

Even President Obama Makes Mistakes:
Why Expansion of the Cascade–Siskiyou National
Monument was Improper

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INTRODUCTION

In 2000, President Clinton created the Cascade–Siskiyou National Monument to protect the Klamath and Siskiyou ecoregions that are home to a variety of rare and endemic plant and animal species. President Clinton proclaimed that the “ecological integrity of the ecosystems . . . is vital to their continued existence.”¹ The monument proclamation states

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1. Proclamation No. 9564, 82 Fed. Reg. 6145, 6145 (Jan. 12, 2017).

that “[n]o portion of the monument shall be considered to be suited for timber production, and no part of the monument shall be used in a calculation or provision of a sustained yield of timber.”²

On January 12, 2017, President Obama expanded the Cascade–Siskiyou National Monument, noting that “[s]ince 2000, scientific studies of the area have reinforced that the environmental processes supporting the biodiversity of the monument require habitat connectivity corridors for species migration and dispersal.”³ Further, the proclamation asserts that the expansion area “includes numerous objects of scientific or historic interest.”⁴

Timber industry representatives and Oregon counties have challenged this expansion because approximately forty thousand of the additional acres were previously reserved for permanent forest production under the Oregon and California Lands Act of 1937 (O&C Act).⁵ The timber industry and Oregon counties correctly claim that the Antiquities Act cannot supersede the O&C Act.

Part I of this Note discusses both the Antiquities Act and the O&C Act in depth, elaborating on their history and purposes of implementation. It further discusses the prior interpretations of both acts and their associated conflicts. Part II sets forth the arguments in opposition to the expansion of the Cascade–Siskiyou National Monument. This section provides case law and historical evidence confirming the O&C Act is a “dominant use” statute and its superiority with regard to the Antiquities Act. Part III lays out the arguments in support of the expansion of the Cascade–Siskiyou National Monument as well as the corresponding counterarguments. Lastly, Part IV concludes with support for the O&C lands’ “dominant use” purpose and sheds light on the negative impacts of an alternative interpretation.

Under the U.S. Constitution, Congress has the power to decide what happens on property that belongs to the United States.⁶ If Congress sets aside land for a particular purpose, the President does not have the power to override Congress’s judgment by issuing a presidential proclamation that repurposes that land for a contrary purpose.⁷ Congress expressly set aside land under the O&C Act to serve as a source of revenue for eighteen Oregon counties; therefore, President Obama exceeded his authority when

2. Proclamation No. 7318, 65 Fed. Reg. 37249, 37250 (June 9, 2000).

3. Proclamation No. 9564, *supra* note 1, at 6145.

4. *Id.*

5. Vickie Aldous, *Lumber Companies File Lawsuit Over Monument Expansion*, MAIL TRIB. (Feb. 17, 2017), <http://www.mailtribune.com/news/20170217/lumber-companies-file-lawsuit-over-monument-expansion> [<https://perma.cc/7THG-9439>].

6. *See* U.S. CONST. art. IV, § 3, cl. 2.

7. *Id.*

he expanded the Cascade–Siskiyou National Monument infringing upon this land.⁸

I. BACKGROUND: THE ANTIQUITIES ACT AND THE O&C ACT

A. The Antiquities Act

In 1906, under Theodore Roosevelt’s aggressive conservationism, Congress passed the Antiquities Act, delegating authority to the president to declare small tracts of federal land as national monuments.⁹ Congress intended to protect the nation’s “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest”¹⁰ Following its inception, the Act became highly controversial as presidents began reserving millions of acres of land under the statute.¹¹ Since the passing of the Antiquities Act in 1906, sixteen out of nineteen presidents have created 157 monuments ranging from 1 to 283 million acres in size.¹²

There has been increasing concern within Congress regarding the presidential authority to create monuments via the Antiquities Act.¹³ One source of concern is the lack of consistency between the Antiquities Act and policies established through other laws.¹⁴ The Antiquities Act provides that “[t]he 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.”¹⁵

Monument designations, however, come with significant consequences.¹⁶ Proclamations afford protection to lands under federal control by permanently withdrawing them from public land laws, which

8. Deborah Scott & Susan Jane M. Brown, *The Oregon and California Lands Act: Revisiting the Concept of “Dominant Use,”* 21 J. ENVTL. L. & LITIG. 259, 276 (2006).

9. See 54 U.S.C. § 320301(a) (2012 & Supp. V).

10. *Id.*

11. Christine A. Klein, *Preserving Monumental Landscapes Under the Antiquities Act*, 87 CORNELL L. REV. 1333, 1334 (2002).

12. Tatiana Schlossberg, *What Is the Antiquities Act and Why Does President Trump Want to Change It?*, N.Y. TIMES (Apr. 26, 2017), <https://www.nytimes.com/2017/04/26/climate/antiquities-act-federal-lands-donald-trump.html> [<https://perma.cc/4HH5-JX5D>].

13. CAROL HARDY VINCENT, CONG. RESEARCH SERV., R41330, NATIONAL MONUMENTS AND THE ANTIQUITIES ACT 3 (2018), <https://fas.org/sgp/crs/misc/R41330.pdf> [<https://perma.cc/6395-Z732>].

14. *Id.*

15. 54 U.S.C. § 320301(a) (2012 & Supp. V).

16. Matthew J. Sanders, *Are National Monuments the Right Way to Manage Federal Public Lands?*, 31 NAT. RESOURCES & ENV’T 3, 4 (2016).

allow mining, logging, grazing, and other such uses.¹⁷ Congress has the ability to abolish designated monuments; however, only eleven national monuments have been abolished by acts of Congress.¹⁸

1. Political and Popular History

In the decades leading up to the Antiquities Act, Western expansion of the United States triggered public interest in the history and art of the Southwestern Native Americans. Archeology and anthropology organizations quickly formed and arranged for exhibitions displaying Native American artifacts.¹⁹ Unfortunately, scientists who hoped to discover and preserve these artifacts in order to better understand the history and culture of our country were faced with the challenge of foreign visitors, who removed artifacts to take back to their home countries, and “pottery diggers,” who vandalized the locations while removing artifacts for personal gain.²⁰ During the progressive era of social activism and political reform, President Roosevelt’s signing of the Antiquities Act was seen as a potential solution.²¹ A number of other countries, such as Turkey, Greece, and Egypt, had already implemented laws regarding their antiquities that required governmental permission prior to excavation.²² At the time, the United States was one of the only countries without any laws to protect its antiquities.²³

As people became more aware of the importance of environmental protection, the importance of national monument preservation became clearer.²⁴ With the population much lower than today, the West widely accepted the Antiquities Act and presidential designations under it because the designation of monuments helped local economies by drawing in tourists to remote areas.²⁵

17. *Id.* at 3.

