BATTERTON V. DUTRA GROUP AND THE LATEST CIRCUIT SPLIT ON ADMIRALTY PUNITIVE DAMAGES

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The year was 2009. Meryl Streep received a nomination for Best Actress at the Academy Awards. Jay-Z received multiple Grammy nominations. And the NFC champion was a major underdog to the AFC champion in the Super Bowl.[1]

That year, in *Atlantic Sounding v. Townsend*,[2] the Supreme Court of the United States (SCOTUS) resolved a long-simmering admiralty law dispute among the circuit courts: are punitive damages available to a Jones Act seaman under general maritime law for a willful and wanton denial of maintenance and cure benefits? The majority opinion authored by Justice Clarence Thomas (writing for himself and Justices Stephen Breyer, David Souter, John Paul Stevens, and Ruth Bader Ginsburg) held such damages were available (under certain circumstances) resolving a circuit split between the Eleventh Circuit on one side and the Fifth Circuit on the other.[3]

Now, in 2018, Meryl Streep again received a nomination for Best Actress at the Academy Awards. Jay-Z again received multiple Grammy nominations. And the NFC champion was again a major underdog to the AFC champion in the Super Bowl.[4]

This year, a fresh circuit split exists, this time between the Fifth and Ninth Circuits, on the issue of whether punitive damages are available to a Jones Act seaman under general maritime law, this time for an unseaworthiness claim. The differences between the circuits are found in two decisions: the 2018 decision of a panel of the Ninth Circuit in *Batterton v. Dutra Group*[5] and the 2014 *en banc* Fifth Circuit decision in *McBride v. Estis Well Services LLC*.[6]

As Yogi Berra would say: "It's déjà vu all over again."

The purpose of this article is not to argue that *Batterton* (or *McBride*) were rightly or wrongly decided. Instead, the purpose is to show that there may be key differences between the *Townsend* analysis and the potential analytical showdown between the *Batterton* and *McBride* decisions, particularly with respect to the scope of an unseaworthiness claim today, as opposed to the nature of such a claim prior to the passage of the Jones Act in 1920.

However, to best understand the nuanced arguments available to the brave admiralty proctors who may venture into the deep and request SCOTUS review of *Batterton*, we must journey down a familiar channel: a brief history of the remedies of a seaman.

A Seaman's Claims

A Jones Act seaman, as that term is understood in admiralty law, is a maritime worker who satisfies the two-part test from *Chandris Inc. v. Latsis*: (1) did the worker's duties at the time of the incident contribute to the function of a vessel or accomplishment of its mission; and (2) was the worker's connection, if any, to a vessel (or an identifiable fleet of vessels) substantial in terms of both duration and nature?[7]

If the answer to both of these questions is affirmative, the worker is a seaman and has the ability to bring three different claims should the worker choose to file suit related to personal injuries sustained in the service of a vessel. Two of these claims exist under general maritime law: a maintenance and cure claim as well as an unseaworthiness action. The last is a negligence claim based upon the Jones

Act, which only came into existence in 1920 and is based on the rights and remedies afforded to railroad workers under the Federal Employers Liability Act (FELA).[8]

Historical Background on Unseaworthiness

In 1960, Justice Potter Stewart provided a historical analysis of the origins of the remedy of unseaworthiness in his majority opinion in *Mitchell v. Trawler Racer Inc.*[9] Unlike maintenance and cure, an unseaworthiness claim cannot trace its origins to the laws of Oleron or Wisby.[10] Rather, Justice Stewart found such a claim arose in the late 19th century:

> During that period it became generally accepted that a shipowner was liable to a mariner injured in the service of a ship as a consequence of the owner's failure to exercise due diligence.[11]

Today, a seaworthy vessel, under the law, is a vessel reasonably fit for its intended use.[12] In order to prove a claim for unseaworthiness, a seaman must demonstrate (1) an injury caused by a defective condition of the ship, its equipment, appurtenances, and/or crew[13] and (2) that said defect proximately caused the alleged injuries.[14]

Fifty-seven years prior to the *Trawler Racer* decision, SCOTUS denied a seaman a cause of action for negligence against his employer in *The Osceola*.[15] At the same time, Justice Henry Brown confirmed that a seaman did have a cause of action for "indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship" under general maritime law.[16]

