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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

ZEBEDIAH GEORGE DALTON; BLUERIBBON
COALITION; KYLE KIMMERLE; and SUZETTE
RANEA MORRIS,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as
President of the United States; DEBRA A.
HAALAND, in her official capacity as Secretary of
Interior; DEPARTMENT OF THE INTERIOR;
TRACY STONE-MANNING, in her official capacity
as Director of the Bureau of Land Management;
BUREAU OF LAND MANAGEMENT; THOMAS J.
VILSACK, in his official capacity as Secretary of
Agriculture; DEPARTMENT OF AGRICULTURE;
RANDY MOORE, in his official capacity as Chief of
the United States Forest Service; and UNITED
STATES FOREST SERVICE,

Defendants.

Civil Action No. 4:22-cv-00060-DN

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

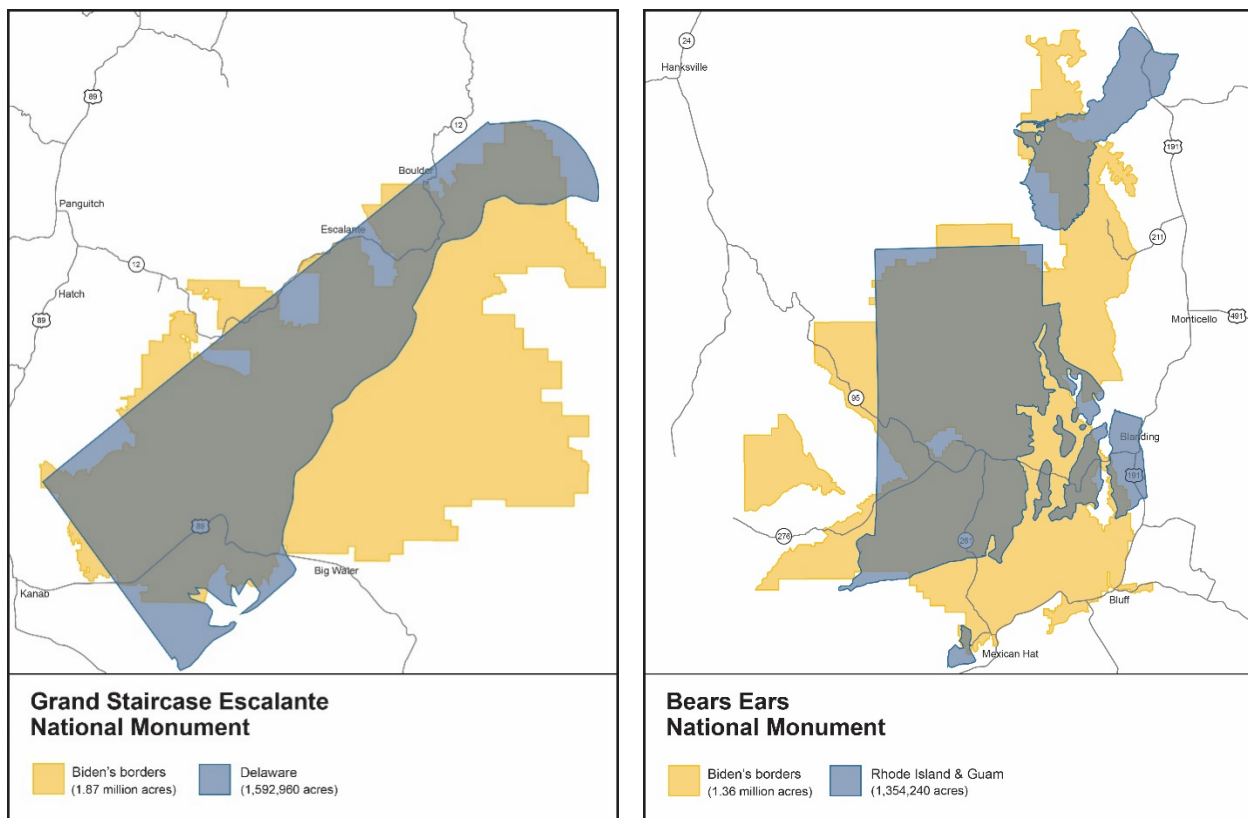
1. Congress passed the Antiquities Act in “response to widespread defacement of Pueblo ruins in the American Southwest.” *Mass. Lobstermen’s Ass’n v. Raimondo*, 141 S. Ct. 979, 980 (2021) (Roberts, C.J., statement respecting the denial of certiorari). In that light, the Act gives the President the power to designate as monuments “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on [federal land],” and to set aside those federal lands that make up the “smallest area compatible with the proper care and management of the objects to be protected.” 54 U.S.C. § 320301(a), (b).

2. The Act thereby gives the President an important but nonetheless circumscribed power. As the House Report explained in 1906: The Act empowers the President to “create small reservations reserving only so much land as may be absolutely necessary for the preservation of these interesting relics of prehistoric times.” H.R. Rep. No. 59-2224, at 1 (1906).

3. In October 2021, President Biden razed the Antiquities Act’s careful limitations by designating over *three million acres* of Utah as two national monuments. That is more than five percent of the State. He did so on the unprecedented rationale that entire landscapes—Grand Staircase-Escalante (1.87 million acres; a bit larger than all of Delaware) and Bears Ears (1.36 million acres; about the size of Rhode Island plus Guam)—*themselves* constitute “objects” under the Act. The proclamations also designate as “objects” a variety of “imprecisely demarcated concept[s]” scattered across those landscapes’ country-sized boundaries. *Mass. Lobstermen’s*, 141 S. Ct. at 981. These so-called “objects” include entire ecosystems, habitats, and even animal species (like bees, chuckwalla, and peregrine falcons).

4. President Biden’s proclamations are unlawful, and cannot be squared with the text, structure, history, or purpose of the Antiquities Act. A landscape is not “an object situated on

land.” Neither is an ecosystem. Nor a swarm of bees. The proclamations instead commandeer a “statute permitting the President in his sole discretion to designate as monuments ‘landmarks,’ ‘structures,’ and ‘objects’ ... [and] transform[] [it] into a power without any discernible limit to set aside vast and amorphous expanses of terrain above and below the sea.” *Mass. Lobstermen’s*, 141 S. Ct. at 981. Indeed, on the Government’s view, the Antiquities Act gives the President plenary power to set aside *all* federal land—every inch of which necessarily harbors some sort of “landscape” or “ecosystem”—as a national monument. That is wrong.



5. This Court should enforce the plain limits of the Antiquities Act, hold the proclamations unlawful, and enjoin their enforcement. The Act is clear that a monument is valid only insofar as it occupies the “smallest area compatible with the proper care and management of the *objects* to be protected.” 54 U.S.C. § 320301(b) (emphasis added). But here, the Monuments’ three-million-plus-acre borders rest upon things that are not “objects” *at all*. Both proclamations

hinge on the same basic legal error—that landscapes, ecosystems, habitats, and falcons are themselves protectible via the *Antiquities* Act. And for that reason, both Monuments are void.

6. It makes no difference whether the proclamations also identify a few valid “objects” (like ruins or relics) within the Monuments’ sprawling borders. The Act requires the President to set aside the smallest amount of land necessary to protect identified, legitimate objects. And here, the President did not even attempt to do so. The proclamations do not specify *what* lands are set aside for *which* objects. The potentially lawful “objects” are mixed with the lawless ones, and the President’s “smallest area compatible” determination is based on everything together. As such, even if some of the listed objects *could* support a monument designation, the President has made no determination about the “smallest area compatible” with protecting only *those* objects.

7. There is no way to judicially salvage the Monuments, in whole or in part. Again, the proclamations are silent as to what lands are reserved for what “objects,” let alone what the “smallest area compatible” with the protection of those objects might be. This Court cannot do the President’s job for him by judicially fashioning new monuments tailored to whatever subset of things the Court deems to be actual “objects.” The proper course is to simply enjoin the unlawful proclamations. The President would then be free to attempt lawful ones, should he so choose.

8. That said, *even if* things like ecosystems, habitats, and animal species could constitute “objects” under the Act, though, the Monuments are *still* unlawful. Without evidence or explanation, the proclamations assert that the Monuments’ three-plus-million acres comprise the “smallest area compatible” with protecting the enumerated objects. That defies common sense and—if allowed to stand—would effectively nullify the “smallest area compatible” requirement.

9. These unlawful Monuments have profound practical consequences and hurt real people—as Plaintiffs’ stories make clear. Plaintiffs are a cross-section of Utah: outdoorsmen,

miners, ranchers, and Native Americans. Their families have been here for generations. Their ancestors helped settle and develop much of the land now within monument bounds. And while they may come from diverse backgrounds, every plaintiff faces the common prospect of President Biden’s proclamations destroying their livelihoods and upending their lives.

10. The Grand Staircase-Escalante and Bears Ears Monuments have hurt local business, hollowed small towns, and separated Utahns from their family histories and religious traditions. Members of the BlueRibbon Coalition—an organization dedicated to preserving motorized access to public lands—are no longer able to ride vehicles on certain trails or areas, preventing them from pursuing family pastimes or, for those who depend on motorized access, visiting these lands at all. Miners like Kyle Kimmerle are unable to develop longstanding mining claims—losing millions in unrecoverable profits—because of newly required, costly, and risky validity exams. Ranchers like Zeb Dalton are stalled from making critical ranch improvements, and face a new regime of crippling regulations. And Native Americans like Suzette Morris are prevented from practicing their traditions via sweeping restrictions on entering or altering monument lands or monument “objects” (*i.e.*, entire landscapes). These injuries will only increase and compound so long as the current Monuments are allowed to stand.

11. As Chief Justice Roberts recently explained, the time is long overdue for the judiciary to rein in presidential abuse of the Antiquities Act. This Court should heed that message.

PARTIES

12. Plaintiff Zebediah George Dalton is the owner of TY Cattle Company LLC.

13. Plaintiff BlueRibbon Coalition is a 501(c)(3) non-profit that has worked to protect public recreation access to public lands through litigation, advocacy, and stewardship since 1987.

14. Plaintiff Kyle Kimmerle is the managing member of Kimmerle Mining LLC.

15. Plaintiff Suzette Ranea Morris is a member of the Ute Mountain Ute Tribe.

16. Defendant Joseph R. Biden is the President of the United States. He issued the proclamations expanding the Grand Staircase-Escalante and Bears Ears National Monuments.

17. Defendant Debra A. Haaland is the Secretary of the Interior. Under President Biden's proclamations, the Secretary of the Interior is charged in part with managing, through the Bureau of Land Management, the Grand Staircase-Escalante and Bears Ears National Monuments.

18. Defendant U.S. Department of the Interior is a federal agency responsible for enforcing, administering, and overseeing federal rules and regulations in connection with the Bears Ears and Grand Staircase-Escalante National Monuments.

19. Defendant Tracy Stone-Manning is the Director of the Bureau of Land Management. Under President Biden's proclamations, the Director of the Bureau of Land Management is charged in part with managing the Grand Staircase-Escalante and Bears Ears National Monuments, including developing a management plan for each Monument.

20. Defendant Bureau of Land Management is a federal agency responsible for enforcing, administering, and overseeing federal rules and regulations in connection with the Bears Ears and Grand Staircase-Escalante National Monuments.

21. Defendant Thomas J. Vilsack is the Secretary of Agriculture. Under President Biden's proclamations, the Secretary of Agriculture is charged in part with managing, through the United States Forest Service, the Bears Ears National Monument.

