 294 (1929); and "subject to no limitations," *Gibson*, 13 Wall. at 99. That power over public lands includes the power to "withdraw the public lands in [a State] from sale." *Stearns* v. *Minnesota*, 179 U.S. 223, 243 (1900).

This Court's decision in *Light* v. *United States*, *supra*, resolves any remaining doubt. In that case, an individual challenged the creation of a national forest reserve in Colorado, arguing that "Congress cannot constitutionally withdraw large bodies of land from settlement without the consent of the State where it is located." *Light*, 220 U.S. at 535-536. The Court rejected

that claim, explaining that the Property Clause empowers Congress to "withhold or reserve" public lands from sale, even "indefinitely." *Id.* at 536. "These are rights incident to proprietorship," the Court observed, "to say nothing of the power of the United States as a sovereign over the property belonging to it." *Id.* at 537.

History leads to the same conclusion as text and precedent. Blackstone identified the "rents and profits" of the "lands of the crown" as a source of government "revenue." 1 William Blackstone, *Commentaries on the Laws of England* 286 (10th ed. 1787). Early American statesmen and commentators similarly identified public lands as an appropriate source of federal revenue. James Madison described the western lands as "a mine of vast wealth to the United States," and he expressed hope that, under "proper management," those lands would furnish "liberal tributes to the federal treasury." *The Federalist No. 38*, at 248 (Jacob E. Cooke ed. 1961). St. George Tucker described those lands as "a national stock of wealth," and he recommended a "reserve of one half, or some other considerable proportion of the lands remaining unsold." 1 St. George Tucker, *Blackstone's Commentaries* App. 285 (1803). And Justice Story observed that "the public lands hold out * * * ample revenues" that Congress could use for purposes such as "internal improvements." 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1321, at 197 (1833).

Longstanding practice confirms that Congress may retain public lands even if the United States is not at the time using them to carry out a specific Article I power in addition to its power under the Property Clause. In 1785, the Confederation Congress authorized the sale of

western lands, but "reserved" "four lots" in every township "for the United States." 28 *J. Continental Cong. 1774-1789*, at 378 (John C. Fitzpatrick ed. 1933). In 1796, Congress authorized the sale of lands in Ohio, but "reserved" "a salt spring lying upon a creek which empties into the Sciota river." Act of May 18, 1796, ch. 29, § 3, 1 Stat. 466. In 1832, it reserved what is today Hot Springs National Park in Arkansas. See Act of Apr. 20, 1832, ch. 70, § 3, 4 Stat. 505. In 1872, it created Yellowstone National Park. See Act of Mar. 1, 1872, ch. 24, § 1, 17 Stat. 32. In 1891, it authorized the President to reserve national forests. See Timber Culture Repeal Act, ch. 561, § 24, 26 Stat. 1103. In 1906, it authorized the President to reserve lands to protect national monuments. See Antiquities Act of 1906, ch. 3060, 34 Stat. 225 (54 U.S.C. 320301 *et seq.*). In 1920, it provided for the retention of certain lands containing mineral deposits. See Mineral Leasing Act, ch. 85, 41 Stat. 437 (30 U.S.C. 181 *et seq.*). And in 1934, it provided for the retention of grazing lands. See Taylor Grazing Act, ch. 865, 48 Stat. 1269 (43 U.S.C. 315 *et seq.*).

The Executive Branch, too, has long issued orders withdrawing particular tracts of land from sale. See *United States* v. *Midwest Oil Co.*, 236 U.S. 459, 469 (1915). It "is not known when the first of these orders was made," but "it is certain that 'the practice dates from an early period in the history of the government.'" *Ibid.* (citation omitted). "The size of the tracts varied from a few square rods to many square miles," and by the early 20th century, "the amount withdrawn ha[d] aggregated millions of acres." *Ibid.* Utah's argument, in short, is inconsistent with a "deeply embedded traditional way of conducting government." *Trump* v.

Mazars USA, LLP, 591 U.S. 848, 869 (2020) (brackets and citation omitted).

2. Despite the Property Clause's plain terms, this Court's precedents, and the Nation's history, Utah claims (Compl. ¶ 28) that the United States' ownership of "unappropriated" public lands in the State violates the Constitution. Utah's arguments lack merit.

