

The *Litigator*

MSLF: Put End To Unconstitutional Agencies

SUPREME COURT TO TEST SARBANES-OXLEY

On October 5, “the First Monday in October,” the Supreme Court of the United States began its October 2009 Term. One of the important cases the Court will consider—*Free Enterprise Fund v. Public Company Accounting Oversight Board* (PCAOB)—asks whether the PCAOB, established by Congress in the 2002 Sarbanes-Oxley Act in response to the Enron “crisis,” complies with the Constitution. One judge from the U.S. Court of Appeals for the District of Columbia called it “the most important separation-of-powers case regarding the president’s appointment and removal powers to reach the courts in the last 20 years.”

MSLF, which was active in the case at the Court of Appeals, filed a friend of the court (*amicus curiae*) brief, urging the Supreme Court to overturn the Court of Appeals, to hold the PCAOB unconstitutional, and to overturn a series of its decisions that has permitted the plethora of administrative agencies that are accountable to no one.

The PCAOB is a private-sector, non-profit corporation that oversees the auditors of public companies in order to “protect the interests of investors and further the public interest in the preparation of informative, fair, and independent audit reports.” It has five full-time members, including its chairman, all appointed by the Securities and Exchange Commission (SEC). The chairman is paid \$556,000 a year, every other board member \$452,000. Headquartered in Washington, D.C., it has an annual

budget of \$100 million and a staff of 300. Its activities are approved and overseen by the SEC, which can revise or reverse its rules.

In February 2006, the Free Enterprise Fund, a nonprofit, IRC 501(c)(4) group that champions limited government, along with a small Nevada accounting firm, filed a lawsuit challenging the constitutionality of the PCAOB. The Fund

argues that the Act quadrupled the auditing expenses of public corporations and costs the U.S. economy nearly

\$35 billion each year. The worst is yet to come, argues the Fund, when the Act is applied to smaller companies and even nonprofit entities. Constitutionally, argues the Fund, PCAOB is “a quasi-legislative, quasi-executive, quasi-non-profit regulatory commission,” that violates the Constitution’s “Separation of Powers Doctrine” as well as the “Appointments Clause.”

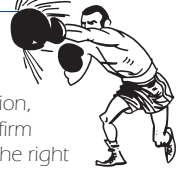
Nonetheless, in March 2007, the federal district court for the District of Columbia upheld the Act’s constitutionality. In August 2008, the U.S. Court of Appeals for the District of Columbia, by a 2-1 margin, agreed and, in November 2008, rejected petitions for rehearing and rehearing *en banc*, by 2-1 and 5-4 respectively. On May 18, 2009, however, the Supreme Court agreed to hear the matter. All briefing in the case has been completed.

The Constitution is explicit as to the structure of the federal government. The Founders believed that all governmental power is composed of one of three types: legislative, executive, and judicial; to

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ensure the “checks and balances” essential to preserve liberty, they vested those powers in three separate, distinct, and equal divisions of government. “All legislative Powers,” they wrote, “shall be vested in a Congress....” Likewise, the “executive Power shall be vested in a President,” and the “judicial Power of the United States shall be vested in one Supreme Court [and inferior courts].”

Despite this specificity, over the decades Congress blurred these lines by creating executive entities that report, not to the President, but to the multi-headed monster that is Congress, hence to no one. Worse yet, the Supreme Court failed to enforce the limits of the Constitution, enabling Congress, in Madison’s words, to “draw all power into its impetuous vortex.” In a series of cases beginning in 1886, extending through 1935, and culminating in 1988 (in a ruling Justice Scalia called “an open invitation for Congress to experiment”), the Court authorized the administrative state.

MSLF FIGHTS FOR STUDENT GUN RIGHTS

The University of Colorado (CU) is not exempt from Colorado's Concealed Carry Act (CCA) and may not bar students from using their permits on campus, three students and a national organization argue in their appeal of an April 2009 ruling by an El Paso County state district court.