22. Defendant U.S. Department of Agriculture is a federal agency responsible for enforcing, administering, and overseeing federal rules and regulations in connection with the Bears Ears and Grand Staircase-Escalante National Monuments.

23. Defendant Randy Moore is the Chief of the U.S. Forest Service. Under President Biden's proclamations, the U.S. Forest Service Chief is charged in part with managing the Bears Ears National Monument, including developing a management plan for that Monument.

24. Defendant U.S. Forest Service is a federal agency within the U.S. Department of Agriculture responsible for enforcing, administering, and overseeing federal rules and regulations in connection with the Bears Ears and Grand Staircase-Escalante National Monuments.

25. All individual defendants are sued only in their official capacities.

JURISDICTION AND VENUE

26. This is an action arising under the Antiquities Act of 1906 (54 U.S.C. § 320301).

27. This Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1331. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, as well as Federal Rule of Civil Procedure 57. Equitable relief is authorized under this Court's inherent equitable powers. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015).

28. There is an actual controversy between the parties concerning the lawfulness of President Biden's proclamations. The plaintiffs have suffered, and will continue to suffer, concrete injuries as a result of the proclamations. And those injuries are redressable by this Court.

29. Venue is proper in this District under 28 U.S.C. § 1391(e).

FACTUAL ALLEGATIONS

The Text of the Antiquities Act

30. The Antiquities Act has two main provisions that work in tandem.

31. The first section of the Antiquities Act provides that the "President may, in the President's discretion, 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).

32. The second provides that the “President may reserve parcels of land as a part of the national monuments,” so long as those “parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.” *Id.* § 320301(b).

33. Moreover, elsewhere in the U.S. Code, the Act includes an enforcement provision, which provides: “A person that appropriates, excavates, injures, or destroys any historic or prehistoric ruin or monument or any other object of antiquity that is situated on land owned or controlled by the Federal Government without the permission of the head of the Federal agency having jurisdiction over the land on which the object is situated, shall be imprisoned not more than 90 days, fined under this title, or both.” 18 U.S.C. §1866(b).

34. These three provisions are substantively identical to those provisions of the original Antiquities Act. *Compare* Pub. L. No. 59-209, 34 Stat. 225 (1906).

The Origins of the Antiquities Act

35. The “Antiquities Act [of 1906] originated as a response to widespread defacement of Pueblo ruins in the American Southwest. Because there was scarcely an ancient dwelling site in the area that had not been vandalized by pottery diggers for personal gain, the Act provided a mechanism for the preservation of prehistoric antiquities in the United States.” *Mass. Lobstermen’s*, 141 S. Ct. at 980 (quotation marks omitted).

36. Starting in the late nineteenth century, Americans grew increasingly interested in the prehistoric ruins and other archeological treasures that interspersed the Western United States. Ronald F. Lee, *The Antiquities Act of 1906* 21–28 (1970). But with interest came exploitation. As a leading archeologist described the situation: “A commercial spirit is leading to careless

excavations for objects to sell, and walls are ruthlessly overthrown, buildings torn down in hope of a few dollars' gain." *Id.* at 32 (quoting J. Walter Fewkes, *Two Ruins Recently Discovered in the Red Rock Country, Arizona*, 9 *Am. Anthropologist* 263, 269–70 (1896)).

37. At the time, federal law offered little protection for relics and objects of antiquity. *See, e.g.*, Benjamin Hayes, *The Antiquities Act: History, Current Litigation, and Considerations for the 116th Congress*, Congressional Research Service 2–3 (2019) (“During this period, federal law did not provide general protection against the excavation or destruction of historic sites located on public lands or require a permit before excavation could commence.”).

38. But in 1899, a group of archeologists—starting with the American Association for the Advancement of Science’s “Committee on the Protection and Preservation of Objects of Archeological Interest”—set out to convince Congress to fill that void. *Lee, supra*, at 47; *see also* Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 *Ga. L. Rev.* 473, 477 (2003) (“There seems little doubt that the impetus for the law that would eventually become the Antiquities Act was the desire of archaeologists to protect aboriginal objects and artifacts.”); Justin J. Quigley, *Grand Staircase-Escalante National Monument: Preservation or Politics*, 19 *J. Land Res. & Env’t L.* 55, 77 (1999) (“The concept for enacting a law to provide for the permanent protection of aboriginal antiquities situated on federal lands is credited to [these archeologists].”).

39. Different archeological organizations joined the effort over the years—often drafting federal legislation that members in Congress would later introduce—but their collective goal was the same as that of the Committee on the Protection of Objects of Archeological Interest: the protection of objects of archeological interest. *See Utah Ass’n of Cnty’s. v. Bush*, 316 F. Supp. 2d 1172, 1178 (D. Utah 2004) (“The original purpose of the proposed [Act] was to protect objects

of antiquity. The substance of the Act, developed over a period of more than six years, was created in response to the demands of archaeological organizations.”).

40. In drafting the Antiquities Act, the archeologists focused on objects of antiquity. And while the draft bills differed in some respects, they shared one basic goal: “[T]he preservation of aboriginal and prehistoric ruins on the public domain.” H.R. Rep. No. 58-3704, at 2 (1905) (describing precursor Antiquities Act); *see also* John Yoo & Todd Gaziano, *Presidential Authority to Revoke or Reduce National Monuments Designations*, 35 Yale J. Reg. 617, 624–25 (2018).

41. Congress debated what eventually became the Antiquities Act for just over half a decade. Two common features cut across the draft legislation. One, a growing desire to carefully delineate the precise items to be protected.¹ And two, a commitment to ensure that the Act would empower the Executive to reserve only limited tracts of federal land.²

¹ *Compare, e.g.*, H.R. 8066 (1900) (giving President power to designate as a park or reservation “any prehistoric or primitive works, monuments, cliff dwellings, cave dwellings, cemeteries, graves, mounds, forts, or any other work of prehistoric or primitive man” along with “any natural formation of scientific or scenic value of interest, or natural wonder or curiosity on the public domain”); *with* H.R. 10451 (1900) (giving Secretary of Interior power to reserve narrow tracts of land to protect “monuments, cliff dwellings, cemeteries, graves, mounds, forts, or any other work of prehistoric, primitive, or aboriginal man.”); *with* H.R. 13349 (1904) (covering “historic and prehistoric ruins, monuments, archaeological objects and other antiquities, and the work of the American aborigines on the public lands of the United States”); *with* S. 4127 (1904) (specifically protecting only “mounds, pyramids, cemeteries, graves, tombs, and burial places and their contents, including human remains; workshops, cliff dwelling, cavate lodges, caves, and rock shelters containing evidences of former occupancy; communal houses, towers, shrines, and other places of worship, including abandoned mission houses or other church edifices; stone heaps, shell heaps, ash heaps, cairns, stones artificially placed, solitary or in groups, with or without regularity; pictographs and all ancient or artificial inscriptions; also fortifications and [e]nclosures, terraced gardens, walls standing or fallen down, and implements, utensils, and other objects of wood, stone, bone, shell, metal, and pottery, or textiles, statues and statuettes, and other artificial objects”).

² *Compare, e.g.*, H.R. 8066, *supra* (limiting President’s ability to set aside federal lands to only those “necessary for the proper preservation or suitable enjoyment of said reservation”); *with* H.R. 10451, *supra* (giving Secretary of Interior power to only reserve 320 acres at a time); *with* H.R. 13349, *supra* (placing covered objects in the custody of Secretary of Interior and giving him authority to grant excavation and collecting permits to qualified institutions); *with* S. 4127, *supra* (similar); *see also* Hayes, *supra*, at 4 (describing debates in Congress between setting strict fixed

42. To be sure, some (primarily career) officials in the Department of the Interior pushed for a broader bill, and tried to win for the President the open-ended authority to set aside whatever public land he felt contained “scenic beauty,” “natural wonders,” or other “curiosities.” H.R. 11021 (1900); *see also* Lee, *supra*, at 53–55. But those efforts went nowhere. *See, e.g.*, Lee, *supra*, at 55 (“Representative Lacey wrote Secretary Hitchcock that the committee ‘seemed to be unanimously of the opinion that it would not be wise to grant authority in the Department of the Interior to create National Parks generally, but that it would be desirable to give the authority to set apart small reservations, not exceeding 320 acres each, where the same contained cliff dwellings and other prehistoric remains’”); *id.* at 109 (“The terms of the monument act do not specify scenery, nor remotely refer to scenery, as a possible *raison d’être* for a possible reservation.”) (quoting Frank Bond, Chief Clerk of National Park Service’s General Land Office, *The Administration of National Monuments* 80–81 (1911)); Squillace, *supra*, at 482 (“In the final push that eventually led to passage of the Antiquities Act, the focus within the House Public Lands Committee remained on archaeological artifacts.”).

43. Soon enough, Dr. Edgar Lee Hewett took the lead on what would become the Antiquities Act. Hewett was singularly focused. In 1902, he had toured the American Southwest with Congressman Lacey to show him the “pueblos and cliff dwellings” that any sort of “archeological legislation” would cover. Lee, *supra*, at 69. Likewise, in 1904, Hewett submitted a painstakingly detailed memorandum that catalogued, by district, “the historic and prehistoric ruins of Arizona, New Mexico, Colorado, and Utah” that would be covered by the archeologists’ proposed law. H.R. Rep. No. 58-3704, *supra*, at 2–10 (attaching full memo).

acre limit versus adopting more flexible standard such as “positively no more land ... than is necessary for the purpose”).

44. At the end of 1905, Hewett drafted a bill that reflected this focus. To help cut through earlier debates, his proposed legislation adopted flexible yet cabined language. Rather than delineate each and every item to be protected, *compare* note 1 *supra*, Hewett opted for three basic categories: “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated []on [federal] lands.” Lee, *supra*, at 73 (quoting proposed bill). And rather than set a specific size limit for every monument, *compare* note 2 *supra*, Hewett provided instead that a monument must be “the smallest area compatible with the proper care and management of the objects to be protected.” Lee, *supra*, at 73. The bill quickly passed Congress without significant changes, and was signed into law by President Roosevelt in 1906.

45. Everyone understood what Hewett’s bill did. As the House Report put it: “The bill proposes to create small reservations reserving only so much land as may be absolutely necessary for the preservation of these interesting relics of prehistoric times.” H.R. Rep. No. 59-2224, *supra*, at 1. Or in the words of the Senate Report: The bill is “carefully drawn” to protect “the historic and prehistoric ruins and monuments on the public lands of the United States [that] are rapidly being destroyed.” S. Rep. No. 59-3797, at 1 (1906). As Congressman Lacey himself reiterated: The Act “is meant to cover the cave dwellers and cliff dwellers” and its “object ... is to preserve these old objects of special interest and the Indian remains in the pueblos in the Southwest, whilst [other legislation] reserves the forests and the water courses.” 40 Cong. Rec. 7888 (1906). The Act would affect “[n]ot very much [land]” because the “bill provides that it shall be the smallest area necessary for the care and maintenance of the objects to be preserved.” *Id.*

46. There was no contemporary suggestion—none—from any legislator, commentator, or scholar that the Antiquities Act empowered the President to declare millions of acres of federal land a national monument, let alone do so in the name of protecting indeterminate concepts like

landscapes, ecosystems, and habitats. *See, e.g., Utah Ass’n of Cnty. v. Clinton*, Nos. 97 CV 479, 97 CV 492, 97 CV 863, 1999 U.S. Dist. LEXIS 15852, at *10 (D. Utah Aug. 12, 1999) (“Congress apparently intended to limit the creation of national monuments to small land areas surrounding specific objects.”); Richard M. Johannsen, *Public Land Withdrawal Policy and the Antiquities Act*, 56 Wash. L. Rev. 439, 450 (1981) (“Congress nevertheless intended to limit the creation of national monuments to small reservations surrounding specific ‘objects.’”).

