No. 23-525

In the Supreme Court of the United States

MURPHY COMPANY, ET AL., PETITIONERS

v.

JOSEPH R. BIDEN, JR.,
PRESIDENT OF THE UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

The Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act (O&C Act), ch. 876, 50 Stat. 874 (43 U.S.C. 2601 *et seq.*), includes approximately 2.5 million acres of federal land in western Oregon. The O&C Act provides that lands "classified as timberlands" shall be managed "for permanent forest production" and "providing recreational facil[i]ties." 43 U.S.C. 2601. Managing the timberlands for permanent forest production involves selling, cutting, and removing the timber "in conformity with the princip[le] 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." *Ibid.* (footnote omitted).

The Antiquities Act of 1906, ch. 3060, 34 Stat. 225 (54 U.S.C. 320301 *et seq.*), grants the President discretion to declare "objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments." 54 U.S.C. 320301(a). In 2017, the President issued a Proclamation under the Antiquities Act expanding the Cascade-Siskiyou National Monument. That expansion included around 40,000 acres of O&C lands and barred most timber harvesting on those lands. The question presented is:

Whether the President's 2017 Proclamation expanding the Monument was barred by the O&C Act.

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OPINIONS BELOW

The court of appeals' opinion (Pet. App. 1a-47a) is reported at 65 F.4th 1122. The district court's order (Pet. App. 48a–50a) is not published in the Federal Supplement but is available at 2019 WL 4231217. The magistrate judge's report and recommendation (Pet. App. 51a–60a) is not published in the Federal Supplement but is available at 2019 WL 2070419.

JURISDICTION

The judgment of the court of appeals was entered on April 24, 2023. A petition for rehearing was denied on August 30, 2023 (Pet. App. 61a-62a). The petition for a writ of certiorari was filed on November 15, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. In 1937, Congress enacted the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act (O&C Act), ch. 876, 50 Stat. 874 (43 U.S.C. 2601 *et seq.*), to address the management of millions of acres of federal lands in western Oregon. See Pet. App. 11a. Congress had granted those lands to railroad companies beginning in 1866, but—after the companies violated the terms of the grants—Congress revested title to the lands in the United States in 1916. *Id.* at 10a; see *Oregon & Cal. R.R.* v. *United States*, 243 U.S. 549, 553-559 (1917). When the lands were revested in the United States, the region faced significant economic difficulties due to a loss of tax revenue. See Pet. App. 10a-11a; *Clackamas Cnty.* v. *McKay*, 219 F.2d 479, 483 (D.C. Cir. 1954), vacated as moot, 349 U.S. 909 (1955) (per curiam).

Against that background, Congress adopted the O&C Act, which provides that:

> [S]uch portions of the revested * * * lands * * * , which have heretofore or may hereafter be classified as timberlands, * * * shall be managed[] * * * for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the princip[le] 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 facil[i]ties.

43 U.S.C. 2601 (footnote omitted). The Act further provides that "[a]ll Acts or parts of Acts in conflict with this Act are hereby repealed to the extent necessary to give

full force and effect to this Act." Tit. II, § (c), 50 Stat. 876.

Today, half the proceeds from the sale of timber on the O&C lands are paid to the counties where the timber is located. See 43 U.S.C. 2605(a) and (b); see also, *e.g.*, Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, Div. G, Tit. I, 136 Stat. 349 (redirecting 25% of the proceeds, thus reducing the counties' portion to 50%). The Secretary of the Interior is responsible for managing the O&C lands, see 43 U.S.C. 2604, 2605; she exercises that authority through the Bureau of Land Management (BLM), see, *e.g.*, 15 Fed. Reg. 5643, 5645-5647 (Aug. 23, 1950); 43 C.F.R. 5400.0-5, 5500.0-5(d).

b. The Antiquities Act of 1906, ch. 3060, 34 Stat. 225 (54 U.S.C. 320301 *et seq.*), confers "discretion" on the President to "declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments." 54 U.S.C. 320301(a). "The President may reserve parcels of land as a part of the national monuments." 54 U.S.C. 320301(b). The "limits of th[os]e parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected." *Ibid.* Since the enactment of the Antiquities Act, 18 Presidents have established and sometimes enlarged 163 national monuments. Cong. Research Serv., *National Monuments and the Antiquities Act* 16 (updated Jan. 2, 2024), https://crsreports.congress.gov/product/pdf/R/R41330/46.