Congress Intervenes With the Jones Act

The Jones Act[17] provides a seaman with the ability, much like a railroad worker under FELA, to sue his employer directly for personal injuries resulting from the employer's negligence.[18] Proof of negligence under the Jones Act requires the plaintiff to establish (1) he was a seaman, (2) a duty existed to him from the employer, (3) the duty was breached by the employer, and (4) said breach was a contributing cause of injuries to the seaman.[19]

Numerous admiralty commentators note that Congress passed the Jones Act to overrule *The Osceola*.[20] Perhaps the most venerated of those great legal minds, Grant Gilmore and Charles Black, wrote in 1975 that the Jones Act "was abominably drafted and the case law construing it soon became a trackless maze, bristling with danger points and honeycombed with pitfalls."[21]

1920 to 1990: The Status of Punitive Damages for Unseaworthiness

Interestingly, there was not a divergence between the Fifth and Ninth Circuits prior to 1990 on the issue of whether a seaman could recover punitive damages on an unseaworthiness claim: both circuits believed punitive damages were available, under certain conditions, as part of an unseaworthiness claim.

The Fifth Circuit so held in a 1982 panel decision, *In re Merry Shipping*,[22] determining that punitive damages were available in an unseaworthiness claim. Six years later, the Ninth Circuit issued an opinion in *Evich v. Morris*[23] where the court directly cited to *In re Merry Shipping* to support the proposition that punitive damages were available in an unseaworthiness claim.

Notably, neither of these opinions provides a deep historical analysis of whether punitive damages were ever recovered for unseaworthiness claims. Likewise, there was little analysis of the impact of the Jones Act/FELA exclusion of pecuniary loss on the damages available in an unseaworthiness action.

1990: Miles v. Apex Marine—The Confusion Begins

In 1990, SCOTUS held in *Miles v. Apex Marine Corp.* that families of deceased seamen cannot recover loss of society damages in a wrongful death action based on either unseaworthiness or Jones Act negligence.[24] The *Miles* decision mentions nothing about punitive damages.[25] The key component of *Miles'* analysis was reliance upon a SCOTUS decision from 1913, *Michigan Central Railroad Co. v. Vreeland*,[26] interpreting FELA to exclude nonpecuniary losses (such as loss of society) from wrongful death recovery.[27] Reasoning that the Jones Act of 1920 incorporated not only the statutory provisions of FELA, but also the "*Vreeland* gloss on FELA, and the hoary tradition behind it," SCOTUS held that Congress "must have intended to incorporate the pecuniary limitation on damages as well," since SCOTUS "assume[s] that Congress is aware of existing law when it passes legislation."[28] Making this assumption, SCOTUS held that since nonpecuniary losses were not available under a Jones Act wrongful death action, they likewise could not be available for an unseaworthiness wrongful death claim.[29]

Points Upon Which All Should Agree

Before contrasting *McBride* and *Batterton*, it is important to note several statements of law to which both courts would agree:

1. Unseaworthiness and maintenance and cure pre-date the passage of the Jones Act.
2. Unseaworthiness is widely described as a "Siamese twin" to a Jones Act negligence claim.[30] In other words, an unseaworthiness claim is extremely similar to a Jones Act claim, to the point where a seaman who prevails on both must elect between the damages awarded so as to prevent a double recovery.
3. Congress' decision to incorporate FELA into the Jones Act also incorporated FELA jurisprudence prior to 1920 into the Jones Act.
4. Plaintiffs in FELA actions are wholly precluded from recovery of punitive damages, as FELA only allows for recovery of pecuniary loss.
5. The *Miles* decision does not mention punitive damages at all.

As the reader will see, these five agreed-upon points still result in drastically different results, even with similar fact patterns. As one commentator noted, several courts of appeals took *Miles* and expanded the rationale to preclude punitive damages for any cause of action available to a seaman, including punitive damages for maintenance and cure.[31]

SCOTUS Overrules Miles in Atlantic Sounding Co. v. Townsend … or Does It?