The History of the Grand Staircase-Escalante and Bears Ears Monuments

47. Over time, Presidents have taken an increasingly broad view of their power under the Antiquities Act. But recent years have seen a particular “trend of ever-expanding antiquities.” *Mass. Lobstermen’s Ass’n*, 141 S. Ct. at 980. Far from the “small reservations reserving only so much land as may be absolutely necessary for the preservation of these interesting relics of prehistoric times,” the Government now claims the Antiquities Act imposes *no discernible limits at all*. Indeed, the Government recently argued that the President possesses unilateral power to set aside *all three billion acres* of the Atlantic Ocean’s Exclusive Economic Zone as a single monument. Oral Argument at 21:22–22:41, *Mass. Lobstermen’s Ass’n v. Ross*, 945 F.3d 535 (D.C. Cir. 2019) (No. 18-5353). Nor is that a theoretical assertion: Since 2006, “Presidents have established five marine monuments alone whose total area exceeds that of all other American monuments combined.” *Mass. Lobstermen’s*, 141 S. Ct. at 980.

48. The history of Grand Staircase-Escalante and Bears Ears epitomizes this pattern of presidential abuse. Both sprawling designations were established with minimal input from local political leaders—let alone Utah’s outdoor recreation, mining, ranching, and broader business communities. In fact, Utah’s congressional delegation learned of President Clinton’s decision to establish the 1.7 million acre Grand Staircase-Escalante Monument (at the time, the largest land

monument in the continental United States) via *The Washington Post*. Eric C. Rusnak, *The Straw That Broke the Camel's Back? Grand Staircase-Escalante National Monument Antiquates the Antiquities Act*, 64 Ohio St. L.J. 669, 697 n.128 (2003). Unfortunately, President Biden has drawn from the same roughshod playbook. See Mitt Romney, Mike Lee, Chris Stewart, John Curtis, Burgess Owens, and Blake Moore, *A Monumental Insult*, *Deseret News* (Oct. 8, 2021) (President Biden “ignored” offers to find a bipartisan and “permanent legislative solution” and excluded “Congress and local officials” from his monument decisions).

49. Even among the most aggressive uses of the Act, President Biden’s proclamations are unprecedented. For the first time ever, the proclamations designate *landscapes*—one larger than Delaware (Grand Staircase-Escalante), the other Rhode Island plus Guam (Bears Ears)—as *themselves* “objects of historic or scientific interest” that are “situated on” federal land. 86 Fed. Reg. 57335, 57336 (Oct. 8, 2021); 86 Fed. Reg. 57321, 57322 (Oct. 8, 2021). “[H]ow far we have come from indigenous pottery” indeed. *Mass. Lobstermen’s*, 141 S. Ct. at 981.

The Grand Staircase-Escalante National Monument

50. The Grand Staircase-Escalante Monument has been controversial from the beginning—so much so that President Clinton announced it from down in Arizona. *Utah Ass’n of Cnty. v. Bush*, 316 F. Supp. 2d. 1172, 1181 (D. Utah 2004).

51. Leading up to President Clinton’s use of the Act, the areas comprising the Grand Staircase-Escalante Monument had long been of federal interest. From 1978 to 1991, the Bureau of Land Management conducted a number of studies in the region and ultimately recommended that 1.9 million acres in Utah (a good portion covering lands now part of the Grand Staircase-Escalante Monument) receive a wilderness designation under the Wilderness Act—a federal statute that gives Congress (not the President) the authority to set aside lands as “wilderness” (a

designation that comes with a host of statutory land use restrictions) after following a series of procedures within the Executive Branch. *See id.* at 1180–1181.

52. Shortly after President Clinton took Office in 1993, Congress began debating how best to protect lands in Southern Utah. Some proposals were broad, seeking to designate over 5 million acres in Utah as wilderness. *Id.* at 1181. Some were more tailored, such as a bill proposed by Utah’s congressional delegation that would cover roughly 2 million acres. *Id.* At the time, none of the bills were able to garner sufficient support to pass in Congress. *Id.*

53. President Clinton’s proclamation short-circuited those deliberations. And as a later investigation uncovered, President Clinton’s motivation was politics rather than preservation. *See Utah Ass’n of Cnty.*, 1999 U.S. Dist. LEXIS 15852, at *31. As then-Chair of the Council of Environmental Quality Kathleen McGinty remarked at the time: “I do think there is a danger of ‘abuse’ of the withdraw/antiquities authorities especially because these lands are not really endangered.” *Id.* at *33–34.

54. In reality, the “driving force” behind the Monument was the President’s desire to shutter the Smoky Hollow coal mine and shore up support with (out-of-state) environmentalists ahead of the 1996 presidential election. *See id.* at *16. An August memorandum to President Clinton explained that the “political purpose” of the Grand Staircase-Escalante designation was to “create a compelling reason for persons who are now disaffected to come around and enthusiastically support the Administration”—namely, those from “coastal California, Oregon and Washington, southern Nevada, and the Front Range communities of Colorado, the Taos-Albuquerque corridor, and the Phoenix-Tucson area”—with a politically costless gesture, since opposition would generally be confined to people who are “unlikely to support the Administration under any circumstances” (*i.e.*, Utahns). Quigley, *supra*, at 89–90 (quoting memorandum); *see*

also *Utah Ass'n of Cntys.*, 316 F. Supp. 2d. at 1182 (quoting July email saying Interior Secretary needs to start putting record together “asap” ahead of monument announcement so that he “has what looks like a credible amount of time to do his investigation” to stave off future litigation).

55. On September 18, 1996, President Clinton created the Grand Staircase-Escalante Monument, which stretched about 1.7 million acres. “There was virtually no advance consultation with Utah’s federal or state officials.” *Utah Ass'n of Cntys.*, 316 F. Supp. 2d at 1182–83.

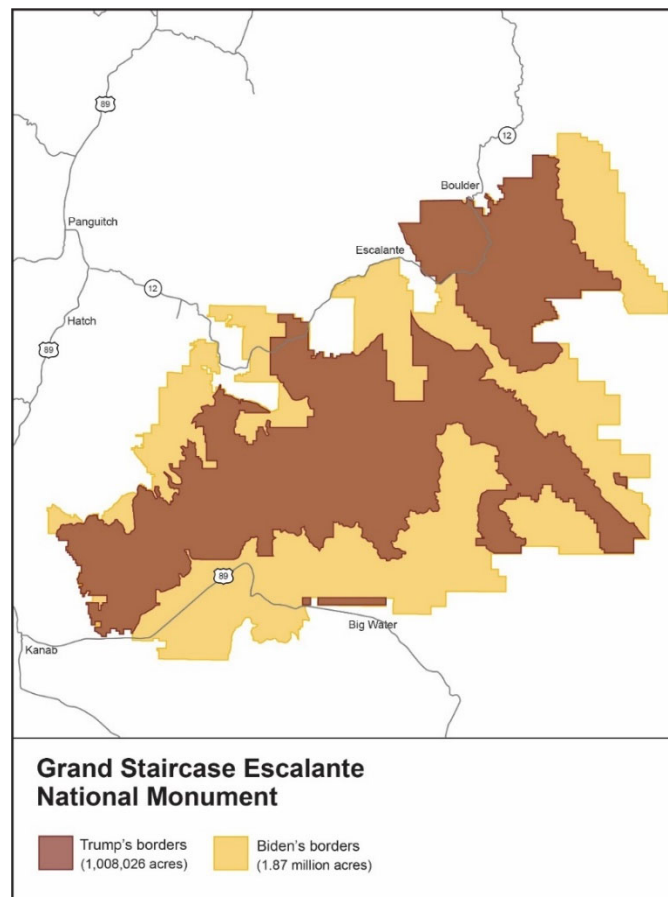
56. In 2017, President Trump reversed course. Following extensive discussions among the Trump Administration, elected officials in Utah, and other key stakeholders, President Trump issued a proclamation in December 2017 that reduced the size of the Grand Staircase-Escalante National Monument by roughly 860,000 acres. *See* 82 Fed. Reg. 58089, 58093 (Dec. 4, 2017).

57. In so doing, President Trump explained that two decades of experience and further study had confirmed that “many of the objects identified by [President Clinton’s proclamation] are not unique to the monument, and some of the particular examples of those objects within the monument are not of significant historic or scientific interest.” *Id.* at 58090. What’s more, other federal laws—like the Paleontological Resources Preservation Act, the Archeological Resources Protection Act, and the Endangered Species Act—offered independent and superior protections for many of the items identified in President Clinton’s proclamation. *Id.* President Trump accordingly concluded that “the current boundaries of the Grand Staircase-Escalante National Monument established by [President Clinton] are greater than the smallest area compatible with the protection of the objects for which lands were reserved.” *Id.* at 58091.

58. In 2021, President Biden reversed course again, reinstating and even expanding the original Grand Staircase-Escalante Monument. In his proclamation, President Biden claimed this dramatic step was the only way to “ensure that this exceptional and inimitable landscape” would

be protected. 86 Fed. Reg. at 57336. To justify the Monument as a whole, President Biden found that the “*entire* Grand Staircase-Escalante landscape ... is an object of historic and scientific interest requiring protection under the Antiquities Act.” *Id.* (emphasis added).

59. The proclamation also identifies various “objects of historic or scientific interest” *within* the Grand Staircase-Escalante landscape. Some may well be consistent with the text of the Antiquities Act. *See, e.g., id.* at 57341 (discussing “Ancestral Pueblo sites, including rock writings, rock shelters, cliffside storage structures, and pithouses”). But many are not. *See, e.g., id.* at 57340 (ecosystems); 57341 (habitats); 57337 (bees).



60. The Monument totals 1.87 million acres—an expanse larger than Delaware. *Id.* at 57345. President Biden declared, without explanation, that anything smaller would not protect “the objects of historic or scientific interest identified” in his proclamation or in President Clinton’s

proclamation, which he incorporated by reference. *Id.* The proclamation does not specify what areas are set aside for which “objects.”

61. On top of the restrictions in both President Biden and Clinton’s proclamations, the BLM Director issued interim guidance for managing the Monument while the Government develops a full monument management plan (which is scheduled for release by March 2024). *See* Memorandum from Director, Bureau of Land Management to Utah State Director, Bureau of Land Management, *Interim Management of the Grand Staircase-Escalante National Monument* (Dec. 16, 2021) [hereinafter, “Grand Staircase-Escalante Interim Guidance”].³ Among other things, that Guidance imposes its own set of rules for activities on monument land, and incorporates other policies, such as the BLM Manual and past management plans. *See id.* at 4 (“In summary, for discretionary decisions before new monument management plans are adopted, the BLM may allow activities only if it determines that: (1) the decision conforms to the applicable 2020 resource management plan; and (2) the decision is consistent with the protection of monument objects.”).

