Supreme Court Rules Utah Doesn’t Have a Right to Its Own Land

by Kathleen Marquardt

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In 2013, Utah submitted its Transfer of Public Lands Act to the federal government, calling on it “to fulfill its pledge under the state’s Enabling Act to dispose of most federal lands in the state, some of which would be placed back to the state.

Eleven years later, in January of this year, the Supreme Court refused Utah’s filing to bring 18.5 million acres of its land and its resources under state control. This is unappropriated land – that is, land that is not designated as national monuments, national ports, or land held for military bases or held in trust for Indian reservations. The decision came in a brief order with no explanation of its reasoning.

This is about land and ownership. Should the federal government control our land or should we the People and our states?

Western states are handicapped *vis a vis* land ownership. The federal government owns over 46% of the land area in the 11 contiguous Western states, while it owns only 4.2% of the land area in the eastern state. About 70% of Utah's total land area is under federal control. But this Act is about just 1/3 of the land in Utah, so the federal government would still control a good bit. The federal government controls nearly 70% of land in Utah, that is about 2/3 of the land in Utah.

Yet, on January 14th, the Supreme Court refused to let Utah file a seeking to bring 18.5 million acres of its land – which comprises only half of Utah's land and its resources under state control. That doesn't seem to be too much to ask.

The federal government manages about 640 million acres (2.6 million km2) of land in the United States, which is about 28% of the total land area of 2.27 billion acres. Most of that land is in the Western states that is 46.4% of the land area in the 11 contiguous Western states.

The case, *State of Utah v. United States*, brings into question

18.5 million acres of what the state is calling "unappropriated" lands – essentially lands Congress hasn't set aside for a specific purpose – that are managed by the Bureau of Land Management across Utah.

The federal government controls nearly 70% of land in Utah, in comparison to eastern states where that number is closer to 1-3%. "Nothing in the text of the Constitution authorizes such an inequitable practice or relationship," said Utah Attorney General Sean Reyes.

Utah's state leaders called the lawsuit "historic" – the state is better poised to manage land within its borders, they argued. The red tape that stymies forest management, permitting and industry would be gone, and local governments could generate more tax revenue.

What does the Constitution say about ownership of land in the U.S.?

"Article I, Enclave Clause

- empowers the federal government with exclusive legislative authority like that exercised for Washington D.C. over "Places purchased by the Consent of the Legislature of the State in which the same shall be, for the erection of Forts, Magazines, Arsenals, Dock-yards, and other needful Buildings."

"The United States' indefinite retention of huge swathes of Utah's territory severely restricts Utah's sovereignty—both absolutely and relative to its sister sovereigns—including its powers to tax, legislate, and exercise eminent domain.

"This Court's original jurisdiction is designed to defuse that kind of dispute between domestic sovereigns. The issues are purely legal and surpassingly important, as Utah's ample amicus support attests. And the federal government's actions are flatly unconstitutional. While the Framers authorized the

federal government to maintain enclaves, own property needed to carry out its Article I powers, and to "dispose of" acquired federal lands, they did not empower it to retain unappropriated lands within a State in perpetuity.

"The federal government's policy of indefinitely retaining unappropriated lands deprives Utah of basic incidents of sovereignty over nearly one-third of the land within its borders. That diminution upsets not only the Constitution's careful balance between federal and state power, but also the foundational principle that all States enjoy equal sovereignty. Utah's constitutional claims against the United States are precisely the type of "high claims affecting state sovereignty" that call for an exercise of this Court's original jurisdiction.

"While the environmental groups are telling us that this decision is the right one, we must understand that these groups were either formed by Non-governmental Organizations (NGO) to be spoilers in fights regarding property rights or older environmental groups bought out by them – same result: attacking property rights, whether those by state and local governments or by individuals."

An institute that promotes the constitution values of faith, family, and freedom, Southerland Institute, came to the conclusion on Utah's transfer of public lands act:

Only one-third of land in the state of Utah is locally owned. The other two-thirds is controlled from Washington, D.C. The transfer of Public Lands Act (HB 148) puts some those federal lands. back in state hands. The act demands that the United States Congress transfer public lands within the state of Utah back to the state by December 31, 2014, with the exception of national parks and monuments, certain wilderness and Department of Defense areas, and tribal lands). The act also requires Utah to pay the United States 95% of the proceeds from the sale of any land, while the remaining 5% is reserved

for school funding in Utah in accordance with its Enabling Act

For well over 80 years our government has used methods that are not compatible with free state operations – and it has accelerated over the last 10 years, weakening the states abilities to deal with the 10th Amendment.

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