Students for Concealed Carry on Campus (SCCC) and three of its Colorado members, represented by MSLF, advised the Colorado Court of Appeals that CU's ban on students who hold concealed carry permits from carrying on campus violates both Colorado law and its constitution. SCCC, a national advocacy group of 35,000 members that supports legalization of concealed carry by licensed persons on college campuses, and CU-Colorado Springs alumnus Eric Mote, CU-Denver student Martha



Altman, and CU-Colorado Springs student John Davis filed their lawsuit in December 2008.

In its brief, MSLF argues that Colorado's 2003 CCA gives licensed adults over the age of 21 the right to carry nearly everywhere in the State and bars local regulations, including those by CU, that conflict with the Act. MSLF asserts that the district court misapplied Colorado Supreme Court precedent, ignored key portions of the CCA and related statutes, and misinterpreted its constitutional claims.

Colorado's CCA requires concealed handgun permit applicants to undergo an extensive background check to ensure they have no history of substance abuse or criminal activity, are not subject to a protection order, and have demonstrated competency with a handgun. Fewer than 1 percent of permits issued in Colorado have been revoked.

DOUBLE YOUR MSLF GIFT! TELL THE BOSS

Did you know that you might be able to double your gift for free? Thousands of companies match their employee's charitable contributions. Matching gifts play a key role in helping MSLF fight its court battles. Please ask if your employer has a matching

gift program. Contact your human resources or personnel department to see if your company will match your gift to MSLF. Then, each time you mail your gift, please include a matching gift form from your employer. MSLF will do the rest!

WEB PAGE POLL

Visitors to MSLF's web site at www.mountainstateslegal.org responded to the following question: "In a secret deal, Obama officials have put an end to the search for energy on private land in Pennsylvania to do environmental studies. Is that right?" One hundred percent (100%) said, "No. Environmental (NEPA) studies are done on discretionary actions by federal agencies; private lands are exempt!" Zero percent (0%) said, "Yes. Extending NEPA to include actions by private parties is a good idea even if the law does not currently allow it."

Vote on the new question at MSLF's web site today!

Remember, the best way to keep abreast of MSLF's precedent-setting, nationally-significant litigation is to check MSLF's highly acclaimed web site. MSLF's web site is updated at least every week and often daily. In particular, check for updates on MSLF's "Legal Cases" and "Press Releases."

PENDLEY'S VIEW

Benjamin Cardozo was born in New York City on May 24, 1870, a descendant of Sephardic Jews of Spain and Portugal who came to the Colonies before the American Revolution. Young Cardozo was "home-schooled" by Horatio Alger, a popular author of tales of impoverished children who, through hard work, courage, and concern for others, led productive lives.

After Cardozo graduated with top honors from Columbia College in 1889, he entered Columbia Law School. Although he received his master's degree in 1890, he dropped out of law school, passed the bar in June 1891, and began the practice of law. Charles Evan Hughes, Jr., later Chief Justice of the United States, called Cardozo "a walking encyclopedia of the law."

In 1913, Cardozo was elected to the New York Supreme Court, a trial court; after only a month, he was appointed to the New York Court of Appeals. In 1917, he was elected to a full term and, in 1926, became its chief justice. He made that court the nation's leading state court and he became renowned for expertise in the common law and "elegant and persuasive writing." In 1932, after Justice Oliver Wendell Holmes, Jr., retired from the Supreme Court, Cardozo was nominated and confirmed unanimously. He served less than six years, but wrote more than 100 opinions, many landmark rulings.

Cardozo's greatest contribution was arguably his approach to judging. For Cardozo, the facts and established legal precedents governed most cases. In others, he often deferred to democratically elected legislatures, but not always, such as when personal liberty and property rights were at stake. Cardozo eschewed subjectivity (not to mention "empathy") but embraced impartiality.

Today, the question is not whether Cardozo was the Nation's first Hispanic justice, but whether Justice Sotomayor will be "a Cardozo" or "a wise Latina woman"?

NEW MEXICAN FIGHTS FOR HER RIGHTS

On behalf of a New Mexico woman across whose land the U.S. Forest Service possesses an easement, MSLF filed a lawsuit in New Mexico federal district court against the United States to secure her right to use her property. Ms. Annie George of Silver City filed a Quiet Title Act (QTA) lawsuit because the Forest Service failed to recognize her right to erect and maintain a gate on her property to protect her horse. Ms. George's ten-acre property, which she bought in March 2005, is bordered on the east and south by the Gila National Forest; the land to the north and west is owned privately. In December 2008, when Ms. George sought to repair a gate and fence she had erected in October 2007 but that had been destroyed by vandals, the Forest Service issued her a ticket. The QTA is the only method by which citizens may secure their property rights against the United States when placed on notice that federal officials dispute their title.