2. In 2000, President Clinton exercised his Antiquities Act authority by issuing a Proclamation establishing the Cascade-Siskiyou National Monument in southern Oregon. 65 Fed. Reg. 37,249 (June 13, 2000). The

Monument protects "a spectacular variety of rare and beautiful species of plants and animals, whose survival in this region depends upon its continued ecological integrity." *Id.* at 37,249. It "is an ecological wonder, with biological diversity unmatched in the Cascade Range." *Ibid.* Under the 2000 Proclamation, the Monument encompassed approximately 52,000 acres, including approximately 40,000 acres of lands covered by the O&C Act. *Id.* at 37,250; C.A. Supp. E.R. 302. The 2000 Proclamation "prohibit[s]" "[t]he commercial harvest of timber," with limited exceptions not relevant here. 65 Fed. Reg. at 37,250. The Proclamation further provides that "[n]o portion of the monument shall be considered to be suited for timber production, and no part of the monument shall be used in a calculation or provision of a sustained yield of timber." *Ibid.*[1] In 2009, Congress enacted a statute that acknowledged the establishment of the Monument, addressed leases and land exchanges within it, and designated 24,100 acres of the Monument as federal wilderness. Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, §§ 1401-1405, 123 Stat. 1026-1031.

In 2017, President Obama issued a Proclamation enlarging the Monument by approximately 48,000 acres. 82 Fed. Reg. 6145, 6148 (Jan. 18, 2017). The expansion was needed to "bolster protection of the resources within the original boundaries of the monument" and "protect the important biological and historic resources within the expansion area." *Id.* at 6145; see *id.* at 6148. The expanded area is managed "under the same laws

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[1] The D.C. Circuit rejected constitutional and *ultra vires* challenges to the 2000 Proclamation. See *Mountain States Legal Found.* v. *Bush*, 306 F.3d 1132, 1136-1138 (2002), cert. denied, 540 U.S. 812 (2003).

and regulations that apply to the rest of the monument," *id.* at 6149, so the 2000 Proclamation's prohibition on commercial timber harvest applies to the entire Monument, see *id.* at 6148. Around 40,000 acres included in the 2017 expansion are O&C lands, although BLM was managing only about 16,500 acres of that land for sustained-yield timber production at the time. Pet. App. 32a, 54a, 59a; see C.A. Supp. E.R. 6.

3. Petitioners are companies engaged in timber harvesting and wood products manufacturing. C.A. E.R. 109-110. They filed suit in the United States District Court for the District of Oregon, asserting that "[s]ince 1937, when Congress set aside the O&C Lands for permanent timber production, the President has had no authority to include those lands within a national monument under the Antiquities Act," and that the 2017 expansion of the Monument therefore "violates the O&C Act and exceeds the authority granted to the President in the Antiquities Act." *Id.* at 114.

The magistrate judge recommended that the district court grant the government's motion for summary judgment. Pet. App. 51a-60a. The magistrate judge found that "[t]he plain text of the O&C Act does not mandate that the BLM's land use plans devote all classified timberlands exclusively to maximum sustained yield timber production." *Id.* at 58a-59a. And the judge concluded that because BLM "has the authority under the O&C Act to reserve lands from harvest, then the President reserving lands within the confines of the smallest area permitted under the Antiquities Act presents no irreconcilable conflict with the O&C Act." *Id.* at 59a.

The district court granted summary judgment for the government, adopting the magistrate judge's report

and recommendation with one modification that is not relevant here. Pet. App. 48a-50a.

4. The court of appeals affirmed. Pet. App. 1a-47a.

a. The court of appeals found petitioners' challenge to the President's 2017 Proclamation justiciable. Pet. App. 13a-19a. The court was of the view that both constitutional and *ultra vires* challenges to presidential actions are reviewable, *id.* at 14a-16a, and concluded that it could review petitioners' claim "whether characterized as *ultra vires* or constitutional," *id.* at 16a.