18. *Antiquities Act 1906–2006: About “Abolished” National Monuments*, NAT’L PARK SERV.: U.S. DEP’T INTERIOR, <https://www.nps.gov/archeology/sites/antiquities/abolished.htm> [<https://perma.cc/RKD3-TSZ4>] (last updated Apr. 9, 2019) (explaining that monuments are most commonly abolished due to the diminishment of important resources for which the monument was established or because the monument is found to be unnecessary).

19. Olivia B. Waxman, *The Real History of the Law Behind President Trump’s Executive Order on National Monuments*, TIME (Apr. 26, 2017), <http://time.com/4756292/antiquities-act-1906-original-intent/> [<https://perma.cc/G2F3-5VDW>].

20. *Id.*

21. *Id.*

22. Ronald F. Lee, *The Story of the Antiquities Act: Chapter 6*, NAT’L PARK SERV.: U.S. DEP’T INTERIOR (2001), https://www.nps.gov/archeology/pubs/lee/Lee_CH6.htm [<https://perma.cc/8X3U-ZKHV>].

23. *Id.*

24. Waxman, *supra* note 19.

25. *Id.*

2. Legislative History

The Antiquities Act was developed to protect ancient and prehistoric Native American archeological sites.²⁶ In late 1899, the Committee on the Protection and Preservation of Objects of Archaeological Interest was established to promote a bill for the permanent preservation of aboriginal antiquities located on federal lands.²⁷ The bill was the first federal preservation legislation to establish a link between historic and natural areas.²⁸ Accompanying the bill was an explanation emphasizing the protection afforded to antiquities by most European governments, in comparison to the absence of such protection in the United States.²⁹

Once the antiquities issue was raised in Congress, competing viewpoints were quickly presented.³⁰ A bill presented by a member of the Public Lands Committee failed to promote presidential authority to create parks of undetermined extent on public lands.³¹ Instead, the bill merely stated that any unauthorized person who harmed an aboriginal antiquity would be subject to a fine, imprisonment, or both.³² Due to the bill's simplistic nature and vagueness, the drafters later introduced an improved version, directing the Secretary of the Interior to inspect specific states containing ruins and prehistoric structures and to recommend which were sufficient for permanent preservation.³³ The Secretary was then authorized to set aside the lands upon which the ruins were situated so long as the designated land did not exceed 320 acres.³⁴

All three bills, however, were found to be unsatisfactory by the Commissioner of the General Land Office.³⁵ The Commissioner preferred a bill that would grant the President broad authority to protect a wider range of resources.³⁶ As a result, the Commissioner proposed a substitute bill, referred to as “[a] Bill to establish and administer national parks, and for other purposes,” which would have authorized the president to “[s]et apart and reserve tracts of public land, which for their scenic beauty,

26. John Yoo & Todd Gaziano, *Presidential Authority to Revoke or Reduce National Monument Designations*, AM. ENTERPRISE INST. 1 (Mar. 2017), <https://www.aei.org/wp-content/uploads/2017/03/Presidential-Authority-to-Revoke-or-Reduce-National-Monument-Designations.pdf> [https://perma.cc/3757-VECV].

27. Lee, *supra* note 22.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 GA. L. REV. 473, 480 (2003).

natural wonders or curiosities, ancient ruins or relics, or other objects of scientific or historic interest, or springs of medicinal or other properties, are desirable to protect and utilize in the interest of the public.”³⁷ Some members of Congress objected to the expansive language and noted that the alternative proposals focused more narrowly on protecting sites and artifacts and placed limitations on the size of land that could be designated.³⁸ While a subcommittee of the House’s Public Lands Committee studied the various proposals, a new bill combining the views of the House and Senate Committees on Public Lands was presented³⁹:

The bill authorized the Secretary of the Interior to set apart and reserve from sale, entry, and settlement any public lands in Colorado, Wyoming, Arizona, and New Mexico containing monuments, cliff dwellings, cemeteries, graves, mounds, forts, or any other work of prehistoric, primitive, or aboriginal man, each such reservation not to exceed 320 acres.⁴⁰

The bill reduced the scope of the legislation while leaving its administration to the Department of the Interior (DOI).⁴¹ Despite a favorable report on the bill, Congress took no action on any of the four bills and almost four years passed before another bill was introduced.⁴²

The bills introduced thereafter received wide praise, but in the year they were raised, Congress adjourned before they could reach the floor for a vote.⁴³ The first bill was referred to as the Lodge Bill, and it “placed all historic and prehistoric ruins, monuments, archaeological objects, and antiquities on the public lands in the custody of the Secretary of the Interior with authority to grant excavation and collecting permits to qualified institutions.”⁴⁴ The bill stated that excavations were to be rigidly regulated and that it was the Secretary’s duty to recommend to Congress which ruins should be made national reservations.⁴⁵ Congress, however, retained complete control over new areas.⁴⁶

The second bill, known as the Smithsonian Bill, clearly defined antiquities on public lands and authorized the President to proclaim important antiquities as public reservations and to determine their

37. *Id.* (quoting H.R. 11021, 58th Cong. § 1 (1900)).