The United States owns a recorded "easement for a right-of-way, 66 feet in width, 33 feet each side of the centerline



for the existing Shrine Mine Road (FDR 6819)" that traverses Ms. George's property and seven neighboring parcels. In its current state, Shrine Mine Road is an uneven and mostly unused dirt path that bisects Ms. George's land.

The U.S. Forest Service has access to the Gila National Forest on several other private roads and does not use or consistently maintain FDR 6819. Ms. George's neighbors use FDR 6819 as a walking and horseback riding trail, and off-road vehicle drivers have in the past occasionally used it for recreation. The Forest Service has failed to maintain FDR 6819, which has caused both damage to the underlying estate and unsafe conditions; the Forest

Service has resisted Ms. George's attempts to erect a gate to contain her horse.

In 2007, Ms. George installed gateposts, fencing, and an unlocked gate. In December 2008, after vandals had destroyed her gate and her horse escaped and was injured by the damaged fencing, she repaired the gate and wired it closed; as a result, a Forest Service employee issued her a ticket.

WOLF DELISTING IS NOT DELAYED!

A federal district court in Montana denied an injunction sought by various environmental groups regarding a proposal by the U.S. Fish and Wildlife Service (FWS) to remove wolves imported into Idaho and Montana from protection under the federal Endangered Species Act (ESA). The Montana Farm Bureau Federation and the Idaho Farm Bureau Federation, both represented by MSLF, all three of which intervened in the lawsuit filed by the groups, had urged the ruling.

MSLF argues that the gray wolf in the northern Rocky Mountains is a distinct population segment (DPS) and may be removed from ESA protection given state plans by Idaho and Montana regarding the predator. The DPS designation was made by the FWS as to gray wolf populations in Idaho and Montana in April 2009. Environmental groups filed their lawsuit on June 2.

The gray wolf (*Canis lupus*) once roamed the northern Rocky Mountain region; however, due to their predation on livestock, the federal government permitted their killing; by 1930, wolves had been almost eliminated in the region. In 1973, the FWS listed the Northern Rocky Mountain Wolf (*Canis lupus irremotus*) as "endangered" and, in 1978, listed the gray wolf as "endangered" in the lower 48 States, except in Minnesota, where it was "threatened."

In 1994, the FWS captured wolves in Canada, imported them into the United States, and released them in Montana, Idaho, and Wyoming.

MOUSE CASE TO HAVE NATIONAL IMPACT

Two Wyoming agricultural associations, whose members' ability to earn livelihoods and use their private property will be affected adversely by designation of the Prebles' Meadow Jumping Mouse (PMJM) as eligible for listing under the federal Endangered Species Act (ESA) were allowed to intervene in a lawsuit filed by environmental groups in Colorado federal district court.

The Wyoming Stock Growers Association and the Wyoming Farm Bureau Federation, with MSLF as their attorney, argue that the decision by the U.S. Fish and Wildlife Service (FWS) to remove the PMJM from federal protection in Wyoming is factually and legally correct.



The environmental groups argue that the decision is based upon a flawed March 2007 interpretation, by the Solicitor of the U.S. Department of the Interior, of the phrase in the ESA, "significant portion of [a species'] range." The groups argue that no species may be delisted in any part of its range until it is eligible for delisting in the entirety of its range. As to the PMJM, the groups argue that the species may not be delisted in Wyoming, until it is recovered fully in Colorado!

In May 1998, the PMJM was listed under the Endangered Species Act. In December 2003, MSLF filed suit in Wyoming federal District Court.

KEEP READING!

The Litigator, MSLF's quarterly newsletter, is the indispensable tool for staying informed regarding the latest in MSLF's precedent-setting, nationally-significant, public-interest litigation. *The Litigator* is mailed on the first of February, May, August, and November. **Ensure that you keep receiving *The Litigator* by contributing \$25 annually.**

GIFT OF SECURITY IS BETTER THAN CASH?