The Bears Ears National Monument

62. The story of Bears Ears is much the same. As with the lands that became the Grand Staircase-Escalante Monument, the lands that became the Bears Ears Monument had long been the subject of federal and local interest. “Locals, lawmakers, environmentalists, and tribal representatives have argued over how to conserve and develop the Bears Ears area for years.” Robinson Meyer, *Obama’s Environmental Legacy, In Two Buttes*, *The Atlantic* (Dec. 30, 2016).

63. Before President Obama’s proclamation, however, those debates were happening in the political process. And for a while, there was meaningful progress. For instance, members

³ The full Grand Staircase-Escalante memorandum can be found here: https://www.blm.gov/sites/blm.gov/files/docs/2021-12/GSENM_Interim_Guidance_12-16-21_Final508_0.pdf.

of Utah’s congressional delegation had worked for years on the Utah Public Lands Initiative Act—a bill that aimed to strike a balance between conservation and development, and reserved around 1.1 million acres of Bears Ears as a national conservation area. H.R. Rep. No. 14-5780 (2016).

64. But in late 2016—after a new President had been elected, but before he took office—President Obama took unilateral action yet again. On December 28, 2016, President Obama issued a proclamation that established the Bears Ears National Monument. The Monument fully encompassed 1.35 million acres in Southern Utah. 82 Fed. Reg. 1139, 1143 (Dec. 28, 2016).

65. This “midnight monument” was immediately controversial. *See* Maureen A. McCotter, *A Presidential Power of Monumental Proportions: Does the Antiquities Act Permit the Review and Revision of National Monuments or Can the President Steal Your Land?*, 30 *Vill. Env’t L.J.* 173, 185–86 (2019); *see also, e.g.*, James R. Rasband, *Stroke of the Pen, Law of the Land?*, 63 *Rocky Mtn. Min. L. Inst.* 21-1, 21-2–21-3 (2017) (“President Obama’s proclamations drew strong protests from some in public land communities near the monuments and from many in the congressional delegations of the states containing the monuments”); Nora R. Pincus, *Annual Mining and Public Land Law Update*, 63 *Rocky Mtn. Min. L. Inst.* 14-1, 14-9 (2017) (“Bears Ears was one of the most controversial of President Obama’s new monuments, drawing strong opposition from the State of Utah and numerous elected officials.”).

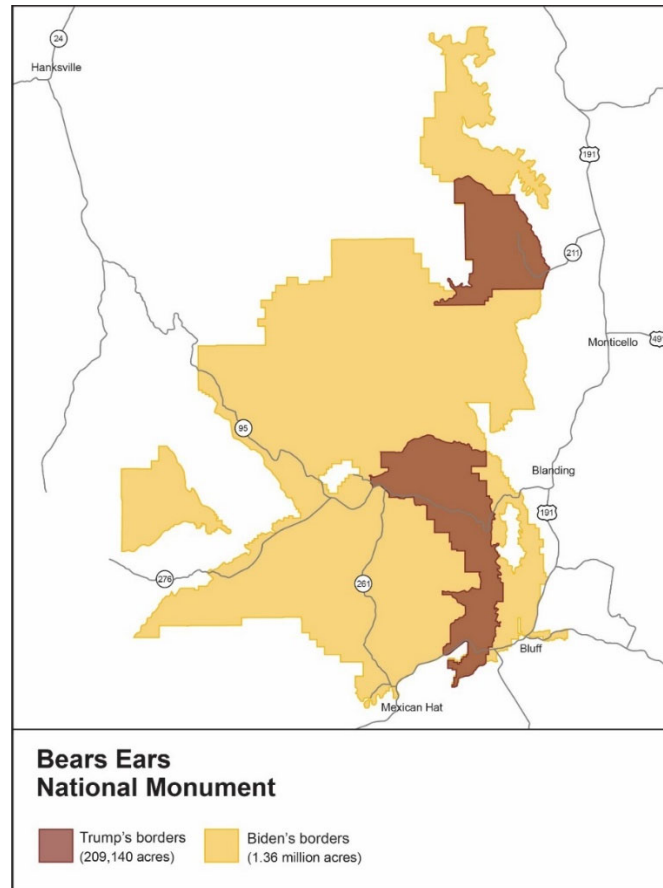
66. Shortly after taking office, President Trump announced that his Administration would reexamine Bears Ears and, in December 2017, he issued a proclamation reducing its size. 82 Fed. Reg. 58081, 58085 (Dec. 4, 2017). As with Grand Staircase-Escalante, President Trump found that “[s]ome of the objects [President Obama’s proclamation] identifies are not unique to the monument, and some of the particular examples of these objects within the monument are not of significant scientific or historic interest.” *Id.* at 58081. And as with Grand Staircase-Escalante,

President Trump determined that a good portion of the Monument was already protected by other federal laws—for instance, 400,000 acres within Bears Ears were already “Wilderness Study Areas” under the Wilderness Act. *Id.* at 58081–82. President Trump accordingly reduced the Bears Ears Monument by around 1.2 million acres. *Id.* at 58085.

67. After taking office, President Biden reestablished and even expanded the original Bears Ears Monument, on the same day that he announced the same action for Grand Staircase-Escalante. Here, as there, President Biden justified the Monument on the basis that the *entire* “Bears Ears landscape ... is, *itself*, an object of historic and scientific interest requiring protection under the Antiquities Act.” 86 Fed. Reg. at 57322 (emphasis added).

68. President Biden’s proclamation also identified a number of constitutive “objects of historic and scientific interest” within that landscape. As above, some might be consistent with the Antiquities Act. *See, e.g., id.* at 57327 (historic kivas, ceremonial sites, and rock writings). But a great many are not. *See, e.g., id.* at 57323 (habitats); 57323 (ecosystems); 57324 (fish and other animals); 57326 (seasonal wetland); 57328 (the San Juan River).

69. The Monument totals 1.36 million acres. *Id.* at 57332. President Biden concluded that anything smaller would not adequately protect “the objects of historic or scientific interest identified [in his proclamation] [or] in [President Obama’s],” which he incorporated by reference. *Id.* at 57331. The proclamation does not specify what areas are set aside for which “objects.”



70. On top of the restrictions in both President Biden and Obama’s proclamations, the BLM Director issued interim guidance for managing the Monument while the Government develops a full monument management plan (scheduled for release by March 2024). *See* Memorandum from Director, Bureau of Land Management to BLM Utah State Director, *Interim Management of the Bears Ears National Monument* (Dec. 16, 2021) [hereinafter, “Bears Ears Interim Guidance”].⁴ Among other things, that Guidance imposes its own set of rules for activities on monument land and incorporates other policies, such as the BLM Manual and past management plans. *See id.* at 4 (“In summary, for discretionary decisions before new monument management

⁴ The full Bears Ears memorandum can be found here: https://www.blm.gov/sites/blm.gov/files/docs/2021-12/BENM%20Interim%20Guidance%2012-16-21_Final508.pdf.

plans are adopted, the BLM may allow activities only if it determines that: (1) the decision conforms to the applicable 2020 Monument Management Plan and applicable resource management plan; and (2) the decision is consistent with the protection of monument objects.”).

The Consequences of the Monuments

71. “The creation of a national monument is of no small consequence.” *Mass. Lobstermen’s Ass’n*, 141 S. Ct. at 980. Monument designations trigger an onerous regime of federal regulation—restrictions that flow from the proclamations themselves as well as the implementing regulations that follow. *See, e.g.*, Carol H. Vincent, *National Monuments and the Antiquities Act*, Congressional Research Service 8–10 (2021) (describing effects on land use). And where, as here, the proclamation labels the monument the “dominant reservation” on the land, it often displaces other federal policies—such as the flexible “multiple use” mandate that governs much other public land management—and alters how federal agencies manage monument lands on a day-to-day basis. *See Squillace, supra*, at 514–19 (detailing monument restrictions).

72. But the attendant regulatory thicket is only the beginning. A monument designation also generally has profound repercussions for surrounding communities. Industries that depend on access to public lands—mining, ranching, logging, off-roading, and more—struggle under a monument’s regulations, or go out of business due to them. Those economic consequences ripple through the wider community, upending livelihoods and traditional ways of life. Families often have to move away, creating a cycle of decline for many towns.

73. That is the true story of the Grand Staircase-Escalante and Bears Ears National Monuments. The Monuments—politically inspired executive diktats imposed from thousands of miles away—pose an existential threat to many of their surrounding communities. Plaintiffs have roots in those communities that date to Utah’s founding and long before. Their families have

endured a great deal in settling, developing, and cultivating the lands that are now part of the Monuments. They have invested their lives in making this part of Utah what it is today. But their ways of life may not survive these lawless proclamations, if the Court allows them to stand.

The BlueRibbon Coalition

74. The BlueRibbon Coalition is a 501(c)(3) non-profit that has worked to protect access to public lands through litigation, advocacy, and stewardship since 1987. Burr Decl. ¶ 8 (attached as Exhibit A). BlueRibbon is a membership-based organization, with thousands of members across every State in the country. *Id.* ¶ 9. Those members include small businesses, local ATV and off-roading clubs, and individual recreationists. *Id.* ¶ 10. And those members come from all walks of life—from veterans, to the disabled, to motorcycle enthusiasts, and everything in between—all united by a shared appreciation for outdoor recreation. *Id.* ¶ 12.

75. In Utah, BlueRibbon has just over 450 individual members and almost 30 members who are businesses or organizations. *Id.* ¶ 9. Those members recreate, camp, off-road, explore, and work within or nearby the Grand Staircase-Escalante and Bears Ears monument lands. *Id.*

76. Ben Burr is the Executive Director of BlueRibbon. *Id.* ¶ 1. Ben lives in New Harmony, Utah with his wife and four children. *Id.* ¶ 2. His family’s roots stretch back to the Mormon pioneers who helped found the State. *Id.* Any map reveals as much—noting Burrville, the Burr Desert, and the Burr Trail. *Id.* Through his family and his faith, Ben has a deep connection to these lands. *Id.* ¶ 4. And he has dedicated much of his life to them. *Id.* ¶ 6.

77. As Ben puts it: “The Grand Staircase-Escalante and Bears Ears Monuments have been nothing short of devastating to our members and the local communities in Southern Utah that they help support.” *Id.* ¶ 17. Indeed, the Monuments portend a future that cuts to the heart of

BlueRibbon’s mission: closed trails and roads; restricted campgrounds; limits on motorized access; and caps on group sizes that will block family or religious gatherings. *See id.* ¶ 32.

78. Ben and his organization have seen the Monuments’ histories up close: their establishment under President Clinton (Grand Staircase-Escalante) and President Obama (Bears Ears); their reductions by President Trump; and their re-expansions by President Biden. Ben and his organization have directly experienced the repercussions of each decision.

79. Start with Grand Staircase-Escalante. “Before President Clinton established the Grand Staircase-Escalante Monument, our members extensively used the designated lands. Many made a living off the land through hunting, through mining, and through livestock and timber production. Others recreated throughout the lands, making use of the lands’ iconic roads and trails. By and large, these lands were visited and used primarily by local communities. And our members were able to utilize these local areas responsibly because the lands were designated for ‘multiple use’ under the Federal Land Policy and Management Act.” *Id.* ¶ 18. But “President Clinton’s proclamation upended all of this. The monument designation closed many of the iconic roads and trails that our members had long used responsibly—most notably, shutting off access to the Paria Canyon Road within the Paria Canyon. As a result, our members were cut off from their treasured recreation experiences, their cultural and familial heritage, and their livelihoods.” *Id.* ¶ 19.