38. Lee, *supra* note 22.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

boundaries.⁴⁷ This bill, however, provided no protection for historical, scenic, or scientific resources on the public lands; protections that the DOI felt were of great importance.⁴⁸

The third bill was drafted in January 1905, when the Archaeological Institute of America created the Committee on the Preservation of the Remains of American Antiquity.⁴⁹ The new Committee met with the American Anthropological Association Committee and agreed upon a memorandum, which is believed to represent the unanimous opinion of American scientists in the archeological field.⁵⁰ The “Interior Bill” strengthened the authority of the Secretary of the Interior to protect antiquities by authorizing him or her to make permanent reservations.⁵¹ As seen in numerous prior drafts, the Interior Bill limited the size of the land that could be designated; this time, it was limited to 640 acres.⁵²

In 1904, the Commissioner of the General Land Office decided that the conflict in Congress over antiquities legislation required a new review of the entire antiquities preservation issue.⁵³ Edgar Lee Hewett, a young archaeologist, took on this review.⁵⁴ Hewett recognized a jurisdictional issue: thousands of Native American sites and ruins were located within the 150 million acres designated as forest reserves under the Forest Transfer Act.⁵⁵ Hewett stated at a joint meeting of the American Anthropological Association and the Archaeological Institute:

It is manifestly impossible to concentrate the entire authority in this matter in any one Department. The purposes for which the lands of the United States are administered are so diverse that no Department could safely undertake to grant privileges of any sort upon lands under the jurisdiction of another Department. Accordingly, if archaeological work is proposed on forest reserves the application for permission must be to the Secretary of Agriculture; if on a military reservation, to the Secretary of War⁵⁶

Hewett drafted a revised version of the Antiquities Act that he believed preserved the goals of the American Anthropological Association and the Archaeological Institute of America, in addition to the goals of

47. *Id.*

48. *Id.*; see Waxman, *supra* note 19.

49. Lee, *supra* note 22.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

various federal departments.⁵⁷ A companion bill following Hewett's draft was introduced and passed by the House and Senate.⁵⁸ President Roosevelt signed the bill, the Antiquities Act, into law on June 8, 1906.⁵⁹

The Act took care of a number of important points that were not adequately covered in prior proposals.⁶⁰ First, the provisions did not apply only to public lands.⁶¹ Instead, the provisions applied to any "lands owned or controlled by the Government of the United States."⁶² This removed the uncertainty that arose from prior proposals regarding the applicability of the Act to forest reserves, Native American lands, and military reservations.⁶³ Second, by its inclusion of the phrase "other objects of historic or scientific interest," the provisions broadened the draft to protect natural areas.⁶⁴ Third, prior drafts placed size limits upon the land that a president could designate; however, the accepted provisions provided flexibility with the language that monuments "shall be confined to the smallest area compatible with the proper care and management of the objects to [be] protected."⁶⁵

Because there was such little debate over the final bill presented, Congress' understanding of the bill's intent was never made entirely clear.⁶⁶ The House report on the legislation appeared to support a narrow reading of the law; however, the language proposed does not reflect an intent to limit the President's authority, as some readings of the report may have assumed it would.⁶⁷ The final bill instead represents the middle ground between designating specific archeological sites, as favored by state legislators in the Western states, and the large scale reservations that could be designated based on their scenic beauty alone, as favored by the DOI.⁶⁸

3. Modern Treatment of the Act

With the exception of Presidents Richard Nixon, Ronald Reagan, and George H. W. Bush, every American president has utilized his authority under the Antiquities Act to designate at least one national monument.⁶⁹

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. Squillace, *supra* note 36, at 484.

67. *Id.*

68. *Id.* at 485.

69. Sanders, *supra* note 16, at 4.

Some proclamations have identified specific objects in need of protection, while others have referred more generally to scenic, scientific, or educational features of interest.⁷⁰

There is continuing controversy regarding the criteria required to designate a monument, and the scope of each reservation varies considerably. Monuments proclaimed thus far reflect a wide variety of restrictions.⁷¹ Some critics find that because the original purpose of the Act was to protect specific objects, particularly objects of antiquity as the title describes,⁷² the presidents have abused their authority by designating land of exponential size for excessively broad purposes.⁷³ Supporters of the President's authority, however, claim that the Act does not limit the President to protecting artifacts only and that "other objects of historic or scientific interest" is broad language that grants the President substantial discretion for designation.⁷⁴

B. The O&C Act

In 1866, Congress began offering grants of federally owned land to assist with rail- and wagon-road construction.⁷⁵ The state of Oregon received a large grant and awarded the land to a private railroad company, the Oregon and California (O&C)⁷⁶ Railroad, calling upon the company to sell portions of the land to settlers in order to cover the costs of the railroad construction and assist in settling the West.⁷⁷ The railroad company, however, did not comply with the requirements imposed upon them and began selling the land to timber companies instead of settlers.⁷⁸ Such conduct led to years of litigation resulting in Congress passing the Chamberlain–Ferris Act, which vested ownership of the unsold O&C lands back to the federal government.⁷⁹ The original plan under the Chamberlain–Ferris Act was for the land and timber to be resold into private ownership so that the counties could recover the taxes the railroad

70. VINCENT, *supra* note 13, at 5.

71. Squillace, *supra* note 36, at 516.

72. VINCENT, *supra* note 13, at 6.

73. *Id.*

74. *Id.*

75. Alley Valkyrie, *Checkerboards, Clearcuts, and Controversies: The History and Legacy of the O&C Lands*, THE WILD HUNT: MODERN PAGAN NEWS & COMMENT. (Feb. 28, 2014), <http://wildhunt.org/2014/02/checkerboards-clearcuts-and-controversies-the-history-and-legacy-of-the-oc-lands.html> [<https://perma.cc/Y9XQ-BSSL>].

76. Although the abbreviation for Oregon and California varies across sources, this Comment will consistently use the abbreviation "O&C."

77. Scott & Brown, *supra* note 8, at 262.

78. *Id.* at 265.