MSLF values all gifts provided by its generous supporters; they permit MSLF to aggressively defend the rule of law and constitutional liberties in the courts of the land. Each supporter, however, may find the value of some gifts, in terms of taxes lawfully avoided, more valuable than others. One example is that involving the choice between a gift of cash or one of long-term appreciated securities; in this case a supporter in the 28% marginal tax bracket wishing to contribute \$10,000:

<u>CASH</u>		<u>SECURITY</u>
\$10,000 (cash)	contribution	\$10,000 (securities bought at \$2,000)
<u>-2,800</u>	income taxes saved	-2,800
	capital gains tax avoided	<u>-1,200</u>
\$ 7,200	post tax contribution cost	\$6,000

For those supporters concerned that the securities, which were bought years ago, are a good investment and likely to continue to increase in value, experts have a suggestion: contribute the stock and use cash to buy the same stock again. In the end they will still hold that good investment but will have eliminated the taxable capital gain to date!

Income tax regulation and estate tax laws are complex and vary state to state. PLEASE consult a tax advisor before making any decision. If you decide to contribute stock, please follow the instructions on the facing page and NOTIFY MSLF that they are "on the way."

ACT NOW: REMEMBER MSLF IN YOUR WILL

Suggest this bequest language to your attorney:

"I [name], of [city, state, ZIP] give, devise and bequeath to Mountain States Legal Foundation (MSLF), (tax identification number 84-0736725) 2596 South Lewis Way, Lakewood, Colorado 80227, [written dollar amount or percentage of the estate or description of the property] to continue its mission to protect and preserve individual liberty, the right to own and use property, limited and ethical government and the free enterprise system."

When you add MSLF to your will, be sure to tell us! We want to thank you by adding your name to MSLF's Legacy Society wall plaque.

IRA CHARITABLE ROLLOVER IS NOW BACK FOR 2009

If you are 70½ or older with a traditional or Roth IRA, you can give up to \$100,000 from your account directly to MSLF. The gift will not be included in your federal taxable income AND will count toward any mandatory withdrawal amount.

To make a gift from your IRA:

1. Contact your IRA financial advisor. It may take 2-3 weeks to make a distribution.
2. Send the gift directly to MSLF (Tax Id. # 84-0736725)

For more information, contact MSLF at 303-292-2021.

IF HELPING IS HARD

During these tough economic times, some life-long supporters find it hard to make the financial contributions they have in the past.

They may continue to support MSLF and ensure its fight for liberty far into the future by naming MSLF in their wills or making MSLF a beneficiary of a life insurance policy their loved ones no longer need.

While MSLF needs operating funds to be able to send its lawyers to court, a gift for MSLF's future has great value for MSLF's fight for freedom.

HELP MSLF FIGHT FOR FREEDOM: JOIN THE LEGACY SOCIETY

Name _____

Address _____

City _____ State _____ Zip _____

Home Phone _____ Cell Phone _____ E-Mail _____

- Send me FREE information on Planned Giving.
- Call me! I have planned giving questions.
- I have added MSLF to my estate plans. Put my name on the plaque.
- Send me the MSLF E-Newsletter.

Mail to: MSLF, 2596 SOUTH LEWIS WAY, LAKEWOOD, CO 80227

Mountain States Legal Foundation (MSLF) Is A Nonprofit, Public-Interest Law Firm, Certified As A 501(c)(3) Organization Since Its 1977 Founding.

Therefore, Your Generous Contributions to MSLF Are Tax Deductible!

- Fact** MSLF receives no government funds (except when it wins in court and the judge orders the federal government to pay attorneys' fees and expenses).
- Fact** MSLF's sole source of support is the tax-deductible contributions of those who support its aggressive litigation program.
- Fact** MSLF is a nonprofit, public interest I.R.C. 501(c)(3) corporation, which makes the contributions it receives tax deductible.
- Fact** MSLF is committed to the vision of the Founding Fathers: individual liberty, the right to own and use property, limited and ethical government, and the free enterprise system.
- Fact** MSLF's commitment to the Constitution ensures that America remains a nation of laws and not of men and that the rich liberty legacy of this nation continues.
- Fact** MSLF does only one thing: it goes to court in defense of the Constitution, strict adherence to the laws of the land, and those who cannot afford to hire legal counsel to protect their rights.
- Fact** Only YOU can ensure that MSLF may continue its vital work.