Nineteen years after *Miles*, SCOTUS evaluated the availability of punitive damages for a seaman's claim, this time for a willful and wanton wrongful denial of maintenance and cure. As noted above, Justice Thomas' 5-4 majority opinion held that such damages were available, but only after performing a historical analysis of (1) the availability of punitive damages prior to 1920 (a) generally, (b) in U.S. jurisprudence, (c) in U.S. maritime jurisprudence, and (d) in maintenance and cure actions; and (2) whether the Jones Act altered the maintenance and cure claim, or the remedy available to seamen. Finding that no

such alteration occurred, Justice Thomas wrote the Jones Act "did not eliminate pre-existing remedies available to seamen" under maintenance and cure jurisprudence[32] and "the Jones Act does not address maintenance and cure or its remedy."[33]

The Fifth Circuit Turns to Starboard in McBride v. Estis Well

As a slightly aged decision, numerous admiralty commentators have posited their thoughts on the veracity of the majority, concurring, and dissenting opinions issued by the *en banc* Fifth Circuit in *McBride.* For example, David W. Robertson and Michael F. Sturley provide an excellent and in-depth review of the *McBride* decision in their 2015 "Recent Developments" paper.[34] However, a short review of the case is important to identify the areas where *Batterton* differs and is similar to *McBride.*

The appeal in *McBride* involved both wrongful death claims as well as injured (but surviving) seamen, both making claims for punitive damages for the alleged unseaworthiness of Estis Rig 23, which fell over in a Louisiana waterway, killing one man and injuring three others.[35] The trial court granted a Rule 12(c) motion and dismissed the portions of the plaintiffs' claims as to punitive damages for unseaworthiness.[36] A panel of the Fifth Circuit reversed the trial court, holding that the rationale of *Townsend* was broad enough to extend from the maintenance and cure sphere to the realm of unseaworthiness.[37]

An *en banc* Fifth Circuit overruled the panel decision, essentially holding that (1) *Townsend* did not abrogate *Miles,* (2) *Miles* precludes recovery of nonpecuniary losses under both the Jones Act and unseaworthiness claims, and (3) punitive damages are nonpecuniary losses.[38] With respect to the second point, Judge W. Eugene Davis noted the SCOTUS admonishment in *Miles* that courts could not sanction a more expansive common law remedy "in which liability is without fault than Congress has allowed in cases of death resulting from negligence."[39] The Fifth Circuit made the second point by quoting Justice Thomas' opinion in *Townsend* that the "reasoning of *Miles* remains sound." As to the final issue, the Fifth Circuit heavily relied upon the *Vreeland* decision (pre-dating the Jones Act) wherein SCOTUS held that a FELA plaintiff could not recover nonpecuniary losses (the basis for *Miles*) and stated that every "circuit court case on the subject holds that punitive damages are not recoverable under FELA because those losses are nonpecuniary."[40]

Judge Edith Brown Clement, joined by Judges E. Grady Jolly, Edith H. Jones, Jerry E. Smith, and Priscilla R. Owen, filed a concurrence stressing the historical differences between unseaworthiness and maintenance and cure, most likely in an attempt to further justify the non-application of Justice Thomas' analysis in *Townsend* to unseaworthiness. In particular, Judge Clement focused on the case of *Pacific Steamship Co. v. Peterson*,[41] wherein SCOTUS held that unseaworthiness gave rise to a claim only for an "indemnity by way of compensatory damages."[42] Judge Catharina Haynes further concurred (joined by Judge Jennifer Walker Elrod), agreeing on the wrongful death claims but disagreeing as to the surviving seamen. However, Judges Haynes and Elrod felt that expansion of the remedy for unseaworthiness was best left to Congress.[43]

Judge Stephen Higginson dissented, joined by Chief Judge Carl E. Stewart and Judges Rhesa H. Barksdale, James L. Dennis, Edward C. Prado, and James E. Graves Jr.[44] Notably, Judge Higginson authored the panel opinion in *McBride* allowing for punitive damages for unseaworthiness, and Judges Stewart and Barksdale were also panel members.[45] Both the panel opinion and the dissent read *Townsend* broadly, arguing that punitive damages were available for unseaworthiness before the passage of the Jones Act and, thus, survived the Jones Act prohibition on such damages.[46] Judge Graves, joined by Judge Dennis, dissented further, providing analysis of how Judge Davis' majority opinion expanded *Miles* too far as to the claims of the surviving seamen.[47]

The Ninth Circuit Turns to Port in Batterton v. Dutra Group

Batterton is not a wrongful death case. Instead, it came to the Ninth Circuit on a trial court's denial of a motion to strike a punitive damages claim from the plaintiff's pleadings.[48] Judge Andrew J. Kleinfeld, writing the majority opinion joined by Chief Judge Sidney R. Thomas and Judge Jacqueline H. Nguyen, stated the Ninth Circuit answered the question of availability of punitive damages for unseaworthiness 21 years prior in *Evich v. Morris*,[49] and the answer is that such damages are available.