Turning to the merits, the court of appeals found that the O&C Act did not repeal the Antiquities Act. Pet. App. 20a-23a. The court noted that "when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Id.* at 21a (quoting *Morton* v. *Mancari*, 417 U.S. 535, 551 (1974)). The court emphasized that "[t]he O&C Act did not explicitly or implicitly repeal the Antiquities Act"—in contrast to other legislation that has "expressly" "restrict[ed] the President's Antiquities Act authority." *Id.* at 20a, 22a. The court also noted that "the two statutes are directed at different officials: The Antiquities Act vests authority in the President, while the O&C Act concerns the Secretary and says nothing about presidential authority." *Id.* at 20a. The court therefore found that "[t]he Antiquities Act and the O&C Act are easily 'capable of co-existence.'" *Id.* at 21a. The court also concluded that the O&C Act's *non-obstante* clause—which provides that "[a]ll Acts or parts of Acts in conflict with this Act are hereby repealed to the extent necessary to give full force and effect to this Act," Tit. II, § (c), 50 Stat. 876—was inapplicable because it "applies only if there is a statutory conflict." Pet. App. 21a. The

court noted "that Congress likely included the *non-obstante* clause as a fail-safe to ensure that the 1937 O&C Act superseded the tangle of statutes that had previously regulated the O&C Lands." *Id.* at 21a-22a.

The court of appeals also held that the President's 2017 Proclamation issued in the "exercise of Antiquities Act power is consistent with the * * * O&C Act's text, history, and purpose." Pet. App. 23a. The court determined that "the O&C Act's plain language empowers the Department [of the Interior] to classify and manage the revested and reconveyed lands for several purposes —predominantly, but not exclusively, timber production." *Id.* at 24a. The court explained that those other purposes include "protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities." *Id.* at 25a (quoting 43 U.S.C. 2601) (brackets omitted). The court also found that although one "'purpose[]'" of the O&C Act was to "provide a 'stream of revenue' to the affected counties," Congress also had environmental goals—including to "'halt the previous practices of clear-cutting without reforestation.'" *Id.* at 27a-28a (brackets and citation omitted).

The court of appeals finally emphasized that "[t]his is not a case where the executive's action eviscerates Congress's land-management scheme, nor is it a case that concerns 'vast and amorphous expanses of terrain.'" Pet. App. 32a (quoting *Massachusetts Lobstermen's Ass'n* v. *Raimondo*, 141 S. Ct. 979, 981 (2021) (Roberts, C.J., respecting the denial of certiorari)). The court noted that, "[o]f the more than two million acres of O&C Lands, only some 40,000 acres—less than two percent—fall within the expanded Monument's territory." *Ibid.* The court therefore concluded that "[t]he

Proclamation does not usurp congressional intent or the Secretary's broad authority to regulate the O&C Lands as a whole." *Ibid.*

b. Judge Tallman dissented. Pet. App. 34a-47a. He agreed that petitioners' challenge to the 2017 Proclamation was reviewable, but would have found the Proclamation irreconcilable with the O&C Act. *Ibid.*

ARGUMENT

Petitioners renew their contention (Pet. 13-24) that the 2017 Proclamation expanding the Cascade-Siskiyou National Monument is inconsistent with the O&C Act.[2] The court of appeals correctly rejected that argument. Its decision does not conflict with any decision of this Court or of another court of appeals; indeed, the D.C. Circuit likewise has rejected the same challenge to the 2017 Proclamation. Nor does this case present general questions—or any questions—about the meaning of the Antiquities Act because petitioners have not pressed an Antiquities Act claim. Rather, this case involves the narrow question of whether a *sui generis* statute—the O&C Act—forecloses a single Proclamation issued under the Antiquities Act. That Proclamation built upon the 2000 Proclamation that established the Monument, which has been acknowledged in a 2009 Act of Congress that designated a portion of the Monument's land to wilderness use. And the question presented has no significance outside the small area of federal lands governed by the O&C Act and included in the 2017 expansion—which is less than two percent of the O&C lands. Further review is not warranted.

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[2] Another pending petition for a writ of certiorari presents the same question presented here. See *American Forest Res. Council* v. *United States*, No. 23-524 (filed Nov. 15, 2023).

1. The court of appeals correctly held that there is no conflict between the Antiquities Act and the O&C Act and that the 2017 Proclamation does not violate the O&C Act. The O&C Act's text and history support its compatibility with the Proclamation. Petitioners' contrary arguments have no sound basis.

a. i. As this Court has emphasized, "[w]hen confronted with two Acts of Congress allegedly touching on the same topic," a court must "strive 'to give effect to both'"—and a party arguing "that two statutes cannot be harmonized" "bears the heavy burden of showing 'a clearly expressed congressional intention'" "that one displaces the other." *Epic Sys. Corp.* v. *Lewis*, 584 U.S. 497, 510 (2018) (citations omitted). Here, the court of appeals correctly concluded that the Antiquities Act and the O&C Act can properly be harmonized. The O&C Act does not purport to repeal or limit the Antiquities Act; indeed, the O&C Act makes no reference to the Antiquities Act at all.