80. President Clinton’s designation, and its accompanying restrictions and regulations, further harmed BlueRibbon’s membership because it “gutted many local economies.” *Id.* ¶ 20.

81. The story of Simone Griffin—BlueRibbon’s Policy Director—illustrates the point. Simone and her family were born and raised in Utah. Griffin Decl. ¶ 2 (attached as Exhibit B). Simone currently lives in Escalante, Utah with her husband and two children. *Id.* As she describes it: “The Grand Staircase-Escalante Monument is right outside of my front door.” *Id.*

82. Simone has seen firsthand how the “Grand Staircase-Escalante Monument has gutted our community.” *Id.* ¶ 3. “Before President Clinton established the Monument, Escalante had a stable, year-round economy made up of logging, drilling, and mining, as well as ranching and farming. But the regulations and restrictions that came with the Monument have steadily destroyed that economy. Local businesses have had to close left and right, often with devastating consequences.” *Id.* By contrast, “[m]ost work is now seasonal, drawing residents who are single, have no families, and stay only for the warmer months. And because of this new part-time economy, a large share of local businesses have to close for six or seven months per year.” *Id.*

83. The Grand Staircase-Escalante Monument “fundamentally changed our town’s identity. The town used to be filled with families with homesteading traditions, such as ranching and farming. We used to have a number of local businesses that supported these kinds of livelihoods. And living off the land was part of our culture. We have since been forced into a tourism industry because we no longer have real access to our surrounding lands. We are essentially a tourist town, filled with nomads—people who are here only seasonally. The influx of part-time residents has also made it difficult to buy a home or pay rent. In short, because of the Monument, the number of families who remain in Escalante has plummeted, witting our community.” *Id.* ¶ 4; *see also id.* ¶ 13 (describing other Monument-induced changes).

84. Simone’s life has mirrored the town’s transformation. For instance, when President Clinton designated the Monument in 1996, the graduating class at their local high school was 36. “By 2018, when I was working as a math teacher, the graduating class was down to 8.” *Id.* ¶ 4.

85. Along with her husband, Simone also runs the local grocery store. *Id.* ¶ 6. Like many other small businesses in the area, “Escalante’s Monument-induced seasonal economy has

made it difficult to keep our grocery store operating year-round, jeopardizing our livelihoods as well as our ability to keep this family business running.” *Id.* ¶ 7.

86. The rest of Simone’s family has had a similar experience. For generations, her husband’s family had been involved in ranching and the “cattle they ran was the main source of income for my husband’s grandpa and his two brothers since 1969.” *Id.* ¶ 9. But with the “designation came impossible to follow regulations,” including rules that required them to move their cattle in an impossibly short period of time (or face ruinous fines). *Id.* ¶ 10. “Given the short timeframe, the difficulty of moving cattle in this rugged terrain, and the steep fines that would have followed if they did not move their cattle in time, they were forced to shoot many of the cattle instead. And after years of struggling under these burdens, my husband’s family had to just sell their allotment. Since 2010 the allotment has gone through three different owners. What was once a lucrative business is now one that is almost impossible to operate at all.” *Id.*



(Pictured: Simone’s mother-in-law and father-in-law in front of Griffin Grocery.)

87. “In so many words, the Monument has put a heavy toll on our family and has ravaged our community.” *Id.* ¶ 15. “It has already started to hurt our community, and I fear that we will never recover if the Monument is allowed to stand. Our town is changing in culture completely. And the Monument has brought about a vicious cycle that will eventually break us: We are losing more and more people because of the Monument, which is forcing more and more people to leave, further depleting our ability to sustain our basic identity.” *Id.* ¶ 14.

88. The Bears Ears Monument has likewise inflicted tremendous harm on BlueRibbon and its members. “Before President Obama established the Bears Ears National Monument, our members explored its extensive canyons, mountains, and forests. Recreating on these lands was common. As with Grand Staircase-Escalante, our members regularly organized rides and performed trail maintenance work in the area. Likewise, locals, which included members of the local tribes, relied on the area for firewood, hunting, and family and religious gatherings. Local communities were able to steward and responsibly rely on these lands because they were managed as multiple-use lands by the Bureau of Land Management, the US Forest Service, as well as the Utah School and Institutional Trust Lands Administration.” Burr Decl. ¶ 23.

89. Nonetheless, “President Obama’s decision to create the Bears Ears Monument uprooted this balance at the expense of our members and our local communities. Among other things, the broad public relations campaign that was launched to justify the monument took an obscure and lightly visited area and put it on the map. A massive influx of visitors have surged into the area with no correlating increase in infrastructure or management capacity.” *Id.* ¶ 24.

90. This last point highlights an irony common to both Bears Ears and Grand Staircase-Escalante: Each “Monument was one of the worst things to happen to conservation in the region.” *Id.* ¶ 21. As for the Bears Ears Monument: “As our members have seen firsthand, the remote

backcountry experience that the monument was allegedly designated to protect is being destroyed by the designation.” *Id.* ¶ 24; *see also id.* (describing harm done by tourists to the Doll House Ruin). And for the Grand Staircase-Escalante Monument: “Before, these lands were mainly visited and used by local communities—communities that took care that these lands were maintained and stewarded such that future generations could continue to benefit from them. But the Monument designation brought with it a surge of tourism and new visitors to this area. And the Federal Government has proven ill-equipped at handling that influx.” *Id.* ¶ 21; *see also id.* (describing harm done by tourists to the Hole-in-the-Rock Trail).

91. In 2017—a little over ten years after President Clinton created the Grand Staircase-Escalante Monument, and almost one year after President Obama established the Monument at Bears Ears—President Trump reduced the size of both Monuments. “President Trump’s decision to reduce the size of the Grand Staircase-Escalante and Bears Ears Monuments brought a much-needed reprieve to our members and our communities.” *Id.* ¶ 25; *see also* Griffin Decl. ¶ 12.

92. But that relief was short-lived. In 2021, President Biden re-established and even expanded the Monuments. Those actions “have already seriously harmed—and will continue to seriously harm—BlueRibbon and its membership.” Burr. Decl. ¶ 26.

93. For starters, “President Biden’s proclamations, coupled with BLM’s interim guidance, impose meaningful regulations on BlueRibbon and its members—regulations that will likely only become more severe once final monument management plans are finished.” *Id.* ¶ 28; *see also id.* (collecting regulations). Both proclamations state that off-road vehicle use and outdoor recreation are not protected activities under the designation. *Id.* And both proclamations identify off-roading and motorized vehicle use as activities that should be supervised or limited under designations. *Id.* The interim guidance for both Monuments accordingly provides that “the agency

must ensure that any proposed recreation use or activity is evaluated for monument management plan or resource management plan conformance and consistency with the proclamation *prior* to being authorized.” Bears Ears Interim Guidance, *supra*, at 5 (emphasis added); *see also* Grand Staircase-Escalante Interim Guidance, *supra*, at 5 (same).

94. As a result, BlueRibbon members are now encountering new and burdensome restrictions on accessing these public lands with motorized vehicles. “[C]ertain trails and roads have been either closed or meaningfully restricted, harming our members. As I’ve learned from members, Kitchen Corral and Inchworm Arch Road, for instance, can no longer be used for commercial, organized rides—something that was allowed during the Trump Administration. Popular trails like Park Wash and Deer Springs Wash are also now closed.” Burr Decl. ¶ 30. So too the Paria Canyon Road, which was accessible under the Trump Administration, but has since been reincorporated into the re-expanded monument bounds under President Biden. *Id.* ¶ 19.

95. But “[t]hese formal regulations only provide part of the picture. Federal agencies and officers regulate and supervise virtually all aspects of life within Monument lands.” *Id.* ¶ 29. As a result, day-to-day life is already changing for BlueRibbon and its members. *See id.* ¶¶ 29–30 (describing restrictions resulting from the monument designations, such as “trail closures, land-use rules, [and] off-roading limitations”).

96. Richard Klein is one example. Rich runs a business called Trail Hero, which is a member of BlueRibbon. Klein Decl. ¶ 1 (attached as Exhibit C). “Trail Hero is an organization that works on public land issues and brings together motorized access groups across the state (and the country).” *Id.* ¶ 3. Through motorized access programs, the organization helps groups that may not otherwise be able to access public lands, such as the disabled and children with special needs. *Id.* ¶¶ 3, 8. Trail Hero also works closely with veterans. As Rich put it: “I’ve seen firsthand

how veterans' mental health greatly improves from our program—similar to a bonding and rehabilitation program—and through an ability to access the outdoors and public lands.” *Id.* ¶ 7.

97. Trail Hero would be expanding into some of the towns and areas at issue but for the regulatory climate that the President's proclamation has unleashed. “We have been wanting to expand into surrounding counties in Utah, but the Monuments have made that impossible with their trail closures and land-use restrictions on off-roading and motorized vehicles. But for the Monuments, we would be bringing Trail Hero to other places in Utah—for instance, the Hole in the Rock Trail—expanding access and bringing revenue into new areas. If we were able to utilize the trail network in these places, we'd expand our events.” *Id.* ¶ 6. As a result, communities within Grand Staircase-Escalante and Bears Ears are missing out on the economic benefits of Trail Hero events. *See id.* ¶ 5. And members of those communities—in particular, members who depend on motorized access to reach these public lands—will suffer from Trail Hero's absence. *Id.* ¶ 7. “If the Grand Staircase-Escalante and Bears Ears National Monuments are allowed to stand in their current form, it is certain that these very people—some of the most vulnerable among us—will be excluded from experiencing these public lands because the designation strips their sole means of accessing them.” *Id.* ¶ 8; *see also* Burr Decl. ¶ 32 (“Many of our members who suffer from mobility impairment disabilities and require motorized access will be prevented from accessing areas that have previously been sacred destinations of refuge and healing. And these harms will be borne in a disproportionate manner by marginalized populations. Indeed, recent studies show that limited-entry, reservation systems in National Parks have led to inequitable access for lower income Americans and minority populations.”).

98. Brent Johansen has had a similar experience. Brent is a lifelong resident of Utah, the President of San Juan Public Entry and Access Rights (SPEAR), and an individual member of

BlueRibbon. Johansen Decl. ¶¶ 1–2 (attached as Exhibit D). “SPEAR is an organization dedicated to preserving access to public lands for all people, young and old. Our organization has worked with the public land managers and the county to build and maintain a network of ATV trails throughout San Juan County for people to ride and enjoy. We currently have about 200 members of SPEAR. A lot of us are getting older and unable to hike long distances. Motorized access is the only method we have to get out and enjoy the features of San Juan County.” *Id.* ¶ 3.

99. As both a lifelong resident of Blanding and the President of SPEAR, Brent has seen up close the effects of the Bears Ears Monument. “Roads and trails are being closed, denying access. Favorite camping spots are being closed. Grazing permits are in jeopardy. Access to Elk Ridge, one of the community’s favorite destinations, seems likely to be closed or diminished.” *Id.* ¶ 5. These restrictions directly harm SPEAR. *See id.* ¶¶ 5–6. “At the same time, the Monument is causing an influx of tourists who don’t show the same respect for the land as the residents do, thus gradually degrading the once pristine state of this area. An excellent example is the Grand Gulch Primitive Area, now a part of the Bears Ears National Monument. It used to be primitive until it was designated as a Primitive Area. Now it has been overwhelmed by tourists who leave their refuse behind.” *Id.* ¶ 5.