The opinion not only relies on prior Ninth Circuit precedent, but also draws a sharp distinction with the third aspect of Judge Davis' majority opinion in *McBride*: whether punitive damages are nonpecuniary in nature. Judge Kleinfeld stated that a widow's inability to "recover damages for loss of the companionship and society of her husband has nothing to do with whether a ship or its owners and operators deserve punishment for callously disregarding the safety of seamen."[50]

Batterton views *Townsend* as a broad framework applicable to any cause of action in maritime law that pre-dates the Jones Act.

One of These Things is More Like the Other

I respectfully suggest analysis of whether *McBride* or *Batterton* contain the correct position on punitive damages for unseaworthiness ultimately turns to this question: Is unseaworthiness more akin to maintenance and cure or to Jones Act negligence?

Judge Clement, in her *McBride* concurrence, makes a three-pronged argument as to why unseaworthiness is not the same type of cause of action as maintenance and cure. First, she noted the historical differences between maintenance and cure (an ancient remedy documented in legal codes and decisions for centuries before the founding of the United States) with that of unseaworthiness, which "did not crystallize until the mid-20th century" in the United States.[51] Judge Clement also touched on the original nature of unseaworthiness being grounds to excuse a seaman from his duties aboard a ship without penalty, as opposed to containing a financial remedy like maintenance and cure.[52] Finally, Judge Clement noted on two occasions in her concurrence that the pre-Jones Act version of unseaworthiness, according to SCOTUS, was an indemnity for compensatory damages.[53] If strictly read, that limitation could preclude anything in the way of punitive damages, which are, as such, not inherently compensatory in nature.

On the other hand, the *Trawler Racer* decision, handed down 40 years after the passage of the Jones Act, documented the expansion of unseaworthiness from a lack of due diligence at the start of the voyage to include failure of due diligence during the voyage, giving rise to claims of transitory unseaworthiness.[54] Therein, SCOTUS analyzed whether a jury instruction on a transitory unseaworthiness condition giving rise to a seaman's injury should be limited by "concepts of common-law negligence."[55] Justice Stewart, writing for the majority, analyzed several prior SCOTUS decisions[56] to conclude that unseaworthiness, over time, was divorced from negligence principles so that a vessel owner's duty was "absolute and completely indepen-

dent of his duty under the Jones Act to exercise reasonable care."[57] Thus, a jury instruction on unseaworthiness that incorporated the concepts of negligence was inappropriate, and to allow such "would be to erase more than just a page of history."[58] Viewing unseaworthiness through this lens makes the cause of action seem more like maintenance and cure, which is a non-delegable duty that awards a remedy to a seaman, only evaluating the conduct of a seaman in limited circumstances.

Why We Should Hope for SCOTUS Resolution

Is a SCOTUS appeal forthcoming? If so, will SCOTUS grant a writ of certiorari and decide this issue on the merits? This author is hopeful the answer to both of these questions is yes. However, it is important to recall that SCOTUS declined to review both *McBride*[59] and *Tabingo v. American Triumph LLC,*[60] a 2017 Supreme Court of Washington opinion that held that punitive damages were available for unseaworthiness.[61]

Whatever the outcome of the case, an emphasis on uniformity is the hallmark of admiralty law in the United States.[62] Currently, different remedies are available for the same cause of action in two of the largest and most active admiralty circuits in the United States. This is problematic not only to the overall operation of the law, but also to the operation of maritime businesses. If a shipping company does business on the Gulf and Pacific Coasts, multiple insurance packages may be necessary. Indemnity agreements will vary from jurisdiction to jurisdiction. The list goes on and on. This is an important issue in the only remaining area of federal common law.

The author respectfully suggests that if a petition for certiorari is filed in *Batterton*, SCOTUS should treat it as Yogi Berra would a fork in the road: Take it. ⊙