Problem ➤ Federal, state, and local taxes take an ever-increasing share of one's income.

Solution ➤ Gift giving decreases taxes while advancing charitable goals.

Reason ➤ At a time when many mechanisms for legally lowering taxes have been eliminated, the opportunities for reducing taxes by planned charitable giving have been increased!

The Means ➤ **Income Tax** – Each year a person may deduct as much as 50 percent of his or her adjusted gross income (AGI) for gifts of cash to a qualified charity; that limit is only 30 percent for gifts of appreciated property.

Estate Tax – A person who died in 2008 is entitled to an exclusion of up to \$1,000,000; however, estates in excess of that amount may deduct charitable gifts, by will or trust. Because federal estate taxes over \$1,000,000 range from 37 percent to 50 percent, for every charitable gift of \$1,000, the estate saves up to \$500 in taxes. Please consult your tax adviser.

Stock Transfer Information ➤ Contributions of stock can be made electronically to MSLF's brokerage account DTC 0164. When transferring stock, indicate acct. #7080-3528, Charles Schwab & Co., 518 17th St., Suite 100; Denver, CO 80202. (Richard Wulforst 303-260-5908; 303-260-5917). **Please notify MSLF BEFORE making the transfer; there is no way to identify a stock donor without prior notification.**

MSLF CANNOT REST; ITS ROLE ESSENTIAL TO REMAINING FREE

In 2009, MSLF will have been going to court for 32 years, fighting to compel compliance with the commands of the Constitution and federal law to ensure that America remains a nation of laws. At no time during these three decades has the need for MSLF to go to court on behalf of those who could not afford legal representation been lessened. In fact, as the federal bureaucracy has grown and as federal laws have become more far-reaching and intrusive, MSLF's caseload has increased dramatically. That is obvious from a review of the scores of MSLF cases.

Your Support Is Vital

If there is one lesson MSLF has learned over the past 32 years, it is that, regardless of which party occupies the White House or controls Congress, the threat to liberty remains and MSLF must be ready, willing, and able to go to court to defend freedom. As Thomas Jefferson once said, "Eternal vigilance is the price of liberty." One of the prices that must be paid for MSLF to remain vigilant is the price that tens of thousands of Americans pay annually by making their tax-deductible contributions to MSLF and its litigation.

The support of MSLF by tens of thousands of Americans committed to freedom could not be more important. Your support will ensure that MSLF remains IN THE COURTS FOR GOOD!

Yes! I want to help MSLF in its brave fight to ensure the guarantees of the U.S. Constitution and to preserve the rule of law throughout the land!

- Enclosed is a tax-deductible contribution of \$25. Please keep sending me *The Litigator!*
- Enclosed is a tax-deductible contribution of \$ _____ to help MSLF in its courtroom battles.
- Enclosed is a tax-deductible contribution of \$ _____ for MSLF's Endowment Fund.
- PLEASE send me information on planned giving.

Name _____
 Street _____
 City _____ State _____ Zip _____
 Day Phone (_____) _____ E-mail Address _____

WALK THE WALK: MSLF ADOPTS ROAD!

As it has for nearly 20 years, MSLF staff gathered recently on a high-altitude stretch of Interstate 70 east of the famed Eisenhower Tunnel in Colorado as part of the nationwide “Adopt A Highway” program. MSLF decided to do so after it noted that the names of environmental groups often appear on legal pleadings where they sue to “protect the planet” but not on “Adopt A Highway” signs. Every year, nearly one million travelers pass by the I-70 signs that proclaim that “Mountain States Legal Foundation” has “adopted” this scenic stretch of highway in the Mountain West.



MSLF recognizes that, for its clients—ranchers, farmers, loggers, miners, energy developers, builders, small business operators, and local governments—every day is Earth Day. While environmental groups “talk the talk” but demand that everyone else “walk the walk,” MSLF believes that a commitment to a clean and healthy environment, which provides for the needs of mankind, including economic growth and the jobs that come with it, means talking the talk and walking the walk. Because that is what MSLF’s clients do every day, MSLF staff is pleased to do the same.