79. *Id.* at 266.

company had avoided by failing to take title to the land.⁸⁰ Due to the rugged terrain, however, selling the land to settlers and developers was unsuccessful.⁸¹

In the 1920s and 1930s, conservation became popular within the DOI, the private forestry community, and the general American population.⁸² The Great Depression caused national sensitivity to the overproduction of natural resource based industries, and the Secretary of the Interior at the time hoped to transform the DOI into the Department of Conservation.⁸³ After the Chamberlain–Ferris Act of 1916 failed, a drastic change was necessary.⁸⁴

During the Great Depression, western Oregon's timber counties were experiencing significant financial strain; they lobbied Congress to provide them with a dependable source of revenue.⁸⁵ This activism resulted in the Oregon & California Lands Act of 1937.⁸⁶ The Act established 18 counties throughout western Oregon that were

classified as timberlands to be managed for permanent forest production, and the timber was to be sold, cut, and removed in conformity with the principle of sustained yield for the purpose of providing a permanent source of timber supply. The Act also provided for protecting watersheds, regulating stream flow, contributing to the economic stability of local communities and industries, and providing recreational facilities.⁸⁷

Currently, the O&C lands encompass more than 2.4 million acres of forest containing diverse plant and animal species, wild and scenic rivers, and wilderness.⁸⁸ The O&C lands are the only area where the Bureau of Land Management (BLM), rather than the Forest Service, oversees forest management.⁸⁹ Unlike all other counties in which the federal government oversees timber harvest, the welfare of local communities within the O&C lands is listed as one of the specific purposes for which the Oregon Department of Interior must provide.⁹⁰

80. Valkyrie, *supra* note 75.

81. *Id.*

82. Scott & Brown, *supra* note 8, at 268.

83. *Id.*

84. *See id.*

85. William G. Robbins, *Oregon and California Lands Act*, THE OREGON ENCYCLOPEDIA, https://oregonencyclopedia.org/articles/oregon_and_california_lands_act/#.WXdhSoTytaQ [<https://perma.cc/98VW-LFZX>] (last updated Apr. 16, 2019).

86. *Id.*

87. *O&C Lands*, U.S. DEP'T INTERIOR BUREAU LAND MGMT., <https://www.blm.gov/programs/natural-resources/forests-and-woodlands/oc-lands> [<https://perma.cc/2EAN-FQF3>].

88. *Id.*

89. Scott & Brown, *supra* note 8, at 260.

90. *Id.*

1. Political and Popular History

During the era of O&C rail construction, American attitudes about public lands and railroads shifted.⁹¹ The federal government planned for the new railroad to open up the American West and draw in settlers, which would stimulate trade and commerce.⁹² When the railroad company failed to comply with the requirements of the land grant that required it to sell the land to settlers, the government's initial plans failed.⁹³ Lines like the O&C held significant land grants, yet the railroads had deferred securing title to the lands until there was a market for the property.⁹⁴ By delaying title to the land, the railroad avoided paying taxes, which deprived the county in which the land was located.⁹⁵ Public interest in these affairs peaked in the 1890s with the emergence of the People's Party, which demanded federal ownership of all railroads and recovery of the land grants.⁹⁶

Additionally, Americans began understanding that the resources of the continent were not unlimited.⁹⁷ The public began expressing interest in public holdings of timber, minerals, water, and the general beauty of the land, and Oregon had gained a reputation for being one of the leaders in progressive reform that the public had expressly sought.⁹⁸ In 1937, when Congress was considering new legislation for the O&C lands, the O&C counties' concern was primarily financial.⁹⁹ Although the Chamberlain-Ferris Act had authorized timber sales, it did not help the financially struggling counties meet their school or port obligations.¹⁰⁰ The counties put pressure on Congress to take action because of their continuing tax crisis.¹⁰¹ Through their persistence, the O&C Act was passed and the revenue from the sale of timber enabled the BLM to build roads and bridges, reforest hillsides, work on fisheries and wildlife programs, and return over 1.4 billion dollars to the O&C counties.¹⁰²

91. STEPHEN DOW BECKHAM, U.S. DEP'T OF THE INTERIOR: BUREAU OF LAND MGMT., O&C SUSTAINED YIELD ACT: THE LAND, THE LAW, THE LEGACY: 1937-1987, at 10 (1987) [hereinafter LAND, LAW, LEGACY].

92. *Id.* at 6.

93. See Scott & Brown, *supra* note 8, at 265-66.

94. LAND, LAW, LEGACY, *supra* note 91, at 9.

95. See Joseph E. Taylor III et al., *Follow the Money: A Spatial History of In-Lieu Programs for Western Federal Lands: Oregon & California Railroad Land Grant Payments*, CESTA: THE SPATIAL HISTORY PROJECT, http://followthemoney.stanford.edu/pages/O_C.html [<https://perma.cc/2M4S-U2PL>].

96. LAND, LAW, LEGACY, *supra* note 91, at 10.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* at 11.

102. *Id.* at 14-15.

2. Legislative History

In 1937, Congress drafted House Bill 5858 to permit the federal government to retain the O&C lands and maintain them for conservation needs instead of selling the timber and disposing of the land, as was planned under the Chamberlain–Ferris Act.¹⁰³ During the congressional hearing for that bill, there was wide support within the DOI and the Department of Agriculture regarding the sustained-yield management scheme.¹⁰⁴ The timber industry was also in full support of sustained-yield management in hopes of avoiding “unproductive land and idle towns.”¹⁰⁵ The West Coast Lumbermen’s Association’s representative compared the situation to a trust, stating that “the federal government would act as a trustee to conserve the productivity so that the people of Oregon would live on the interest and keep the capital unimpaired.”¹⁰⁶

Sustained yield was also important due to its economic impact on Oregon communities.¹⁰⁷ The DOI believed that the House Bill would allow for a “timber culture” with mills that were “solid and permanent in character.”¹⁰⁸ Although the House of Representatives was aware that the timber sales from the O&C lands would not be profitable for the federal government, they explained that the forests were not revenue builders, but rather a natural resource to be held in perpetuity and protected for the timber needs of the United States.¹⁰⁹

Although stakeholders and legislators agreed on the concept of sustain yield, controversy persisted around the actual logging limits and requirements.¹¹⁰ The Association of O&C Counties (AOCC), in fear of uncertain revenue returns, offered amendments requiring the DOI to sell a minimum of 500 million board feet of timber annually.¹¹¹ To the AOCC’s relief, the offered language was accepted and the eighteen O&C counties were guaranteed a source of revenue.¹¹²

The bill that eventually passed the House and Senate was very similar to House Bill 5858;¹¹³ it was viewed as a solution to the lack of consideration given to preservation and local economies under the Chamberlain–Ferris Act.¹¹⁴ The Act provided for conservation and

103. Scott & Brown, *supra* note 8, at 269.

104. *Id.* at 270.

105. *Id.* at 271.

106. *Id.*

107. *Id.* at 272.

108. *Id.*

109. *Id.* at 273.