Nor is there any irreconcilable conflict between the two Acts' treatment of the O&C lands. The O&C Act's sustained-yield principle requires BLM to take into account "protecting watersheds," "regulating stream flow," and "contributing to the economic stability of local communities and industries." 43 U.S.C. 2601. The O&C Act also requires BLM to manage lands covered by the Act in light of the interest of "providing recreational facil[i]ties." *Ibid.* The Antiquities Act permits the President to protect "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest" on federal land. 54 U.S.C. 320301(a). Those goals are compatible.

What is more, as the court of appeals recognized, "the two statutes are directed at different officials,"

Pet. App. 20a, which further confirms their compatibility. See *Sale* v. *Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 171-173 (1993); *Regan* v. *Wald*, 468 U.S. 222, 233 n.16 (1984). The Antiquities Act authorizes action by the President. 54 U.S.C. 320301(a) and (b). The O&C Act says nothing about the President. Rather, it authorizes and directs actions to be taken by the Secretary of the Interior. See, *e.g.*, 43 U.S.C. 2601-2604.

Because the two Acts can thus be reconciled, there is no need to consider whether one is more specific than the other or that the O&C Act was adopted after the Antiquities Act. Contra Pet. 15. A court may need to take such considerations into account only when there is an "irreconcilable statutory conflict." *Epic Sys. Corp.*, 584 U.S. at 511; see *Morton* v. *Mancari*, 417 U.S. 535, 550 (1974) ("[T]he only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable."). For the same reason, the O&C Act's *non obstante* clause—which applies only in the event of "conflict" between the Act and other legislation, Tit. II, § (c), 50 Stat. 876—has no role to play here. Contra Pet. 15.

ii. The court of appeals also correctly rejected petitioners' primary contention to the contrary: that the 2017 Proclamation issued under the Antiquities Act is irreconcilable with the O&C Act's provisions for timber harvesting. See, *e.g.*, Pet. 13, 20-22. The O&C Act has never required commercial timber harvesting on all O&C lands. And the Proclamation is consistent with the O&C Act because it serves conservation and recreational goals—which are also recognized in the Act.

The 2017 Proclamation's determination that a small percentage of O&C lands are not subject to commercial timber harvest does not violate the O&C Act. The O&C

Act provides that "such portions of" the O&C lands "which have heretofore or may hereafter be classified as timberlands * * * shall be managed[] * * * for permanent forest production" and the other purposes discussed above. 43 U.S.C. 2601. The Act has always anticipated that portions of the O&C lands would not be harvested, because only "such portions of" the lands that are "classified as timberlands" must be "managed * * * for permanent forest production." *Ibid.* The Act likewise provides for reclassification decisions: It contemplates lands that "may hereafter be classified as timberlands." *Ibid.* The Act thus expressly leaves room for some O&C lands to be classified as something other than timberlands—and therefore not be harvested.

Even on lands classified as timberlands, the O&C Act requires BLM to take into account a variety of goals—not just timber production—and gives BLM significant discretion in how it manages those lands. See Pet. App. 25a. The Act's primary management objective for timberlands is "permanent forest production"—that is, the lands "shall be managed[] * * * for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the princip[le] of sustained yield." 43 U.S.C. 2601 (footnote omitted). But the Act establishes that sustained-yield management is for more than one purpose: It is "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." *Ibid.* After setting the sustained-yield principle and the "purpose[s]" that inform it, the Act provides that the lands should also be managed for "providing recreational facil[i]ties." *Ibid.* The Act therefore includes

conservation and recreational purposes among the purposes that BLM must take into account in managing the O&C lands.

Consistent with the statutory text, Interior promulgated regulations one year after Congress adopted the O&C Act that made clear both that timbered areas could be reserved from timber production and that BLM has significant discretion in managing timberlands. First, those regulations provided that the Secretary "is authorized to classify" "as agricultural" "any of [the O&C land] which, in his judgment, is more suitable for agricultural use than for afforestation, reforestation, stream-flow protection, recreation, or other public purposes." 3 Fed. Reg. 1795, 1795 (July 21, 1938). Second, the regulations provided that, even on "lands classified for continuous timber production," "scenic strips of merchantable timber may be reserved adjacent to public roads, along stream courses and surrounding lakes." *Id.* at 1796. The regulations also provided that, "[i]n the discretion of the officer in charge, a strip of suitable width on each side of lakes, streams, roads, and trails and in the vicinity of camping places and recreation grounds may be reserved, in which little or no cutting will be allowed." *Id.* at 1798.