First, Utah contends (Compl. ¶ 1) that the United States may hold public lands only if it (1) uses them to carry out "its enumerated powers" or (2) "formally reserv[es]" them for a "designated purpose" such as a national park. Utah does not explain, however, why a formal reservation would make a legal difference. "The Constitution deals with substance, not shadows. Its inhibition was levelled at the thing, not the name." *Cummings* v. *Missouri*, 4 Wall. 277, 325 (1867). If Congress may hold land that it is not using to carry out a specific Article I power—and text, precedent, and history all establish it may—then it may hold that land regardless of whether it formally labels the tract as a national park, national forest, national monument, or the like.

In any event, federal ownership of the lands at issue satisfies Utah's test. Congress's power to "make all needful Rules and Regulations respecting the * * * Property belonging to the United States," Art. IV, § 3, Cl. 2, is itself a specific constitutional power—and one that is fully sufficient in its own right to render Congress's retention of public lands constitutional. Further, Article I authorizes Congress to make laws that are "necessary and proper" for carrying out its other powers. U.S. Const. Art. I, § 8, Cl. 18. That authorization enables Congress to raise money to fund the federal government's activities. See *United States* v. *Ore-*

gon, 366 U.S. 643, 649 (1961). As discussed above, public lands are a traditional source of public revenue. See pp. 24-25, *supra*. In this case, Utah alleges (Compl. ¶ 1) that the United States "earns significant revenue by leasing th[e] lands to private parties for activities such as oil and gas production, grazing, and commercial filmmaking, and by selling timber and other valuable natural resources." Congress's retention of those lands is thus necessary and proper to carry out the federal activities funded by those revenues.

Second, Utah argues (Br. in Support 22) that the United States may not retain federal lands in Utah "over Utah's express objection." That argument inverts the Supremacy Clause, which makes the "Laws of the United States" the "supreme Law of the Land," "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Art. VI, Cl. 2. That argument also conflicts with this Court's precedents, which have rejected efforts to "place the public domain of the United States completely at the mercy of state legislation." *Camfield*, 167 U.S. at 526.

Utah invokes (Br. in Support 15-16) the Enclave Clause, which requires a state legislature's "Consent" before Congress may exercise "exclusive Legislation" over federal enclaves. U.S. Const. Art. I, § 8, Cl. 17. But Utah overlooks the distinction between federal enclaves and federal lands. See *Kleppe*, 426 U.S. at 541-543. The Enclave Clause, by its terms, authorizes Congress to acquire federal enclaves that are subject to "exclusive federal jurisdiction with no residual state police power." *Id.* at 542. By contrast, a State "undoubtedly retains jurisdiction over federal lands within its territory" and is "free to enforce its criminal and civil laws

on those lands." *Id.* at 543. Thus, although the Enclave Clause requires Congress to obtain state consent before it can establish federal enclaves, the Property Clause does not require it to obtain state consent in order to acquire or retain federal lands. See *ibid.*

Third, Utah claims (Br. in Support 28) that Congress has a "duty to dispose of unappropriated public lands." But the Property Clause grants Congress the "Power" to dispose of property; it does not impose a duty to do so. U.S. Const. Art. IV, § 3, Cl. 2. The word "power" encompasses discretion in the exercise of that power. For example, the power to tax is the power to decide whether or not to tax; the power to spend is the power to decide whether or not to spend; and the power to declare war is the power to decide whether or not to go to war. In the same way, the power to dispose of property allows Congress to decide whether or not to dispose of federal property.

When the Constitution imposes a duty, it says so. For example, "Congress shall assemble at least once in every Year," U.S. Const. Art. I, § 4, Cl. 2; each House "shall keep a Journal of its Proceedings," *id.* Art. I, § 5, Cl. 3; and "a regular Statement and Account of the Receipts and Expenditures of public Money shall be published," *id.* Art. I, § 9, Cl. 7. The Property Clause, in stark contrast, contains no such mandatory language. "It is hardly to be presumed that the variation in the language could have been accidental." *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 334 (1816).