100. Shane Shumway, another member of BlueRibbon, has also experienced the harsh effects of the Bears Ears Monument. Shane is a lifelong resident of Blanding, and has roots in Utah dating back multiple generations. Shumway Decl. ¶¶ 2–3 (attached as Exhibit E). “The lands around Bears Ears are sacred to our family. These lands are where I have had deeply spiritual moments that have connected me to my ancestors. I have learned about my family history through this land. But because of the Monument, and because of a host of restrictions and regulations, I also find myself separated from that history.” *Id.* ¶ 4.

101. Along with his familial and spiritual connections, Shane also relies on Bears Ears lands as a businessman. “My livelihood, and the livelihood of my family, are wrapped up in these lands. I have been a rancher and farmer my whole life. I run a construction business here with my younger brother. And my family has long been involved in mining.” *Id.* ¶ 5. The Monument and its new regulations have particularly harmed Shane’s mining business, in particular. *Id.* ¶ 8. “We have not mined on any of our claims and, because of the Monument, we do not plan on in the near future. Absent the Monument’s current designation, we would be moving forward with our mining claims.” *Id.*

102. Shane has also seen the broader repercussions of the Bears Ears Monument. *See id.* ¶ 10. Many families in the area are like Shane’s and have long histories in mining and other industries. *Id.* ¶ 9. Being prevented from mining and the like does not just hurt their bottom lines; it disables them from “practicing [their] family’s culture and heritage.” *Id.*

103. Similarly, for Simone Griffin, the Grand Staircase-Escalante Monument has gotten between her and her family. After President Trump’s decision to reduce the size of the Monument, Simone and her family started planning trips to areas no longer within the designated lands that were previously inaccessible for them—either because monument regulations included strict limits on group sizes, or because different restrictions prevented motorized access to those lands (which was the only way their 92-year-old grandfather could make it). Griffin Decl. ¶ 12. But after President Biden’s proclamation—and the accompanying restrictions that came with the expanded Monument—the Griffins needed to scrap some of those plans. *Id.* (describing trip to “The Sody”).

104. Simone and her family are also being restricted from riding motorized vehicles in areas where they recently were able to explore under President Trump. “In particular, as a result of President Biden’s proclamation, the Little Desert OHV area has been closed to off-roading and

motorized vehicles. We were able to off-road and ride motorized vehicles in this area under President Trump’s proclamation. But no longer. This is an area that is meaningful to my family. My husband’s father learned how to ride a motorcycle here, as did my husband. My kids also had their first moments on motorcycles here (pictured below). We want to be able to freely ride motorized vehicles in this area again. And that is true for many others; there is a long history of locals using this area for recreation, holiday picnics, and family rides. But for President Biden’s proclamation, those traditions would continue.” *Id.* ¶ 13; *see also* Grand Staircase-Escalante Interim Guidance, *supra*, at 4 (identifying “Little Desert OHV open area” for reexamination).



(Pictured: Simone’s child learning how to ride in Little Desert.)

105. Lastly, both Monuments have irreparably harmed BlueRibbon as an organization. “The proclamations have impaired our ability to perform our core mission and to operate our existing programs. In particular, the proclamations have caused BlueRibbon to divert time and resources from some of its core programs—such as working toward securing, protecting, and

expanding shared outdoor recreation access, and encouraging individual environmental stewardship on public lands—to new efforts designed to educate members and other stakeholders about the consequences and regulations of the two national monuments at issue here. Indeed, once President Biden announced his intent to expand the two Monuments, we spent several weeks and dozens of hours of staff time working toward assessing the impact of the Monuments on our organization and our members. We also invested in technological tools as part of starting an advocacy campaign on behalf of our members. All told, BlueRibbon was forced to spend tens of thousands of dollars on staff time, technological tools, and outreach in order to prepare for and adapt to the Monuments at issue. Those important resources would have gone elsewhere but for the disastrous risks posed by the Monuments.” Burr Decl. ¶ 31.

106. The Monuments have also directly interfered with BlueRibbon’s initiatives. “For instance, BlueRibbon has recently started the Dispersed Camping Access Alliance as a special project within our organization to advocate for the interests of dispersed camping users (that is, campers who camp outside of a designated campground). That project is being steadily undermined by the restrictions already imposed by the Monument, and the restrictions that are upcoming—trail closures, land-use rules, off-roading limitations, and hardened primitive sites.” *Id.* ¶ 30; *see also id.* ¶ 29 (“Similarly, regulators are hardening primitive sites—adding pavement, parking lots, signs, and other tourist-induced fortifications—that are stripping these areas of their historical character and integrity.”).

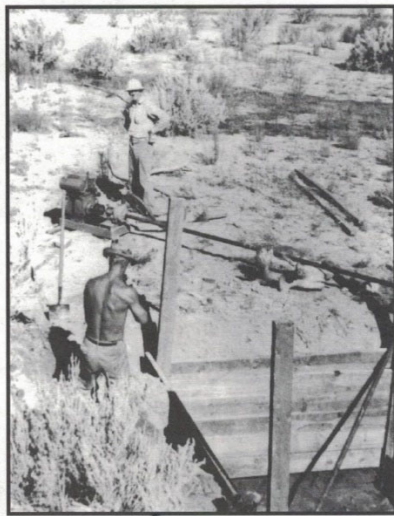
107. In short, both the Grand Staircase-Escalante and Bears Ears National Monuments have irreparably harmed both BlueRibbon and its members. Those harms will continue, and will only further compound, so long as President Biden’s unlawful proclamations are allowed to stand.

Kyle Kimmerle

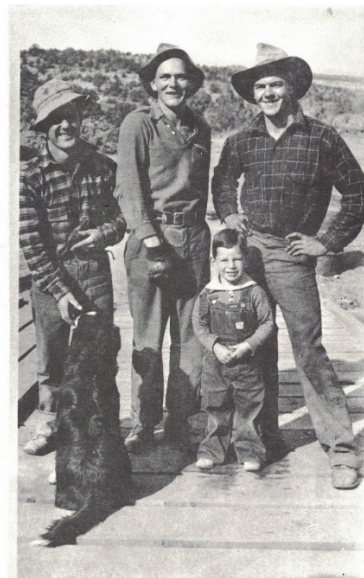
108. Kyle Kimmerle is the managing member of Kimmerle Mining LLC in Moab, Utah. Kimmerle Decl. ¶ 1 (attached as Exhibit F). Kyle has lived in Utah virtually all his life, and now lives in Moab with his wife and five children. *Id.* ¶ 2. Kyle's family has deep roots in the State. *Id.* ¶ 3.

109. Mining is not just a business for Kyle; it is a family tradition, and a way to connect with his past and the land he grew up on. *Id.* Kyle's family has been mining in Utah since the 1930s. *Id.* And each generation of Kimmerles has continued in that tradition. *Id.* Some of Kyle's earliest memories come from spending time with his father or grandfather around their mines. *Id.* Today, Kyle and his father still own family mines that trace back generations. *Id.*

110. Kyle and his dad, David Kimmerle, started Kimmerle Mining LLC in 2005. *Id.* ¶ 7. This was just the most recent partnership in a long line of Kimmerle mining operations, going back in this part of Utah nearly a century. Kyle's dad had a partnership with his father, Howard Kimmerle Jr. *Id.* And Kyle's grandfather was partners with his father, Howard Kimmerle Sr. *Id.*



Above: Howard Kimmerle standing by the pump (center of photo). Man in foreground is probably John Kimmerle, who looks like he is tamping the dirt around the form.



Warren Cliburn - Gene Blickenstaff - Howard Kimmerle
"Moki" - Sonny Kimmerle - (Son of Bill and Gertrude Kimmerle)

111. Kyle and his dad formed Kimmerle Mining in 2005 “because that was the first year in a very long time that the price of uranium began to rise to levels that would justify new production.” *Id.* ¶ 8. Over the next number of years, the Kimmerles staked over 300 “claims” across Southeastern Utah and Southwestern Colorado. *Id.* ¶ 9. In Utah, those claims are near Green River, Lasal, Monticello, Lisbon Valley, and some areas west of Blanding. *Id.* ¶ 8. They cover 20 different known deposits, with a number of potential deposits in the works. *See id.* ¶ 9.

112. “[E]very aspect of mining is regulated by an overlapping cadre of federal agencies. The [EPA] regulates mines with an eye toward air and water quality, supervising all things from what engines are installed in the mobile equipment, to the diesel particulate matter that comes from a mine, to the quantities of radon emitted from underground workings, to the various sources of electricity used in operations. [BLM] regulates everything from how mines affect endangered species, to how much dust they emit, to how mines affect surrounding plant life (including weeds). And the Mine Safety and Health Administration oversees the health and safety of those who perform the work. All of this regulation is done at a hyper-specific level. To give just one example, if a mine worker has a water bottle in his lunch box that is not properly labeled as ‘water,’ a mine operator may be issued a citation and forced to then pay a federal fine.” *Id.* ¶ 5.

113. “It should not be surprising, then, that staking and maintaining a claim today involves a very onerous process. Among other things—including finding an area of interest and filing a ‘notice of location’ with BLM—a miner needs to pay the Federal Government an initial payment of \$256 per claim. A miner needs to then pay annual maintenance fees to BLM of \$165 per claim. Most importantly, before *any* actual work is done to develop a mine, a ‘plan of operation’ must be filed with federal regulators. Having to file these plans is remarkably burdensome. Each year, plans of operation need to be more detailed, more thorough, and, in turn,

more costly. What’s more, plans of operation typically take many months or years to be reviewed and approved (if they are approved at all). And if a plan of operation is approved, miners must post reclamation bonds that ensure that upon finishing the project (whether successful or not), the miner will restore the surface of the land to its overall pre-mining condition.” *Id.* ¶ 6.

114. Kimmerle Mining has already paid the Federal Government roughly \$665,000 in fees. *Id.* ¶ 9. This year, they plan to pay at least \$50,000 in claim maintenance fees. *Id.*

115. The Bears Ears Monument has caused—and is causing—irreparable harm to both Kyle and Kimmerle Mining. *Id.* ¶ 21. That is so because regulations adopted in the aftermath of the Monument have inhibited the Kimmerles from mining any of their claims in Bears Ears. *Id.*



(Pictured: David Kimmerle starting a new mine portal.)

116. In early 2021, Kimmerle Mining owned 135 claims in what would soon become the expanded Bears Ears National Monument. *Id.* ¶ 10. Seeing the writing on the wall after President Biden was sworn in, Kyle and his dad started planning for a re-expanded Bears Ears. *Id.* They first abandoned most of their claims—100 in total—within the likely monument bounds, keeping only their best 35 claims in the area. *Id.* They then tried to move forward on their best property—a group of claims called Geitus—that is located near the edge of Deer Flat in

Southeastern Utah (now wholly within the boundaries of Bears Ears). *Id.* “The Geitus is probably our best property.” *Id.* The group of claims covers nearly 450,000 pounds of uranium, and roughly 1,500,000 pounds of copper (and possibly more than three times that amount). *Id.*

117. To move ahead on the Geitus Mine, Kyle submitted to BLM a plan of operation. “Filing the plan of operation to open the Geitus Mine was a very time-consuming and resource-intensive process. We spent about two full months gathering the necessary data, writing up the document, and submitting it to BLM. The document we ultimately submitted was over 80 pages long. We had hoped that the plan would be approved before President Biden re-expanded the Monument. At minimum, we had hoped that even if the plan was not approved, our rights to mine the deposit would nonetheless be grandfathered in given that we submitted the plan.” *Id.* ¶ 11.