The legislative history confirms that conservation concerns partially motivated Congress's adoption of the O&C Act. The House Report criticized the O&C Act's predecessor statute for "call[ing] for outright liquidation" of timber on the lands and making "[n]o provision * * * for the administration of the land on a conservation basis looking toward the orderly use and preservation of its natural resources." H.R. Rep. No. 1119, 75th Cong., 1st Sess. 2 (1937). The prior statute's "cutting policy" was "now believed to be wasteful and

destructive of the best social interests of the State and Nation." *Ibid.*; see S. Rep. No. 1231, 75th Cong., 1st Sess. 2 (1937) (Senate Report) ("The purpose of [the Act] is to provide conservation and scientific management for this vast Federal property."). Similarly, the Senate Report clarified that when the Act refers to "regulating stream flow," 43 U.S.C. 2601, that "should be construed to mean the protection of the watersheds and the run-off of waters," Senate Report 5.

The 2017 Proclamation is consistent with the O&C Act's text, its overall framework, and its purposes as just described. As an initial matter, the Proclamation covers less than two percent of the O&C lands, effectively reclassifying those lands as non-timberlands and exempting them from commercial harvest, which is consistent with the O&C Act's text and history. See Pet. App. 24a-25a, 32a. And the National Monument expanded by the Proclamation furthers conservation and recreational goals recognized in the O&C Act. The Proclamation explains that "ecological integrity of the ecosystems that harbor [the] diverse array of species" that live in the Monument "is vital to their continued existence"; that "[e]xpanding the monument" will help "provide[] vital habitat connectivity, watershed protection, and landscape-scale resilience for the area's critically important natural resources"; and that the expansion "protect[s] the important biological and historic resources within the expansion area." 82 Fed. Reg. at 6145. Those purposes are consistent with the O&C Act's purposes. Indeed, the Proclamation's more specific conservation purposes mirror those in the Act: The Act identifies "protecting watersheds" as a purpose of sustained-yield management, 43 U.S.C. 2601, while the Proclamation explicitly addresses

watershed protection, *e.g.*, 82 Fed. Reg. at 6147 (discussing certain headwaters included in the expanded Monument that "are vital to the ecological integrity of the watershed as a whole"). The Proclamation likewise furthers the O&C Act's "recreational facil[i]ties" purpose, 43 U.S.C. 2601; it references hiking on "the Applegate Trail," "hydrologic features that capture the interest of visitors," and "snowmobile and nonmotorized mechanized use off of roads" in the Monument, 82 Fed. Reg. at 6145, 6147, 6149.

b. Petitioners' contrary arguments lack merit. Petitioners fail to seriously grapple with the O&C Act's text and history, and they overread the court of appeals' decision.

i. Petitioners first contend that the Proclamation is incompatible with the O&C Act's text. They assert that "any wooded land on which timber can be produced" in the O&C lands "*must* be used for logging" because the Act "provides that timberlands 'shall be managed[] * * * for permanent forest production.'" Pet. 14, 20 (quoting 43 U.S.C. 2601) (omission in original). That argument brushes aside the O&C Act's plain language: It fails to account for the Act's allowance for reclassification of lands as timberlands and the discretion the Act gives to the Secretary in managing the O&C lands. See pp. 10-12, *supra*. And it ignores BLM's longstanding regulatory approach. See p. 12, *supra*.

Petitioners also contend (Pet. 21) that when the O&C Act references other goals it does not create "free-standing statutory objectives." In petitioners' view, those goals are merely "results that Congress said would be reached by means of 's[elling], c[utting], and remov[ing]' timber under a 'sustained yield' approach." *Ibid.* (citation and emphasis omitted; brackets in

original). But Section 2601 does not refer to "results." Section 2601 provides that timber must be cut "in conformity with the princip[le] 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." 43 U.S.C. 2601 (emphasis added; footnote omitted). A series of clauses (only the first of which is "providing a permanent source of timber") thus follows the phrase "for the purpose of." *Ibid.* The text is therefore clear: "[P]rotecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries" are *all* part of "the purpose" of the sustained-yield principle—and the lands also must be managed to "provid[e] recreational facil[i]ties." *Ibid.*

To the extent petitioners' argument emphasizes (Pet. 21) the O&C Act's reference to "s[elling], cut[ting], and remov[ing]" timber, 43 U.S.C. 2601, the Act is clear that such actions must be taken in accordance with the additional purposes identified by the Act. Had Congress wished to adopt petitioners' approach and require the Secretary to sell, cut, and remove all harvestable timber, it would have said so—and would not have required any harvesting to be in conformance with the principle of sustained yield and a list of purposes and goals that include conservation and recreational facilities.