UTAH RALLIES FOR ITS RIGHTS V. FEDS

A week following the Town Hall Meetings that swept the nation following the start of Congress’s annual August recess, the largest “Town Hall Meeting” in the country took place in Salt Lake City, Utah. More than 3,500 Utahans paraded up State Street and then assembled at the State Capitol Building to hear speeches by Utah’s two U.S. Senators, a U.S. Representative, as well as state and local representatives.

The only non-Utahan to address the thousands on the Capitol lawn was MSLF’s president and chief operating officer, William Perry Pendley. Pendley denounced officials in Washington, D.C.

“who say that the Constitution is meaningless; that state and local governments are irrelevant, and that the people are ‘Astroturf.’” He reported that MSLF had been battling such views for more than 32 years in what he termed “a war on the West, a war on westerners and a war on western civilization.” Recalling the warning of Ronald Reagan that freedom is never more than a generation away from extinction, Pendley noted Benjamin Franklin’s caution that the Founding Fathers had created, “a Republic, if [we] can keep it,” and closed, to sustained applause, by announcing, at MSLF “We intend to keep it.”

MSLF FIGHTS IN PENNSYLVANIA COURT FOR JOBS AND ENERGY!

The battle for private property rights, the ability to develop the largest natural gas deposit in the country, and the rule of law continues in Pennsylvania. MSLF, representing the oldest family owned oil company in the country, Minard Run Oil Company, and the



Pennsylvania Oil and Gas Association (POGAM) is challenging the settlement by the Obama Administration of a “sweet-heart lawsuit” filed by environmental organizations. MSLF engaged in days of hearings during which the testimony of experts and lay witnesses was taken; subsequently MSLF filed legal documents urging the federal

DHS FOIA FILING: THREAT IS A JOKE!



One response by the Federal Department of Homeland Security (DHS) to a Freedom of Information Act (FOIA) request seeking the basis for its April 7, 2009, “intelligence analysis report” about “rightwing extremists” contains stunning results. The report, *Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment*—which targeted unnamed persons and groups because of their views on illegal immigration, centralizing power in Washington, D.C. rather than in state and local governments, restricting the right to keep and bear arms, and the loss of American sovereignty—was generated by DHS employees who spent the day surfing the web!

According to the FOIA response, the site most accessed by DHS employees for their report, which targeted military veterans returning from service in Iraq and Afghanistan because of their “combat skills and experience,” was once described as “frighteningly kooky.”

MSLF filed its FOIA request on May 11, 2009.

LEGAL



ACTION

- At a federal court of appeals, MSLF battles the illegal settlement, by Obama officials, of a “sweetheart lawsuit” filed by environmental groups.
- The Arizona and New Mexico Cattle Growers’ Associations, with MSLF as their attorney, seek to battle a group demanding that certain prairie dogs remain on the Federal Endangered Species Act list. As in the other cases in which MSLF is

involved, the group argues that a species must be recovered in all of its range before it is removed from any part of its range.

- With a 114-year old mining association as its client, MSLF is fighting an attempt by environmental groups to close one million acres of federal land in Arizona to energy mining; the groups seek to enforce an unconstitutional “order” issued by a committee of the U.S. House of Representatives.
- MSLF’s client, the Independent Petroleum Association of New Mexico, has been allowed to intervene as a party in a newly consolidated challenge by environmental

groups to federal oil and gas leasing; the groups claim the federal agencies failed to study “green house gases” and “ozone levels.”

- On behalf of a Montana family that lives near a potential fire zone, MSLF urged a Montana federal district court to permit a U.S. Forest Service forest health plan to be implemented to save lives and property.
- A New Jersey family is fighting for its property rights in federal district court after family members were sued by the National Park Service (NPS). At issue is a road, which accesses family property, that was abandoned by the local township and hence reverted to the family.