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.* at 274.

scientific management of the O&C lands.¹¹⁵ The land would be managed according to a sustained-yield basis to avoid depletion of the forest capital.¹¹⁶ It would “make for a more permanent type of community, contribute to the economic stability of local dependent industries, protect watersheds, and aid in regulating stream flow.”¹¹⁷ The lands are described as a “vast, self-sustaining timber reservoir for the future, an asset to the Nation and the State of Oregon alike, all of which is financed by the lands themselves.”¹¹⁸ The O&C Act permitted the division of O&C lands into “sustained-yield forest units” and stated that in subdividing the lands, the secretary must give “due consideration to established lumbering operations . . . when necessary to protect the economic stability of dependent communities.”¹¹⁹

Further, because Congress recognized that vesting the lands in the federal government deprived western Oregon of part of its economic foundation via taxes, the Act adopted House Bill 5858’s financial structure.¹²⁰ It provided that the revenue from timber and land sales would go to an Oregon and California land-grant fund in which fifty percent would be designated for the O&C counties; twenty-five percent would go toward the repayment of tax advances provided by the U.S. Treasury, made on behalf of the Oregon & California Railroad until the debt had been fulfilled, and then to the counties; and twenty-five percent was to be utilized for administrative purposes.¹²¹

3. Modern Treatment of the Act

A number of legislative issues surround current O&C management, including who should manage the lands, how the Northwest Forest Plan and various other federal environmental laws would apply, how to calculate and define sustained yield and allowable sale quality, and how to address county compensation.¹²²

115. *Id.* at 275.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.* at 276.

120. *Id.*

121. *Id.*

122. See generally CONG. RESEARCH SERV., R42951, THE OREGON AND CALIFORNIA RAILROAD LANDS (O&C LANDS): ISSUES FOR CONGRESS (2015), https://www.everycrsreport.com/files/20150114_R42951_d89c88b4c73cb3904da01fef162afc1a52e5421e.pdf [<https://perma.cc/B4XH-UBE4>] [hereinafter O&C CRS].

In August 2016, the BLM signed two Records of Decision adopting new Resource Management Plans (RMPs) for Western Oregon.¹²³ These Records of Decision illustrated the BLM's effort "to use new science, policies, and technology to protect natural resources and support local communities."¹²⁴ The plans provide guidance for the future management of 2.1 million acres of O&C lands; however, the RMPs fail to recognize that the O&C forests are required by the O&C Act to be managed under principles of sustained yield for the purpose of contributing to the economic stability of local communities.¹²⁵ Contrary to the requirements of the O&C Act, the plans prohibit sustained-yield management on approximately eighty percent of the BLM lands.¹²⁶ The BLM believes that in order to provide a sustained yield of timber, they must take care of other legal responsibilities such as the Endangered Species Act and the Clean Water Act.¹²⁷

II. WHY OPPONENTS TO THE EXPANSION OF THE CASCADE-SISKIYOU NATIONAL MONUMENT ARE CORRECT

History demonstrates that expanding the Cascade-Siskiyou National Monument into lands designated under the O&C Act would not only violate the power granted to Congress under the Constitution, but also undercut the intent of the O&C Act's drafters. The language of the Act is overwhelmingly clear, and to presume a presidential proclamation can override such language would offend the integrity of our three-branch system and lead to a future of uncertainty for subsequent administrations.

The O&C Act mandates that the O&C lands be managed primarily for commercial forestry use.¹²⁸ This designation of timber as a dominant use for the land is no different from legislation setting aside land for other specific purposes, such as wilderness, parks, scenic areas, or historic

123. *Resource Management Plans (RMPs) for Western Oregon*, U.S. DEP'T OF THE INTERIOR: BUREAU OF LAND MGMT., <https://www.blm.gov/programs/planning-and-nepa/near-you/oregon-washington/rmps-westernoregon> [<https://perma.cc/9YDT-QJ9C>].

124. *Id.*

125. *See id.*

126. *But see BLM Timber Management of the O&C Forest—Current Management*, ASS'N OF O&C CTYS., <http://www.oandc.org/current-management/> [<https://perma.cc/MF3U-S48E>].

127. Alex Paul, *O&C Counties to Challenge BLM Timber Harvest Levels*, CORVALLIS GAZETTE-TIMES (Apr. 13, 2016), http://www.gazettetimes.com/albany/news/o-c-counties-to-challenge-blm-timber-harvest-levels/article_90481544-8676-50bf-b6a3-c9c80564e9d7.html [<https://perma.cc/WL5N-WM5H>].

128. Memorandum from the Secretary of the U.S. Dep't of the Interior to the Solicitor of the Dep't of the Interior, 10 (Sep. 5, 1978), https://www.blm.gov/ca/pa/wilderness/wilderness_pdfs/wsa/Solicitor's_Opinion_.pdf [<https://perma.cc/4JMA-T9SM>] [hereinafter FLPMA 1979] (citing 43 U.S.C. § 1181a (1970)).

preservation.¹²⁹ Courts have consistently agreed on the dominant use of the O&C lands.¹³⁰ The O&C Act requires that the lands

[s]hall be managed . . . for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities.¹³¹

Since 1937, Congress has not amended, repealed, replaced, or modified the O&C Act. To the contrary, Congress confirmed its intent behind the Act by exempting O&C lands from the Federal Land Policy and Management Act in 1976¹³² and establishing the “No Net Loss” policy in 1998.¹³³

A number of cases demonstrate that the dominant purpose of the O&C lands is for timber production.¹³⁴ In *Weyerhaeuser Co.*, there was a dispute over access to timberlands due to intermingled ownership of private and public lands in a checkerboard pattern—a characteristic shared by the O&C lands.¹³⁵ When referring to the O&C lands, the Ninth Circuit stated,

In 1937, Congress declared that these lands were to be managed as part of a sustained yield timber program for the benefit of dependent communities. . . . In order to protect watersheds and maintain economic stability in the area, long-term federal timber yields were guaranteed by limiting the maximum harvest to the volume of new timber growth.¹³⁶

Additionally, in *Skoko*, decided in 1979, the Ninth Circuit resolved a dispute over the allocation of revenues under the O&C Act.¹³⁷ The court noted that “[i]n 1937 Congress passed the O&C Sustained Yield [Act]. . . ,

129. *History of the O&C Lands: 1937 to 1990*, ASS’N OF O&C CTYS., <http://www.oandc.org/o-c-lands/history-of-o-c-lands/history-of-the-oc-lands-1937-to-1990/> [<https://perma.cc/W26B-VZUC>].