Contrary to petitioners' suggestion (Pet. 20-21), the O&C Act's reference to "permanent forest production," 43 U.S.C. 2601, does not mandate maximum timber production wherever possible. See pp. 10-13, *supra*. In the absence of such a mandate, the Proclamation clearly can be harmonized with the O&C Act: The Procla-

mation reserves a small amount of O&C lands to the Monument—less than two percent of the total O&C lands. So the Proclamation does not significantly affect the lands' overall timber production. And the Proclamation furthers conservation and recreational purposes that are encompassed within the flexible management contemplated by the Act. See pp. 13-14, *supra*.

ii. Petitioners' criticisms of the court of appeals' decision are likewise misplaced. Petitioners contend that the court "embraced the extreme and unjustifiable position that the Antiquities Act 'effectively allows the President to repeal any disagreeable statute.'" Pet. 2 (brackets and citation omitted); see Pet. 14, 16, 22, 24. But the court did not adopt any such rule; rather, it thoughtfully analyzed the specific Proclamation at issue and the text and purposes of the O&C Act and found them compatible. See Pet. App. 23a-30a.

Petitioners also assert (Pet. 16) that the court of appeals "interpreted the Antiquities Act as permitting any and all presidential action unless Congress steps in *after that action to undo it*." The court did no such thing. Although it noted that Congress at times has stepped in to limit presidential authority under the Antiquities Act, Pet. App. 22a, 31a-32a,[3] the court immediately made

[3] Since adopting the Antiquities Act, Congress has repeatedly limited the President's authority under the Act. See 16 U.S.C. 3213 (restricting future Executive Branch withdrawals of more than 5000 acres of public lands within Alaska); 54 U.S.C. 320301(d) ("No extension or establishment of national monuments in Wyoming may be undertaken except by express authorization of Congress."). Congress has also modified and abolished monuments created by the President. See, *e.g.*, Automobile National Heritage Area Act, Pub. L. No. 105-355, § 201, 112 Stat. 3252-3253 (modifying the boundaries and directing conveyance of lands within Grand Staircase-Escalante National Monument); Omnibus Parks and Public Lands Manage-

clear that this observation was not the basis for its decision. The court emphasized that "[w]e do not suggest that congressional silence is the bellwether for interpretation" and that "[t]he important point is that the designation here is not contrary to the text of the O&C Act, nor does it represent any effort to modify or nullify the Act." *Id.* at 32a. Rather than "abdicat[ing] its judicial role," Pet. 17, the court carefully reconciled the Proclamation with the O&C Act.

Petitioners also err in suggesting (Pet. 26-27) that the decision below creates separation-of-powers concerns. As an initial matter, petitioners are mistaken in framing their statutory-interpretation argument in constitutional terms. Petitioners' claim is not that the Constitution forbids the President from designating National Monuments, but that the 2017 Proclamation exceeded the President's authority because it was inconsistent with the O&C Act. See C.A. E.R. 114 (petitioners' complaint alleging that the Proclamation "violates the O&C Act and exceeds the authority granted to the President in the Antiquities Act"). Where, as here, "the only source of [the President's] authority is statutory, no 'constitutional question whatever' is raised." *Dalton* v. *Specter*, 511 U.S. 462, 474 n.6 (1994) (citation omitted);

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ment Act of 1996, Pub. L. No. 104-333, § 205, 110 Stat. 4106 (revising the borders of Craters of the Moon National Monument); Act of Aug. 1, 1956, ch. 847, 70 Stat. 898 (abolishing Fossil Cycad National Monument); Act of July 30, 1956, ch. 790, 70 Stat. 730 (abolishing Verendrye National Monument and conveying the lands to North Dakota for continued public use as a state historic site); Act of July 26, 1955, ch. 387, 69 Stat. 380 (abolishing Old Kasaan National Monument and authorizing administration of the lands as national forest); Act of Aug. 3, 1950, ch. 534, 64 Stat. 405 (same for Wheeler National Monument); Act of Aug. 3, 1950, ch. 530, 64 Stat. 404 (same for Holy Cross National Monument).

see *id.* at 473 ("[C]laims simply alleging that the President has exceeded his statutory authority are not 'constitutional' claims."). And, in any event, as already discussed the court of appeals did not interpret the Antiquities Act to allow the President "to run roughshod over other statutory schemes." Pet. 26 (emphasis omitted). The court merely found that the Proclamation does not violate the O&C Act.