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Endnotes

[1]David Purdum, *Eagles Open as Biggest Super Bowl Underdogs Since 2009*, ABC News (Jan. 29, 2018, 7:45 PM), http://abcnews.go.com/Sports/eagles-open-biggest-super-bowl-underdogs-2009/story?id=52693871.
[2]*Atlantic Sounding v. Townsend*, 557 U.S. 404 (2009).
[3]*Id.* at 408.
[4] Purdum, *supra* note 1.
[5]*Batterton v. Dutra Grp.*, ____ F.3d ____, 2018 U.S. App. LEXIS 1627, No. 15-56775 (9th Cir. 2018).
[6]*McBride v. Estis Well Servs. LLC*, 768 F.3d 382 (5th Cir. 2014), *cert. denied* 135 S. Ct. 2310 (2015).
[7]*Chandris Inc. v. Latsis*, 515 U.S. 347, 368 (1995).
[8]*See* Merchant Marine Act of 1920 (Jones Act), 46 U.S.C. § 688 (1920) (codified at 46 U.S.C. § 30104 (2006)) *and* Federal Employers Liability Act (FELA), 45 U.S.C. §§ 51-60 (1908).
[9]*Mitchell v. Trawler Racer Inc.*, 362 U.S. 539, 543-46 (1960).
[10]*Id.* at 543-544; *see also Harden v. Gordon*, 11 F. Cas. 480, 482-83 (D. Maine 1823) (tracing the history of maintenance and cure in international maritime laws/codes).
[11]*Mitchell,* 362 U.S. at 544; *see also The City of Alexandria*, 17 F. 390 (S.D. N.Y. 1883) (holding the only way a vessel owner could be liable for negligence was through negligence that rendered the vessel unseaworthy).
[12]*Mitchell*, 362 U.S. at 550.
[13]*The Osceola*, 189 U.S. 158, 175 (1903); *Martinez v. Sea Land Servs. Inc.*, 763 F.2d 26, 27 (1st Cir. 1985) (the hull of the ship); *Mahnich v. Southern S.S. Co.*, 321 U.S. 96 (1944) (ship's cargo handling machinery covered); *Gosnell v. Sea-Land Serv. Inc.*, 782 F.2d 464 (4th Cir. 1986) (hand tools aboard the ship).
[14]*Alvarez v. J. Ray McDermott & Co. Inc.*, 674 F.2d 1037, 1042-43 (5th Cir. 1982).
[15]*The Osceola*, 189 U.S. 158.
[16]*Id.* at 175.
[17]Jones Act, *supra* note 8.
[18]*Id.*; FELA, *supra* note 8, at 51; *Jacob v. New York*, 315 U.S. 752 (1942).
[19]*Vickers v. Tumey*, 290 F.2d 426, 432 fn.3 (5th Cir. 1961).
[20]See Grant Gilmore & Charles Black, The Law of Admiralty, § 6-3, 477 (2d ed., 1975) (hereinafter Gilmore & Black).
[21]*Id.*
[22]*In re Merry Shipping*, 650 F.2d 622 (5th Cir. 1981).
[23]*Evich v. Morris*, 819 F.2d 256 (9th Cir. 1987).
[24]*Miles v. Apex Marine Corp.*, 498 U.S. 19, 32-33 (1990).
[25]David W. Robertson, *Punitive Damages in U.S. Maritime Law: Miles, Baker, and* Townsend, 70 La. L. Rev. 463, 466-67 (Winter 2010).
[26]*Michigan Cent. R.R. Co. v. Vreeland*, 227 U.S. 59, 69-71 (1913).
[27]*Miles,* 498 U.S. at 32.
[28]*Id.* at 32.
[29]*Id.* at 32-33.
[30]Robertson, 70 La. L. Rev. at 464 (citing Gilmore & Black at 383).
[31]Robertson, 70 La. L. Rev. at 468.
[32]*Townsend*, 557 U.S. at 416.
[33]*Id.* at 420.
[34]David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty & Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 39 Tul. Mar. L. J. 471, 545-551 (Summer 2015).
[35]*McBride*, 768 F.3d 382, 384.
[36]*Id.*
[37]*Id.* at 384-85.
[38]*Id.* at 391.
[39]*Id.* at 387-88 (citing *Miles*, 498 U.S. 19, 33).
[40]*Id.* at 390 (citing *Miller v. Am. President Lines Ltd.*, 989 F.2d 1450, 1457 (6th Cir. 1993); and *Wildman v. Burlington N. R.R. Co.*, 825 F.2d 1392, 1395 (9th Cir. 1987)).
[41]*Pacific S.S. Co. v. Peterson*, 278 U.S. 130, 138 (1928).
[42]*McBride,* 786 F.3d at 392.
[43]*Id.* at 403-04.
[44]*Id.* at 404.
[45]*McBride v. Estis Well Serv. LLC*, 731 F.3d 505, 506-07 (5th Cir. 2013).
[46]*McBride,* 786 F.3d at 411.
[47]*Id.* at 419.