118. “Those hopes did not bear out.” *Id.* ¶ 12. BLM did not approve the Kimmerles’ plan of operation before President Biden’s proclamation. *Id.* And that proclamation did in fact put all of the Geitus project within the monument bounds. *Id.* On December 1, 2021, BLM informed Kimmerle Mining that, since their claims were now on monument lands, they would be required to perform (and pay for) a “Claim Validity Exam” before anything could proceed. *Id.*

119. This validity exam requirement is new, costly, and risky—and it is stopping the Kimmerles from proceeding on their Geitus project. As the Bears Ears interim guidance explains: “Before approving a plan of operations within the monument on claims located before the lands were withdrawn,” BLM must “prepare a mineral examination report to determine whether the mining claim was valid *before* the withdrawal, and to determine whether the mining claim remains valid.” Bears Ears Interim Guidance, *supra*, at 2. The mining operator is “responsible for the costs of the mineral examination.” *Id.* at 3. And all significant mining activities are halted while this review takes place. *Id.* Thus, in order for a mining company to start work on a mining claim

that *pre-dates* the Monument, it must first pay for an exam that tests the validity of the claim itself. And if BLM determines that the preexisting mining claim is actually *invalid*, the Government must then “promptly initiate contest proceedings.” *Id.*

120. For Geitus, in particular, the validity exams come at great cost and steep risk. BLM first estimated that *each* exam would cost roughly \$100,000—totaling around \$3,000,000 for the whole project. Kimmerle Decl. ¶ 14. The agency has since revised that figure downward—estimating now that everything will cost around \$300,000, nonetheless a major expense for a small business like Kimmerle Mining. *Id.* The agency has consistently maintained, though, that the Kimmerles will need a validity exam for each claim. *Id.* Perhaps more important, in discussing these claims with BLM, the agency strongly suggested to the Kimmerles that if they pressed forward on their Geitus project, BLM may take this opportunity to contest their claims and declare them invalid. *See id.* Nor is there any mechanism for the Kimmerles to recover the money spent on exams—even if that process ends in their claims being extinguished.

121. This has left Kimmerle Mining in a serious predicament. “We are trapped in a horrible position. Every year, we are forced to pay maintenance fees on our claims or lose them. But at the same time, the Government is stopping us from mining those claims. Moreover, in order to move forward on certain claims—namely, those making up the Geitus project—we would need to undergo an incredibly costly set of validity exams that come with the steep risk that BLM will declare our existing claims to be invalid. And even if our claims survive the validity exam process, we still need to have BLM approve our plan of operation—something that now involves ever more hurdles given that Geitus is part of a National Monument.” *Id.* ¶ 15.

122. “To put a finer point on it, we are pausing operations on the Geitus project because of the Monument and its requirement that we put our claims through a costly and risky validity

exam process. But for that exam process, we would continue to work with BLM to get the plan of operation we already submitted approved.” *Id.* ¶ 16. “As noted, uranium markets are notably volatile; windows of profitability are fluid and fleeting, and we need the ability to capitalize on high uranium prices when they are available. Because of the Monument, and its accompanying regulations, we are missing out on these critical opportunities. We estimate that our inability to develop Geitus will cost us between \$2–3 million in lost profits that we will never be able to recover.” *Id.* That is textbook irreparable harm.

123. Being unable to develop productive projects like Geitus does not just hurt Kimmerle Mining, it hurts the entire local economy. If the Geitus Mine became operational, Kyle estimates that they would be able to hire 8–10 miners who would each earn \$40–50 per hour. *Id.* ¶ 17. It would also produce economic benefits for surrounding industries: the ore refinery in Blanding; local equipment dealers and explosive makers; regional truck drivers; and more. *Id.* The Mine would likely generate tens of millions of dollars for the local economy. *Id.*

124. It is not just Geitus Mine. President Biden’s proclamation bars any new mining claims on lands within the Bears Ears Monument. 86 Fed. Reg. at 57331. Kimmerle Mining also has four other existing claims within Bears Ears outside of the Geitus project. Kimmerle Decl. ¶ 18. For the same reasons, they are not developing those claims. *Id.*

125. Kyle has also likewise observed how the broad proclamation—with its accompanying regulatory uncertainty—has created a wider chilling effect that extends beyond the borders of the Monument itself. *Id.* ¶ 19. Indeed, in Kyle’s own experience, local businesses have been resistant to working with Kimmerle Mining (or other businesses with interests within the Monument) for fear of political blowback or future regulatory consequences. *Id.* This has likewise cost the Kimmerles lucrative opportunities. *Id.*

126. The Monument has hurt Kyle both as a businessowner and a local. “President Biden’s designation of the Bears Ears Monument has already damaged our business and our community. If allowed to stand in its current form, I fear that the Monument will soon fundamentally destroy our region and its traditional way of life. I have seen firsthand how families like mine—families who have long histories working these lands in mining, timber, ranching, or related industries—are seeing their livelihoods threatened by the Monument and its regulations. I have also seen how our way of life is being ripped from under us by the influx of tourists that have flocked to this area because of the Monument, overwhelming our towns and, ironically, degrading the very public lands the Monument is supposed to conserve.” *Id.* ¶ 21.

Zeb Dalton

127. Zebediah George Dalton is the owner and operator of TY Cattle Company LLC. Dalton Decl. ¶ 1 (attached as Exhibit G). He is the owner of T Y Ranch in Southwestern Utah. *Id.* ¶ 3. Zeb’s ranch is about 730,000 acres. *Id.* ¶ 5. Almost all of the ranch is on BLM or USFS land. *Id.* About three-quarters of the ranch is now within Bears Ears. *Id.* During the Trump Administration, less than 1% of the ranch was within monument bounds. *Id.*

128. Zeb was born and raised in Utah, and now lives in Blanding with his wife and children. *Id.* ¶ 2. His family has been ranching in San Juan County for nearly 130 years. *Id.* ¶ 3.

129. Zeb has given his life to the T Y Ranch. *Id.* ¶ 6. “I follow in the footsteps of my dad and granddad, who were role models to me and instilled in me the value of hard work and a solid work ethic. As they told me: If the sun is up before you, then you are burning daylight. To operate the T Y Ranch, I am usually up and out by 3:30 in the morning, and back home around 7 or 8 at night. Most days on the ranch are 12 to 16 hours long. An 8 hour day is considered a half

day of work.” *Id.* And Zeb does this all for his family. “I have worked all my life to improve and make conditions better on the ranch so that I could pass it on to my children.” *Id.* ¶ 19.



(Pictured: Zeb working on the ranch.)

130. Much goes into running T Y Ranch: securing reliable supplies of feed and water; matching the cows to the features of the range; and maintaining the ranch’s infrastructure. *Id.* ¶¶ 7–9. Each and every aspect of running the ranch is subject to intricate governmental regulation. *See id.* ¶ 13 (describing web of overlapping and occasionally conflicting federal regulations). “Because much of our ranch is located on federal land, we are generally regulated by an overlapping regime of federal and state regulations. Both BLM and the USFS manage our cattle range land, and our ranch is subject to regulations implemented by BLM, USFS, and the National Park Service.” *Id.* ¶ 10. “Even before the Bears Ears National Monument was created, our ranch was (and still is) subject to an onerous collection of federal regulations. Indeed, the local BLM regulations alone measure about a foot tall on my desk once all printed out.” *Id.* ¶ 11.

131. It is difficult to overstate, practically speaking, how much each additional layer of federal regulation impacts Zeb’s ability to run his ranch. For example, it took nearly *twenty years* for Zeb to obtain BLM approval for him to build a single, ordinary fence on his land. *Id.* ¶ 12.



(Pictured: The twenty-year fence atop an object of antiquity, highlighted for visibility.)

132. Before President Biden’s proclamation, about 100,000 acres of T Y Ranch was on state land, managed by the Utah School and Institutional Lands Administration (SITLA). *Id.* ¶ 10.

133. That is very important when it comes to the management of Zeb’s ranch. “SITLA’s regulatory regime is easier and more efficient than BLM’s. By contrast, obtaining approval for improvements from BLM is far more costly, onerous, and time-consuming.” *Id.* ¶ 16. For this reason, “the bulk of our grazing improvements have been on SITLA lands because it is virtually impossible to get timely regulatory approvals from federal agencies.” *Id.* ¶ 18.

134. “President Biden’s proclamation has already started to adversely affect our ranch.” *Id.* ¶ 16. As part of carrying out President Biden’s proclamation, Utah and the United States are finalizing a land exchange agreement that will transfer the state lands within Bears Ears to the Federal Government. *Id.* Once that land transfer deal is complete, no part of T Y Ranch will remain on state land managed by SITLA. *Id.* Rather, all of T Y Ranch—minus about 20 acres of private land—will be on federal land managed by BLM or USFS. *See id.* ¶ 5.

135. This looming transfer, and BLM’s increased role in managing the land under T Y Ranch, has directly harmed Zeb. For example, a portion of Zeb’s ranch on Mancos Mesa—land that is still owned by Utah—desperately needs better and more reliable sources of water for cattle. *Id.* ¶ 16. To help with this sort of problem, Zeb has purchased a drill rig to drill water wells in dry regions of the ranch. *Id.* For years, Zeb has tried to obtain permission from BLM for a right of way so that he could move his drill rig across BLM-managed lands to his SITLA-managed lands on Mancos Mesa. *Id.* But in the lead up to the most recent Bears Ears designation, BLM withheld approval. *Id.* And now, after the proclamation, it seems clear that any federal approvals—approvals to merely transport equipment across federal land—will remain stalled as the Monument is implemented. *Id.*

136. This federal obstruction is irreparably harming T Y Ranch. *Id.* ¶ 17. “[B]ecause I was not able to drill these wells, I had to sell down 200 head of cows since there was not enough usable feed on the rest of the range due to a drought. Being forced to sell those cows—as well as not being able to keep our replacement heifers—has cost me an estimated \$750,000. That is money I will not be able to recover. Also, so long as the well project on Mancos Mesa is stalled, I am missing out on other opportunities and lost profits that I similarly will not be able to recover.” *Id.*

137. “If allowed to stand, the Monument and its accompanying regulations pose an existential threat to our ranch and our livelihood. Once SITLA lands are transferred to the Federal Government, federal regulators will have total control over whether we can build and maintain grazing improvements on our ranch. I fear that might spell the beginning of our end.” *Id.* ¶ 18. Indeed, now that T Y Ranch is soon to be entirely on federal land, the Federal Government will have both the means and the opportunity to put the ranch out of business by simply withholding

its approval of improvement projects like wells. *Id.*; *see also id.* ¶ 7 (explaining necessity of drilling new water wells in arid climate); ¶ 17 (detailing costs of being unable to drill wells).

138. Those fears are well-founded. The interim guidance issued by BLM makes plain that grazing is not a protected activity under the Bears Ears proclamation, and that all regulatory approvals concerning grazing activities on Bears Ears land must be made to “ensure protection of the monument objects.” Bears Ears Interim Guidance, *supra*, at 5. Those “objects,” again, *include the entire Bears Ears landscape*—as well as entire ecosystems and habitats (along with many of the animals living in them). The proclamation also takes the atypical step of declaring that, if a grazing permit is voluntarily relinquished by an existing holder, then that land shall be “retire[d] from livestock grazing.” 86 Fed. Reg. at 57332. The proclamation thus directs federal regulators to steadily discontinue grazing on this land.