Fourth, Utah argues (Br. in Support 29) that the United States is violating the principle of equal state sovereignty by owning "little or no unappropriated land" in the eastern States but "vast unappropriated

lands" in the western States. But the equal-sovereignty principle does not require the United States to equalize levels of federal land ownership across the States. See *United States* v. *Texas*, 339 U.S. 707, 716 (1950). "There has never been equality among the States in that sense." *Ibid.* "Some States when they entered the Union had within their boundaries tracts of land belonging to the Federal Government"; others did not. *Ibid.* The Constitution does not "wipe out those diversities." *Ibid.*

Utah's equal-sovereignty argument conflicts not only with precedent, but also with history. In the 1820s, some newly admitted western States argued that the Constitution required Congress to cede federal lands within their borders in order to maintain their equality with the original States. See Jeffrey Schmitt, *A Historical Reassessment of Congress's "Power to Dispose of" the Public Lands*, 42 Harv. Envtl. L. Rev. 453, 474-476 (2018). But those arguments were rejected. Madison wrote that "the title in the people of the United States rests on a foundation too just and solid to be shaken by any technical or metaphysical arguments whatever." 4 *Letters and Other Writings of James Madison* 188 (1865). Senator Robert Hayne observed that the States' claims were "set up for the first time only a few years ago" and rejected them as "untenable." 6 Reg. Deb. 34 (1830). Senator David Barton explained that the States' theory conflated "sovereignty" with "the subjects upon which to exercise" sovereignty, adding that "Missouri possesses all the kinds of power or sovereignty that New York does, although she has no grand canal upon which to exercise her powers." 3 Reg. Deb. 43 (1829). And Representative William Martin bluntly rejected

the States' claims as "preposterous." 38 *Niles' Weekly Register* 445, 453 (Aug. 21, 1830).

Fifth, Utah argues (Br. in Support 27) that this Court originally interpreted the Property Clause to grant Congress only the rights of a proprietor, not the powers of a sovereign, over federal lands, and that the Court's later departure from that interpretation upset the original federal-state balance. That is incorrect. "From the earliest times," Congress has exercised the powers of sovereignty (such as the power to impose criminal punishment) over federal lands in the States. *Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 404 (1917). The States "almost uniformly accepted this legislation as controlling." *Ibid.* In the few cases where such federal laws were challenged, the Court held that laws adopted under the Property Clause—like other federal laws, but unlike the pronouncements of ordinary proprietors—preempted contrary state enactments. See, *e.g.*, *Jourdan* v. *Barrett*, 4 How. 169, 185 (1846); *Wilcox* v. *Jackson*, 13 Pet. 498, 516-517 (1839).

To be sure, statements in some opinions suggested a narrower view of Congress's power. See, *e.g.*, *Paul* v. *United States*, 371 U.S. 245, 264 (1963); *Fort Leavenworth R.R.* v. *Lowe*, 114 U.S. 525, 527 (1885); see also *Dred Scott* v. *Sandford*, 19 How. 393, 440 (1857) ("The words 'needful rules and regulations' * * * are not the words usually employed by statesmen, when they mean to give the powers of sovereignty."). But the Court has since disavowed the statements in *Paul* and *Fort Leavenworth* as "dicta" and has relied instead on "the raft of cases in which the Clause has been given a broader construction." *Kleppe*, 426 U.S. at 538-539. In any event, Utah's suit would fail even under the narrower inter-

pretation it espouses. Even a "mere proprietor," Br. in Support 27 (citation omitted), may choose to hold rather than sell his lands.

Finally, Utah raises (Br. in Support 30-34) a series of policy objections to federal ownership of land in Utah. For example, it argues (*ibid.*) that the federal government's immunity from state taxation deprives it of tax revenues, that lands in Utah should be managed by state officials rather than BLM, and that revenues from the United States' public lands in Utah should go to the State rather than to the United States. Those policy arguments, however, are not properly addressed to this Court. It "is not for the courts to say how [public lands] shall be administered. That is for Congress to determine." *Light*, 220 U.S. at 537.

* * * * *

In sum, Utah's suit does not satisfy the usual criteria for the exercise of this Court's original jurisdiction, faces significant jurisdictional and procedural barriers, and lacks merit. The Court should deny Utah's motion for leave to file a bill of complaint. But if the Court grants leave, it should allow the United States to file a motion to dismiss before referring the case to a special master. See, *e.g.*, *Texas* v. *New Mexico*, 571 U.S. 1173 (2014); *New Hampshire* v. *Maine*, 530 U.S. 1272 (2000).

CONCLUSION

This Court should deny Utah's motion for leave to file a bill of complaint. Alternatively, if the Court grants leave, it should allow the United States to file a motion to dismiss.

Respectfully submitted.

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