NOTABLE



QUOTES

“You do GREAT work. I appreciate that. Keep it up.”
Wesley Grow
Pottstown, PA

“Keep up the good work!”
Lee M. Holmes
Hagatna, GU

“I have been an ardent supporter and thank [MSLF] for fighting to conserve the Constitution.”
Irene W. Hartmann
Toms River, NJ

“[D]iversity rights aren’t in the Constitution but property rights are.”
Steve B. Smith
Los Angeles, CA

“I hope to be more and more what Al Gore calls a denier. I intend to DENY my cooperation with cap-n-trade and bigger government.”
Lorenzo P. Avila
Berkeley, CA

“Keep up the good work.”

Robert G. Boice
Globe, AZ

“Keep fighting the good fight.”

Susan Hawkey
Casper, WY

“Thanks for what you do.”

Richard Stevens
Hungry Horse, MT

“Thank you for being on the front lines.”

Cammy Repp
Spokane, WA

“I have long admired the work of MSLF....”

David F. Myrick
Santa Barbara, CA

“Thanks for your effort!”

Willard G. Scott
Salem, OR

“My sincerest gratitude to you for your work to keep [the] U.S. free.”

Mary L. Jensen
Byron, WY

“Please keep up the good work!”

Donald L. Tolin
Dallas, TX

“MSLF is doing a great job...keep up the good work!”

Joseph W. Stecker
Crystal Lake, IL

“[T]hank you for ‘jumping into the fight’ on the legal side of the current political issues.”

Clifford Cone
Lovington, NM

“Thank you for all you do....”

Nancy L. Bauman
Chapel Hill, NC

“Thank you for all of your efforts on behalf of the people of Wyoming.”

John Barrasso, M.D.
U.S. Senator (R-WY)

“I have been supporter of MSLF for many years and appreciate your good work.”

Larry Hinderager
Blackfoot, ID

“MSLF is a treasure to those of us (a majority) who believe in our Constitution.”

Irene V. Victory
Boise, ID

“We . . . hope that you will be in the fight for a long time to come.”

Barry & Kathy Goldsmith
Greeley, CO

WYOMING MAN FIGHTS TWO FRONT BATTLE FOR HIS PROPERTY

On behalf of a Wyoming man fighting for his property, MSLF filed documents in two federal courts, separated by fifteen hundred miles. Marvin Brandt is now before both the U.S. Court of Appeals for the Tenth Circuit in Denver and the United States Court of Federal Claims in Washington, D.C. The reason why takes some explaining.

In 1944, Mr. Brandt's father, Melvin M. Brandt, purchased the sawmill in Fox Park, Wyoming—50 miles southwest of Laramie—from which he transported timber via a railroad owned by the Laramie, Hahn's Peak & Pacific Railway Company. In 1976, the United States patented 83 acres to him and his wife, pursuant to federal law, subject to a right of way for the railroad. Later, Mr. Brandt acquired the property from his parents and, in 1991, closed the sawmill.

Meanwhile, from 1987 to 1995, the Wyoming and Colorado Railroad Company, Inc. (WYCO), which had acquired the railroad, operated the line. In 1996, WYCO initiated efforts to abandon its rail line; in 2004, WYCO completed the process, including abandonment of the portion on Mr. Brandt's property. Mr. Brandt now owned not only



the reverted rail line right of way, but also a U.S. Forest Service road that had been reserved by the agency, but then abandoned.

Then, in April 2005, the Forest Service decided to convert the abandoned rail bed into a 26-mile-long, high altitude (9,062 feet), recreational trail through the Medicine Bow National Forest. The Forest Service needed Mr. Brandt's property, so, in July 2006, it filed a federal quiet title action against him and others.

In April 2008, the Wyoming federal district court ruled against Mr. Brandt announcing that, notwithstanding a split among the federal circuits, the court was required to adhere to dated rulings by the U.S. Court of Appeals for the Tenth Circuit. Worse yet, even though the Forest Service had closed its unneeded road, bulldozed a section of it, erected a fence and planted trees across it, directed Mr. Brandt to construct a gate at his end of it, and opened a new road to replace it, the district court ruled the Forest Service's abandonment was "superficial."

Mr. Brandt could not simply appeal to the Tenth Circuit; he also had to file a "takings action" in claims court. At the Tenth Circuit, federal lawyers defend the district court's ruling while at the claims court they demand dismissal of Mr. Brandt's lawsuit!



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