

# U.S. Supreme Court asked to review feds' prairie dog regulation

**Cedar City, Utah; September 26, 2017:** Is there any logical stopping point to congressional power? Yes, according to Pacific Legal Foundation's latest case before the Supreme Court. For two years, the State of Utah has worked with property owners to conserve the species known as the Utah prairie dog. But that successful program is threatened by a damaging federal regulation, imposed under the Endangered Species Act (ESA), which bars state biologists from doing what is best for the species. Now, local property owners who are also harmed by the regulation are asking the Supreme Court to hear their challenge and strike it down. The regulation is an unconstitutional overreach by the federal government and undermines the well-being of both the local community and the Utah prairie dog itself.

The [petition](#) to the Supreme Court was filed by People for the Ethical Treatment of Property Owners (PETPO), a nonprofit group representing property owners and local governments from southwestern Utah. PETPO is represented free of charge by Pacific Legal Foundation.

The federal regulation—called an anti-“take” restriction—prohibits essentially any human activity that might affect Utah prairie dogs. It even bars state biologists from moving prairie dogs to conservation lands for their protection.

## **Property rights and species protection are both at stake**

“For decades, the federal government’s harmful Utah prairie dog regulation has prohibited residents of Cedar City from doing things that most of us take for granted in our own communities,” said PLF attorney Jonathan Wood. “They have been blocked from building homes, starting small businesses, even protecting playgrounds, an airport, and the local cemetery from the disruptive, tunneling rodent.

“The Commerce Clause has long been a source of federal mischief, but the Supreme Court has never allowed it to be stretched this far,” Wood noted. “With their prairie dog regulation, federal bureaucrats have asserted control over local activities that are not interstate commerce, do not affect interstate commerce, and are not necessary to any federal regulation of interstate commerce.”

## **Restoring the role of federalism in environmental protection**

“Decades of federal regulation have created a lot of conflict but haven’t brought us any closer to a long-term plan to protect the Utah prairie dog,” said PLF client and PETPO spokesperson Derek Morton. “The future of the species is on public conservation lands managed by state biologists, not backyards, playgrounds, and other residential areas.”

“The differences between the federal regulation and the state’s conservation plan are stark,” said Wood. “The federal regulation pits people and prairie dogs against each other. In contrast, under state management, property owners were partners in the species’ conservation, and real progress was being made toward the species’ recovery. We are asking the Supreme Court to allow that progress to resume, by striking down the unconstitutional federal regulation that is obstructing it.”

“Pacific Legal Foundation fights for balance and common sense in environmental regulations and for constitutional limits on federal power,” said PLF President and CEO Steven D. Anderson. “As this case

shows, the two goals coincide. Protecting the environment in a responsible way often requires vindicating the rights of individuals and communities to be free from counterproductive federal intrusion.”

The case is [\*People for the Ethical Treatment of Property Owners v. U.S. Fish and Wildlife Service\*](#). More information can be found at: [pacificlegal.org/prairiedog](http://pacificlegal.org/prairiedog).

### **About Pacific Legal Foundation**

PLF litigates nationwide to secure all Americans’ inalienable rights to live responsibly and productively in their pursuit of happiness. PLF combines strategic and principled litigation, communications, and research to achieve landmark court victories enforcing the Constitution’s guarantee of individual liberty.

**Contact:**    [Jonathan Wood](#)  
Attorney  
Pacific Legal Foundation  
[jwood@pacificlegal.org](mailto:jwood@pacificlegal.org)  
(703) 647-4119

[Kate Pomeroy](#)  
Media Director  
Pacific Legal Foundation  
[kpomeroy@pacificlegal.org](mailto:kpomeroy@pacificlegal.org)  
(202) 465-8733