[48]*Batterton, supra* note 3, at *3.
[49]*Evich*, *supra* note 23, at 258.
[50]*Batterton*, *supra* note 3, at *11.
[51]*McBride*, 768 F.3d at 393 (Clement, concurring).
[52]*Id.*
[53]*Id*. at 394.
[54]*Mitchell,* 362 U.S. 539.
[55]*Id.* at 542.
[56]*Carlisle Packing Co. v. Sandanger*, 259 U.S. 255 (1922); *Mahnich v. Souther S.S. Co.*, 321 U.S. 96 (1944); *Seas Shipping Co. v. Sieracki*, 328 U.S. 85 (1946).
[57]*Mitchell,* 362 U.S. at 549.
[58]*Id*. at 550.
[59]*McBride*, 768 F.3d 382, *cert. denied* by *McBride v. Estis Well Serv. LLC*, 135 S.Ct. 2310 (2015).
[60]*Tabingo v. Am. Triumph LLC*, 188 Wn.2d 41, 391 P.3d 434 (Was. 2017), *cert. denied* by *Am. Triumph LLC v. Tabingo*, 2018 U.S. LEXIS 381 (2018).
[61]391 P.3d 434 (Wash. 2017).
[62]*See Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.*, 561 U.S. 89, 100 (2010) (citing *Norfolk S. R. Co. v. James N. Kirby Pty Ltd.*, 543 U.S. 14, 28 (2004)).

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Table 4. Bills Introduced in the 115th Congress

Bill	Proposed By	Summary
H.R. 243	Rep. Mark Amodel (R-Nev.)	Legislation that would prohibit monument designations in Nevada without congressional approval
H.R. 1489	Rep. Don Young (R-Alaska)	Similar to S. 33
H.R. 2074	Rep. Greg Walden (R-Ore.)	Legislation that the president shall certify compliance with NEPA as a condition of designating a monument
H.R. 2157	Rep. Dave Brat (R-Va.)	Companion bill to S. 956
H.R. 2284	Rep. Raul Labrador (R-Idaho)	Requiring congressional approval and the state in which the monument is located enacting legislation approving the creation of the monument. Also, the secretary shall not implement any restrictions on public use until appropriate review.
H.R. 3249	Rep. Steve Scalise (R-La.)	Legislation includes provision that terminates president's authority to designate marine national monuments, but is not retroactive.
H.R. 3668	Rep. Jeff Duncan (R-S.C.)	Legislation that requires land management agencies to provide facilities for recreational fishing, hunting, and shooting on federal land, including national monuments.
H.R. 3905	Rep. Tom Emmer (R-Minn.)	Legislation that would prohibit president from extending or establishing national monuments on National Forest System lands in Minnesota without congressional approval.
H.R. 3990	Rep. Rob Bishop (R-Utah)	Legislation to make national monuments harder to designate.
H.R. 4558	Rep. Chris Stewart (R-Utah)	Legislation to approve President Trump's modification to the Grand Staircase-Escalante National Monument.
H.R. 4532	Rep. John Curtis (R-Utah)	Legislation to approve President Trump's modification to the Bears Ears National Monument.
H.R. 4518	Rep. Ruben Gallego (D-Ariz.)	Legislation to expand the boundaries of Bears Ears National Monument.
S. 22	Sen. Dean Heller (R-Nev.)	Legislation to amend § 32030 to prohibit monument designation in Nevada without congressional approval.
S. 33	Sen. Lisa Murkowski (R-Alaska)	Legislation preventing president from establishing a national monument without congressional and state legislature approval and without certifying NEPA compliance inter alia.
S. 132	Sen. Mike Crapo (R-Idaho)	Similar to S. 33
S. 956	Sen. Bill Cassidy (R-La.)	Legislation includes provision that terminates president's authority to designate marine national monuments, but is not retroactive.
S. 2354	Sen. Tom Udall (D-N.M.)	Legislation to set forth management of certain covered national monuments, including Bears Ears National Monument and Grand Staircase-Escalante National Monument, including funding.

Take Care Clause of the Constitution. Plaintiffs also raise statutory construction claims that (1) President Trump's proclamation is ultra vires and beyond the statutory authority delegated by Congress, and (2) the president's proclamation violates the Antiquities Act because *inter alia* the proclamation is based on considerations outside of the Antiquities Act and lacked any adequate legal or factual justification.

Grand Staircase-Escalante National Monument Proclamation and Litigation

President Trump's Proclamation 9682[57] modifies the boundary of the Grand Staircase-Escalante National Monument to exclude 861,974 acres of land from the original 1.7 million designation by President

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