130. *See, e.g.*, *Headwaters, Inc. v. BLM, Medford Dist.*, 914 F.2d 1174 (9th Cir. 1990); *O’Neal v. U.S.*, 814 F.2d 1285 (9th Cir. 1987); *Skoko v. Andrus*, 638 F.2d 1154 (9th Cir. 1979); *United States v. Weyerhaeuser Co.*, 538 F.2d 1363 (9th Cir. 1976).

131. 43 U.S.C. § 2601 (2012 & Supp. V).

132. *See* FLPMA 1979, *supra* note 127, at 9 (“To establish public land policy; to establish guidelines for its administration; to provide for the management, protection, development, and enhancement of the public lands; and for other purposes.”).

133. O&C CRS, *supra* note 121, at 5 (“The act requires BLM to ensure—on a 10-year basis—that the total acres of O&C . . . land available for timber harvest remain stable.”).

134. *See, e.g.*, *Headwaters*, 914 F.2d 1174; *O’Neal*, 814 F.2d 1285; *Skoko*, 638 F.2d 1154; *Weyerhaeuser Co.*, 538 F.2d 1363.

135. *Weyerhaeuser Co.*, 538 F.2d at 1364–66.

136. *Id.* at 1364 (internal quotation marks and citation omitted).

137. *Skoko*, 638 F.2d at 1156–57.

which provided that most of the O&C lands would henceforth be managed for sustained-yield timber production.¹³⁸

Again, in 1987, the Ninth Circuit Court of Appeals in *O'Neal* emphasized the dominance of timber production over secondary uses such as recreation.¹³⁹ The court held that “[t]he provisions of 43 U.S.C. § 1181 (a) make it clear that the primary use of the revested lands is for timber production to be managed in conformity with the provision of sustained yield, and the provision of recreational facilities as a secondary use.”¹⁴⁰

A few years later, in *Headwaters*, the Ninth Circuit made clear that Congress intended to achieve a sustained revenue stream to the O&C counties to support the local economies through timber production and harvest.¹⁴¹ In response to the plaintiff’s argument that the land should be managed in a way that protects the habitat of the spotted owl, the court stated that “[n]owhere does the legislative history suggest that wildlife habitat conservation or conservation of old growth forest is a goal on a par with timber production, or indeed that it is a goal of the O&C Act at all.”¹⁴²

In some cases, courts have held that the Antiquities Act is not limited by other statutes, but the other statutes that were the subject of those cases are distinguishable from the O&C Act.¹⁴³ In 2001, the court in *Tulare County* found that the National Forest Management Act (NFMA),¹⁴⁴ enacted seventy years after the Antiquities Act, did not limit the President in his ability to create national monuments within national forests.¹⁴⁵ The court emphasized that if Congress had intended to limit the President’s use of the Antiquities Act, it could have done so as it did in the Weeks Act.¹⁴⁶ The Weeks Act allowed the use of federal funding to purchase forest land for conservation, and the language of the Act required that certain lands be “permanently reserved, and administered as national forest lands.”¹⁴⁷ The court found that because this type of explicit language was absent from the NFMA, it did not demonstrate Congress’s intent to limit the Antiquities Act as it applied to national forest lands.¹⁴⁸ The O&C Act,

138. *Id.* at 1156.

139. *O'Neal*, 814 F.2d at 1287.

140. *Id.*

141. *Headwaters, Inc. v. BLM, Medford Dist.*, 914 F.2d 1174, 1183–84 (9th Cir. 1990).

142. *Id.* at 1184.

143. *See generally* *Tulare Cty. v. Bush*, 185 F. Supp. 2d 18 (D.D.C. 2001).

144. *National Forest Management Act of 1976*, CTR. FOR REG. EFFECTIVENESS, <http://www.thecre.com/fedlaw/legal14/nfma.htm> [https://perma.cc/YMZ8-A5UY] (“The National Forest Management Act requires the Secretary of Agriculture to assess forest lands, develop a management program based on multiple-use, sustained-yield principles, and implement a resource management plan for each unit of the National Forest System.”).

145. *Tulare Cty.*, 185 F. Supp. 2d at 27 n.2.

146. *Id.*

147. *Id.* (citing 16 U.S.C. § 521 (2019)).

148. *Id.* at 27 n.2.

however, like the Weeks Act, includes explicit language requiring the land be used for “permanent forest production,”¹⁴⁹ demonstrating Congress’s intent to limit the Antiquities Act as it applies to the O&C Act.¹⁵⁰

The O&C lands have been designated by Congress and routinely recognized by the courts as land to be used for permanent forest production. Proclamation 9564 attempts to unlawfully repurpose forty thousand acres of O&C land expressly reserved by Congress for commercial harvest and timber.¹⁵¹

In 1941, the Solicitor for the DOI made clear that the President lacks authority under the Antiquities Act to include O&C lands within a national monument.¹⁵² In the opinion, the Solicitor responded to a question from the Secretary of the Interior regarding a proposal to include O&C lands in an expansion of the Oregon Caves National Monument.¹⁵³ The Solicitor advised that the President had no such authority:

My dear Mr. Secretary: My opinion has been requested as to whether the President is authorized to set apart certain lands as an addition to the Oregon Caves National Monument. It is my opinion that the President does not have such authority.

. . . .

By the act of August 28, 1937 (50 Stat. 874), Congress directed that certain of the lands . . . be managed “for permanent forest production and the timber thereon shall be sold, cut, and removed in conformity with the principle of sustained yield.”

. . . .

It is clear from the foregoing that Congress has specifically provided a plan of utilization of the Oregon and California Railroad Company revested lands. . . . It must be concluded that Congress has set aside the lands for the specified purposes.

. . . .

There can be no doubt that the administration of the lands for national monument purposes would be inconsistent with the utilization of the O&C lands as directed by Congress. It is well settled that where Congress has set aside lands for a specific purpose the

149. 43 U.S.C. § 2601 (2019) (transferred from 43 U.S.C. § 1181(f) (1957)).

150. *See Tulare Cty.*, 185 F. Supp. 2d at 27 n.2.

151. *See* Proclamation No. 9564, 82 Fed. Reg. at 6145.