2. Further review is unwarranted. There is no conflict between the decision below and any decision of this Court or of another court of appeals. This case would be a poor vehicle for considering more general questions about the scope of the Antiquities Act. And the 2017 Proclamation has a minimal effect on the O&C lands because it withdraws a small percentage of the O&C lands from commercial timber harvest.

The court of appeals' decision does not conflict with any decision of this Court or of another court of appeals. See Pet. 31 (acknowledging "the absence of a circuit split"). Indeed, the D.C. Circuit—the only other court of appeals that is likely to consider the question presented, due to the O&C lands' location—has likewise upheld the 2017 Proclamation's expansion of the Monument. *American Forest Res. Council* v. *United States*, 77 F.4th 787, 798-802 (2023), petition for cert. pending, No. 23-524 (filed Nov. 15, 2023).[4]

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[4] Petitioners assert in passing (Pet. 22-23) that the court of appeals here "[c]ast[] aside" another Ninth Circuit decision, *Headwaters, Inc.* v. *Bureau of Land Mgmt.*, 914 F.2d 1174 (1990). But *Headwaters* did not involve an Antiquities Act proclamation, so there is no conflict with the decision below. And in any event, any intracircuit tension that might exist would be best addressed by that court itself. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

Petitioners assert that this case "presents an excellent vehicle to address the limits of the significant and recurring exercise of presidential power under the Antiquities Act." Pet. 24 (capitalization altered; emphasis omitted). But this case is not a suitable vehicle for considering any such issue for the simple reason that petitioners have not brought a claim under the Antiquities Act itself. Petitioners pleaded a single claim alleging an inconsistency between the 2017 Proclamation and the O&C Act. See C.A. E.R. 114 ("Since 1937, when Congress set aside the O&C Lands for permanent timber production, the President has had no authority to include those lands within a national monument under the Antiquities Act of 1906." The 2017 Proclamation "violates the O&C Act and exceeds the authority granted to the President in the Antiquities Act."). And the court of appeals resolved this case primarily by interpreting the O&C Act. See Pet. App. 23a-30a. This case thus does not present a clean question regarding the Antiquities Act more generally or its application in other circumstances. Rather, it presents the narrow question of whether a unique statute (the O&C Act) forecloses one particular action under the Antiquities Act (the 2017 Proclamation) that expanded the preexisting Cascade-Siskiyou National Monument—a Monument that itself had been acknowledged by Congress in a statute that designated a portion of Monument land as wilderness. See p. 4, *supra*. And, for those reasons, this case likewise does not provide a suitable vehicle for the Court to consider whether a "monument" of significant "proportions" "can be justified under the Antiquities Act" or to determine the correct "interpret[ation] [of] the Antiquities Act's 'smallest area compatible' requirement." *Massachusetts Lobstermen's Ass'n* v. *Raimondo*, 141 S.

Ct. 979, 981 (2021) (Roberts, C.J., respecting the denial of certiorari) (quoting 54 U.S.C. 320301(b)).

Petitioners also suggest (Pet. 28) that further review is warranted because the 2017 Proclamation "prevent[s] timber sales on" the O&C lands in the expanded Monument area and thereby "depriv[es] the [O&C] counties of essential revenues they should be receiving under the O&C Act." But, contrary to petitioners' assertion (Pet. 27), the Proclamation negligibly reduces commercial timber harvest on the O&C lands. The 2017 expansion includes 40,000 acres of O&C lands—less than two percent of the more than two million acres subject to the O&C Act. Pet. App. 32a, 54a; see *id.* at 11a. And of those 40,000 acres, only approximately 16,500 were being managed for sustained-yield timber production before the 2017 Proclamation. *Id.* at 59a; see C.A. Supp. E.R. 6. Those case-specific circumstances do not warrant this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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