139. Even aside from issues involving the land transfer, the reality that three-quarters of T Y Ranch is now within monument bounds puts Zeb’s future in jeopardy. Under the proclamation and its accompanying guidance, any future grazing improvement or project that Zeb would like to perform on his ranch would be subject to additional oversight. As the BLM Manual—which the Bears Ears Interim Guidance incorporates by reference—explains, all “[g]razing management practices” must be implemented in a way that protects the Monument and its constitutive objects. BLM Manual 6220 § 1.6.I (2012) (detailing livestock grazing policies for national monument lands). In a world where it takes regulators *twenty years* to approve a fence, that is the sort of “additional layer of federal regulation [that] may ultimately break [the ranch].” Dalton Decl. ¶ 19.

140. The future of the T Y Ranch may thus depend on the outcome of this suit. “I hoped to be able to pass on a ranch [down to my children] that was in better conditions than when I got

it. I have a sinking feeling in my heart that we are going to lose the ranch and the ability to raise cattle on it.” *Id.*

141. As a lifelong resident of the area and member of President Trump’s Monument Advisory Committee, Zeb has also seen how the Monument has impacted his broader community. *Id.* ¶ 20. In his words: “Simply put, I do not think that our community, and our traditional way of life, will be able to survive the Bears Ears Monument in its current form.” *Id.*

Suzette Morris

142. Suzette Morris is a member of the Ute Mountain Ute Tribe. Morris Decl. ¶ 1 (attached as Exhibit H). She is a lifelong Utah resident and lives in White Mesa, where she raised her six kids. *Id.* ¶ 2.

143. Suzette’s family has roots tracing back one hundred years in the lands that make up part of the Bears Ears Monument. *Id.* Her family “first settled here in what is today called Allen Canyon—what they called ‘Avikan.’” *Id.* ¶ 3. They “helped develop these areas, sowing and scattering corn, squash, zucchini, and other crops.” *Id.* And they fought for these lands. *Id.* Near the turn of the 20th century, the Government gave Suzette’s family a land allotment in Avikan. *Id.*

144. That land allotment—now entirely within the expanded borders of Bears Ears—has remained in Suzette’s family ever since. *Id.* ¶ 4. In light of this history, Suzette and her family have a deep attachment to Avikan. As Suzette explained: “These lands are so much more than dirt and wheat to us. Our very sense of self is bound up in these lands.” *Id.* ¶ 6.

145. Suzette cares deeply for this area. “For generations, we have lived off the land, and have depended upon it physically and spiritually. We have grown food; hunted wild game; picked our supply of medicinal herbs; and used its wood to heat our homes. These lands are essential to my family’s—and my community’s—ability to access our ancestors and practice our faith. We

have a Bear Dance out here every Spring to help people in the community who are sick. We regularly pray on these lands. We have two burial sites out in Avikan where many of our ancestors are kept. We venture out to these lands to honor and respect our traditions.” *Id.* ¶ 5.



(Pictured: Family photo of woman in Avikan making basket with willows.)

146. The Bears Ears Monument threatens Suzette, her community, and their way of life. *Id.* ¶ 7. “Whatever the intent behind the Monument, it will be disastrous for our community if it’s allowed to stand. We don’t need it, and in fact we may not be able to survive it.” *Id.* ¶ 11.

147. Suzette and her community depend on ready access to these lands for their livelihoods and their way of life. “[O]ur lives have developed around these lands. We rely on these lands for resources and as a place where we can freely hold our ceremonial gatherings. For example, many people here do not have electricity to heat their homes, and need to be able to go out to cut down trees in order to provide warmth. Similarly, for the Bear Dance, we need to collect cedar post from the Avikan for the dance ground. And what is true for timber and cedar is true for many other things: choke cherries, wild onions, sage, willows, sweet grass, yucca, medicinal herbs, and the like. Lots of people do not have the means of transportation to go long ways, and many

others do not have the financial means to buy these kinds of things. If we cannot obtain them from these lands, many of us will not be able to obtain them at all.” *Id.* ¶ 7.

148. But “the Monument designation directly threatens that access.” *Id.* ¶ 8. Indeed, President Biden’s proclamation provides that “unauthorized persons” may not “appropriate, injure, destroy, or remove *any feature of the monument*” and may not “locate or settle upon any of the lands thereof.” 86 Fed. Reg. at 57333 (emphasis added). Yet, as noted above, the proclamation identifies the *entire* Bears Ears landscape as one of protected “objects”—along with entire habitats or ecosystems. What’s more, while President Obama’s Bears Ears proclamation specifically protected Native American access for “traditional cultural and customary uses,” President Biden’s proclamation includes no such provision. *Compare* 82 Fed. Reg. at 1145.

149. “As a result, it is hard to see how we can continue to freely access these lands without permission of the Federal Government.” Morris Decl. ¶ 8. The Monument is thus restricting access to lands that are important and sacred to Suzette, her family, and her community—in other words, the Monument is irreparably harming Suzette. *Id.* At minimum, the proclamation’s broad wording, coupled with its accompanying regulations, are chilling Suzette from practicing her traditions. “Because of the Monument, its restrictions, and the threat of enforcement, both my family and members of my community are refraining from accessing and using these lands as we did before. That is harming my way of life, and will continue to do so as long as the Monument is in effect.” *Id.*

150. “As bad, the Monument will not only prohibit us from accessing these sacred lands, but it will also bring about the degradation of these lands through an influx of outsiders and tourists. Since President Obama first designated a Bears Ears Monument, tens of thousands of people have passed through these lands in the summer months. In my experience, they have often trespassed

on our lands and have taken little care of our public areas. Since the Monument was re-established, we have already seen our values, resources, and community start to steadily degrade and diminish.” *Id.* ¶ 9. As such, Bears Ears suffers from yet another cruel irony. In reality, “the Monument is deeply counterproductive if its goal is conservation of these lands and our culture.” *Id.* ¶ 10.

CLAIM FOR RELIEF

151. Plaintiffs incorporate and reallege each and every allegation contained in the foregoing paragraphs of this Complaint, as though fully set forth herein.

152. The Grand Staircase-Escalante and Bears Ears Monuments exceed the President’s Antiquities Act authority. The Act gives the President the limited power to “declare by public proclamation historic landmarks, historic and prehistoric structures, and *other objects* of historic or scientific interest that are *situated on*” federal lands. 54 U.S.C. § 320301(a) (emphases added).

153. President Biden’s proclamations, however, rest in whole and in part on protecting things that are not “objects” *at all* under the Act. Foremost, the proclamations justify both Monuments on the unprecedented rationale that their *entire landscapes*—which together total over three million acres across southern Utah—are themselves “objects of historic or scientific interest” under the Act. 86 Fed. Reg. at 57336; *id.* at 57322. Likewise, the proclamations identify a number of indeterminate items—ecosystems, habitats, and species like bighorn sheep and peregrine falcons—as “objects” scattered across the Monuments’ multi-million-acre expanse.

154. President Biden’s proclamations contravene the Antiquities Act’s text, structure, history, and purpose. A landscape is not an “object situated on land”; it *is* the land. That is doubtless why President Biden’s proclamations simply omit the Act’s “situated on” language when describing the landscapes. What’s more, “imprecisely demarcated concept[s] [such] as an ecosystem” or a habitat are not “objects” under the Act. *Mass. Lobstermen’s Ass’n*, 141 S. Ct. at

981. So too an animal species like a chuckwalla or a peregrine falcon—something that, *inter alia*, is not itself *affixed* to federal land, as the text of the Act plainly requires.

155. President Biden’s proclamations regarding the Grand Staircase-Escalante and Bears Ears Monuments are thus void. The Antiquities Act provides that the “President may reserve parcels of land as a part of the national monuments” only so long as those “parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.” 54 U.S.C. § 320301(b). But many of the items identified by the proclamations are not “objects” in the first place—the massive landscapes that underly every single acre of each Monument, perhaps most of all. It is therefore impossible to say this statutory requirement is satisfied (or, for that matter, that the President even attempted to satisfy this requirement).

156. It is no answer that the proclamations may have identified *some* valid objects within their three-million-plus acres. Again, the Act requires that the reserved lands constitute “the smallest area compatible with the proper care and management of the objects to be protected.” *Id.* § 320301(b). But here, the proclamations instead bundle all the purported “objects” together as “constituent parts” of the total designated area. 86 Fed. Reg. at 57338. The proclamations do not specify how much land is set aside for potentially valid “objects” (Pueblo ruins, archeological relics) versus plainly invalid ones (landscapes, ecosystems, habitats, species, and more). And as a result, the monument borders are inextricably bound up with the many underlying items and concepts that are labeled “objects” but in reality fall beyond the Act’s ambit.

157. A court cannot salvage the proclamations in whole or in part. Given that many of the constitutive items are not “objects” at all, the designated area is necessarily broader than the smallest area compatible with protecting the subset of items that qualify. And the federal courts cannot design for themselves a smaller monument that preserves some portion of what the

proclamations designate. It is impossible to discern from the proclamations what lands were reserved for what objects, let alone what the “smallest area” would be to protect only the potentially valid objects. Nor are courts qualified or statutorily empowered to make these judgments in the first instance. The only proper course is to set aside the proclamations in full.

158. *Even if* some of the identified objects are in fact “objects” under the Act, the Monuments still contravene the Act’s “smallest area compatible” requirement. The Monuments sweep across millions of acres of landscape—far more than is necessary to protect any genuine landmarks, structures, or objects contained therein. For instance, as the State of Utah has already detailed, the proclamations set aside far more land than is needed to actually safeguard items such as Newspaper Rock, San Juan Hill, Doll House, Moon House, Bears Ears Buttes, Butler Wash Village, Dance Hall Rock, Grosvener Arch, and the Twentymile Wash Dinosaur Megatrackway. Compl. ¶¶ 289–95, *Garfield Cnty. v. Biden*, No. 4:22-cv-00059 (D. Utah Aug. 24, 2022). Properly understood, and for the reasons Utah provides, no more than 40 or so acres would be needed for Newspaper Rock, San Juan Hill, Dance Hall Rock, or Grosvener Arch; 160 for something like Doll House or Moon House; and around 2,000 for the Bears Ears Buttes, Butler Wash Village, or Twentymile Wash Dinosaur Megatrackway. *Id.* Indeed, the proclamations do not even *attempt* to justify their capacious borders as comprising the smallest area compatible to protect any of these identified objects. Nor could they.

159. Plaintiffs have suffered, and will continue to suffer, irreparable harm as a result of the Grand Staircase-Escalante and Bears Ears Monuments. Those harms are redressable by a court.

160. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

An actual controversy has arisen between the parties entitling Plaintiffs to declaratory and injunctive relief. Accordingly, Plaintiffs pray that this Court:

A. Enter a judgment declaring the Antiquities Act does not authorize President Biden's proclamations regarding the Grand Staircase-Escalante National and Bears Ears Monuments, and holding that President Biden's proclamations are therefore unlawful, unenforceable, and void.

B. Enter an injunction forbidding Defendants and their successors from implementing, administering, or enforcing either proclamation—and to the extent unlawful, any prior proclamation incorporated therein by reference—as well as from issuing any further regulations or management plans pursuant to those proclamations.

C. Grant Plaintiffs such additional or different relief as the Court deems just and proper, including an award of reasonable attorneys' fees and the costs of this action (including under 28 U.S.C. § 2412).

Dated: August 25, 2022

Respectfully submitted,

s/ Brady Brammer

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