152. Letter from Solicitor Nathan R. Margold, U.S. Dep’t of the Interior, to Sec’y of the Interior, (Mar. 9, 1940), <http://www.oandc.org/wp-content/uploads/Solicitors-Opinion-OC-and-Oregon-Caves-1940.pdf> [<https://perma.cc/39WP-G2PX>].

153. *Id.*

President is without authority to reserve the lands for another purpose inconsistent with that specified by Congress.¹⁵⁴

Pursuant to 43 U.S.C § 1181(f), the O&C counties share fifty percent of the total revenues generated from timber harvests on O&C lands.¹⁵⁵ Counties depend on this revenue to pay for essential public services such as public safety, jails, and libraries.¹⁵⁶ If the lands are withdrawn from sustained yield management, there will be a significant financial loss to the county governments and a loss of services to the citizens of the eighteen O&C counties.¹⁵⁷ The President of the Association of O&C Counties, Commissioner Tim Freeman, stated:

The O&C Counties are already reeling from two decades of federal mismanagement of the O&C lands and a reduction of almost 90 percent in revenues from shared timber harvest receipts. Counties struggle to provide even minimally acceptable levels of public services. It can only be described as indifference or even arrogance to add to these woes by Presidential actions taken under the Antiquities Act.¹⁵⁸

It is abundantly clear that the expanded monument will take a toll upon the eighteen O&C counties. The counties depend on the revenue from this land to operate fully functioning communities.¹⁵⁹

III. WHY PROPONENTS OF EXPANSION ARE MISSING THE BIG PICTURE

Proponents for the expansion of the Cascade–Siskiyou National Monument ignore much of the underlying issue. The O&C Act is current law: it has never been repealed, replaced, or amended. The Obama Administration circumvented this law when it re-designated the land's current purpose for a contrary purpose. Proponents also set aside the detrimental effects the expansion would have on those living in the eighteen counties that receive revenue from the lands designated under the O&C Act. These effects are the very reason the Act was put in place to begin with.

Proponents for expansion assert that the President does not have the authority to abolish or reduce the size of a national monument designated

154. *Id.* (citing 43 U.S.C. § 2601 (2019)).

155. LAND, LAW, LEGACY, *supra* note 91, at 14.

156. Letter from Commissioner Tim Freeman, President, Association of O&C Counties, to House Committee on Natural Resources Subcommittee on Federal Lands, Testimony for The House Committee on Natural Resources Subcommittee on Federal Lands Regarding The Antiquities Act, at 3 (May 2, 2017), http://www.oandc.org/wp-content/uploads/Monument_Testimony.pdf [https://perma.cc/LB6Y-7NAJ].

157. *Id.*

158. *Id.*

159. *See id.*

by a former president.¹⁶⁰ This argument, however, does not address whether President Obama's expansion of this particular monument violated the O&C Act by requiring that the lands be managed as a national monument without commercial timber production. The U.S. Constitution gives Congress the power to decide what happens on territory or other property belonging to the United States.¹⁶¹ If Congress sets aside land for a particular purpose, the President does not have the power to override Congress's judgement by issuing a presidential proclamation that repurposes that land for a contrary purpose; hence, the monument is void from its inception.¹⁶²

Further, proponents of the national monument claim the expansion was justified because "[t]he monument is home to a spectacular variety of rare and beautiful species of plants and animals, whose survival depends upon its continued ecological integrity."¹⁶³ Although the Antiquities Act provides for an expedited method to protect these species, the O&C Act accounts for these protections through the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA), two Acts that the BLM is required to abide by in its management of O&C lands.¹⁶⁴ To protect these species on O&C lands, however, the steps associated with NEPA and the ESA must be properly followed to ensure that if the lands are to be prohibited from timber production within specific regions, there is a well-researched and legitimate reason for such prohibition.¹⁶⁵ Additionally, courts have made clear that the O&C Act does not suggest that the goal of wildlife habitat conservation is equal to the goal of timber production.¹⁶⁶

Advocates for the expansion of the Cascade–Siskiyou National Monument have consistently asserted that the O&C Act is not a single-use

160. See 54 U.S.C. § 320301(a), (b) (2019).

161. See U.S. CONST. art. IV, § 3, cl. 2.

162. See *id.*

163. Michael C. Blumm et al., *Blumm comments to Zinke regarding Cascade–Siskiyou Monument*, LEWIS & CLARK L. SCH.: ENVTL, NAT. RESOURCES, & ENERGY L. (June 13, 2017), <https://law.lclark.edu/live/news/36462-blumm-comments-to-zinke-regarding-Cascade-Siskiyou> [<https://perma.cc/755U-VXGX>].

164. *Portland Audubon Soc'y v. Lujan*, 795 F. Supp. 1489, 1506 (D. Or. 1992), *aff'd sub nom. See also Portland Audubon Soc'y v. Babbitt*, 998 F.2d 705 (9th Cir. 1993); *Seattle Audubon Soc'y v. Lyons*, 871 F. Supp. 1291, 1314 (W.D. Wash. 1994).

165. See *Endangered Species*, NAT'L WILDLIFE FED'N, <https://www.nwf.org/Educational-Resources/Wildlife-Guide/Understanding-Conservation/Endangered-Species> [<https://perma.cc/AZ93-N72C>] (discussing why and how animals receive protection under the Endangered Species Act); see also *Federal Public Land—National Forests and BLM*, CLEARCUT OR., <http://www.clearcutoregon.com/federal-public-land.html> [<https://perma.cc/288T-TJ82>] (discussing that NEPA requires analysis of environmental impacts, alternatives to a proposed action, and public input).

166. *Headwaters, Inc. v. BLM, Medford Dist.*, 914 F.2d 1174, 1184 (9th Cir. 1990).

statute. This assertion, however, ignores the legislative history, the language of the FLPMA, the No Net Loss policy, and the DOI's Solicitor Opinion of 1940, as previously discussed. The very purpose of the O&C Act was to ensure consistent revenue was provided to the eighteen O&C counties that were deprived of the land tax owed when the federal government took ownership of the lands in 1916.¹⁶⁷ Although the Act accounts for "protecting watersheds" and "regulating stream flow," the history of the O&C Act evidences Congress's intent to utilize the lands for permanent forest production to provide a permanent source of revenue for the O&C counties first and foremost.¹⁶⁸ The acts leading up to the passing of the O&C Act make this even clearer.

The 1916 Chamberlain–Ferris Act was passed and required the DOI to sell the timber of the O&C lands "as rapidly as reasonable prices [could] be secured" through a public bidding process.¹⁶⁹ Due to the lack of resources of the General Land Office and the limited accessibility of the timber, few sales occurred and most O&C counties received no payments in lieu of taxes between 1916 and 1926.¹⁷⁰ As a result, Congress stepped in again and enacted the Stanfield Act, which required the DOI pay the eighteen O&C counties approximately \$7 million from future timber sales, an amount equal to what they would have earned from railroad taxes between 1916 and 1926 had the O&C lands not reverted in the government.¹⁷¹ This solution was not acceptable to the O&C counties, however, because the Act did not mandate enough cutting and the counties were not receiving enough revenue.¹⁷²

In an effort to provide a *permanent* solution to the lingering issues of prior Acts, Congress passed the O&C Act.¹⁷³ In implementing the O&C Act, the goal was to resolve the issues that were previously encountered through the Chamberlain–Ferris and Stanfield Acts—not producing enough timber to financially support the O&C counties. The language of the Act itself calls for "permanent forest production"¹⁷⁴ to ensure the O&C counties the stable source of income Congress had been working to achieve since it took ownership of the land in 1916.

167. See Scott & Brown, *supra* note 8, at 276.

168. Oregon and California Lands Act of 1937, H.R. 7618, 75th Cong. ch. 876 (1st Sess. 1937).

169. Chamberlain–Ferris Revestment Act of 1916, 64th Cong. ch. 137, § 4 (1916).

170. David Maldwyn Ellis, *The Oregon and California Railroad Land Grant, 1866–1945*, 39 PAC. NW. Q. 253, 275 (1948).

171. Stanfield Act of 1926, ch. 897, §§ 1, 4, 44 Stat. 915 (1926); see Ellis, *supra* note 170, at 275.

172. *History of the O&C Lands: 1866 to 1937*, ASS'N OF O&C CTYS, <http://www.oandc.org/o-c-lands/history-of-o-c-lands/history-of-the-oc-lands-1866-to-1937/> [<https://perma.cc/SDM6-26LX>].

173. See Scott & Brown, *supra* note 8, at 274.

174. Oregon and California Lands Act of 1937, H.R. 7618, 75th Cong. ch. 876 (1st Sess. 1937).

Supporters of the expansion further argue that the expansion of the monument is consistent with the language of the O&C Act because the Act does not set minimum timber harvest levels. Again, this claim ignores the Act's history. The AOCC offered amendments during the bill's proposal, which were accepted specifically to ensure that the eighteen counties were guaranteed a source of revenue by requiring the DOI sell at least 500 million board feet per year, or not less than the maximum annual sustained yield capacity.¹⁷⁵ The AOCC feared that "[w]ithout the amendment it might be conceivable that the timber would be wholly or substantially withdrawn from sale and the proceeds . . . thereby greatly restricted or completely cut off."¹⁷⁶

Although the Ninth Circuit in *Babbitt* held that the O&C Act "has not deprived the BLM of all discretion with regard to either the volume requirements of the Act or the management of the lands entrusted to its care," the court failed to make clear how much discretion the BLM has.¹⁷⁷ Further, the statement in *Babbitt* is solely related to the O&C Act's compliance with NEPA.¹⁷⁸ The O&C Act does limit the BLM's discretion to lower annual harvests in order to achieve the secondary uses listed in the O&C Act. Even if the BLM is required to achieve competing goals, the harvest levels are not to fall below 500 million board feet per year.

Advocates for the expansion also claim that the O&C counties are not the sole beneficiaries of the O&C Act. This belief is inconsistent with the legislative history of the Act and fails to recognize that the sole purpose of the Act was to provide the eighteen O&C counties with a consistent stream of revenue to make up for the land taxes they are being deprived of due to the federal government taking ownership of the lands.¹⁷⁹ The Act is specific to these counties because they are the counties directly affected by the Federal Government's decision not to sell the land into private ownership. Further, the Act adopted House Bill 5858's financial structure requiring fifty percent of timber and land sales from the O&C counties be designated for the eighteen counties to achieve this very goal.¹⁸⁰

CONCLUSION

The legal challenges set forth regarding the expansion of the Cascade-Siskiyou National Monument are not just about the O&C Act or the monument itself, they are about whether a president has the authority

175. Scott & Brown, *supra* note 8, at 273–74 (citing to *Hearings on H.R. 5858*).

176. *Id.* at 274.

177. *Portland Audubon Soc'y v. Babbitt*, 998 F.2d 705, 709 (9th Cir. 1993).

178. *Id.*

179. Scott & Brown, *supra* note 8, at 276.

180. *Id.*

to disregard the plain language of federal law without congressional authorization or judicial review. “When the president fails to execute a law as written, he not only erodes the separation of powers, he breeds disrespect for the rule of law and increases political polarization.”¹⁸¹

The language and intent behind the Oregon and California Lands Act is clear; the goal is to ensure that the eighteen O&C counties are provided with sustainable revenue through permanent forest production to make up for the land tax of which they are deprived.¹⁸² To remove forty thousand acres of land under the Antiquities Act, which have already been designated for a specific purpose under the O&C Act, would not only conflict with the language and intent of Congress, but also be detrimental to the economy of the O&C counties—the very issue the O&C Act was put in place to resolve. The legislative history and the plain language of the Act make it evident that the O&C lands were designated for permanent timber production to provide revenue to the O&C counties. Allowing the President to ignore the explicit language Congress has laid out in the O&C Act of 1937 will certainly have legal implications on our future administrations, the most significant being the uncertainty this kind of unilateral decision brings to the integrity of our three branches of government.

181. Elizabeth Price Foley, *Presidents Cannot Ignore Laws as Written*, N.Y. TIMES, Jan. 29, 2014, <https://www.nytimes.com/roomfordebate/2014/01/29/presidential-power-vs-congressional-inertia/presidents-cannot-ignore-laws-as-written/> [<https://perma.cc/U7BK-3ZDF>].

182. *See supra* Part II.