

The *Litigator*

Illegals Challenge Proof of Citizenship Test

MSLF FIGHTS FOR ARIZONA'S VOTING LAW

Fresh from its victory before the U.S. Court of Appeals for the Ninth Circuit where it prevailed when the appellate court dismissed a lawsuit filed by the ACLU and the Mexican American Legal Defense and Educational Fund (MALDEF), MSLF has reentered the fray over the efforts by Arizona voters to address the burden imposed upon the state by illegal immigration. In its first defense of Proposition

200 or the "Arizona Taxpayer and Citizen Protection Act," MSLF fought for the right of Arizona taxpayers to deny benefits to illegal aliens; the ACLU and MALDEF had asserted that Proposition 200 interfered unconstitutionally with federal immigration law.

This time, MSLF will defend the right of Arizona to demand that voters demonstrate that they have a right to cast ballots by presenting proof positive of their citizenship, including photographic identification.

On behalf of the Arizona man often credited as the prime mover in adoption of Proposition 200, which was approved overwhelmingly by voters in November 2004, and the organization he established to win approval of the controversial ballot initiative, MSLF moved to intervene in a lawsuit that challenges the voter identification requirements of the law. Randy Pullen and his organization, Yes on Proposition 200, argue that they may join with the State of Arizona and Arizona officials in defending the voting requirements. The motion by Mr. Pullen and his group comes in response to a lawsuit filed on May 9, 2006,

by MALDEF and other civil rights and voter advocacy groups in Arizona federal district court. The groups challenge the registration and identification provisions of Proposition 200, naming as defendants Arizona and Secretary of State Jan Brewer among others.

MSLF argues that Mr. Pullen's lead role in successful passage of Proposition 200 and the important part he played in defending the statute's constitutionality from the aggressive assault launched by the ACLU and MALDEF demonstrate why he must be a part of this new challenge. A similar motion filed by Pullen and Yes on Proposition 200 in the first test of

Proposition 200 by the ACLU and MALDEF was granted quickly. Not only did Mr. Pullen and Yes on Proposition 200 participate before the Arizona federal district court in the earlier case, they made the oral argument before the Ninth Circuit that was the basis for the appellate court's decision to dismiss the case.

In November 2004, by a margin of 56 percent to 44 percent, Arizona voters approved Proposition 200 to address the burden imposed on Arizona citizens by the payment of public benefits to illegal aliens. These benefits are believed, by some, to exceed \$1 billion a year, or \$700 for each and every Arizona household. Proposition 200 strengthens enforcement of existing laws related to illegal immigration by requiring all who register to vote or apply for state public benefits, excluding emergency medical assistance, short-term, non-



Summer 2006

The Litigator

is published quarterly by Mountain States Legal Foundation, a nonprofit, public interest law firm dedicated to individual liberty, the right to own and use property, limited and ethical government, and the free enterprise system.



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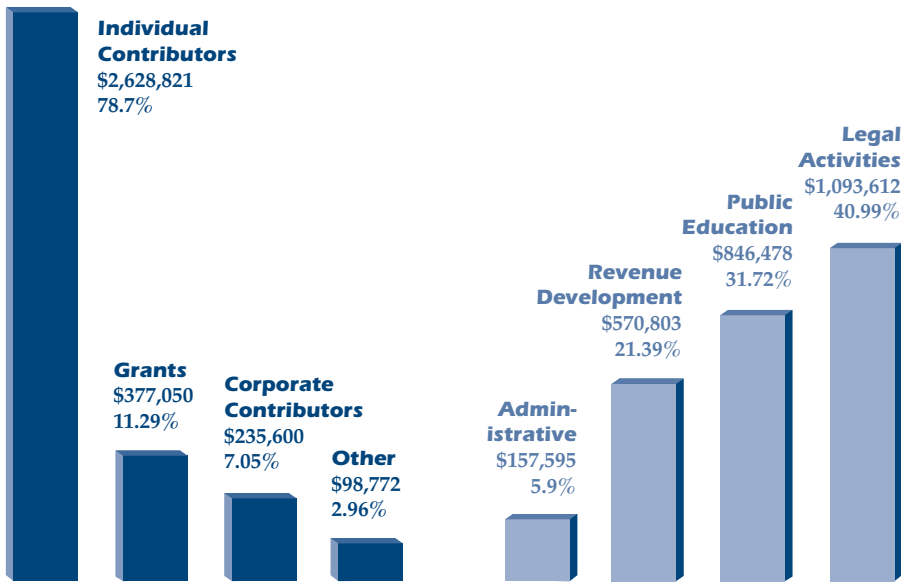
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cash emergency disaster relief, public health assistance for immunizations and testing / treatment of communicable diseases, to prove citizenship.

Proposition 200 creates a verification process to enforce current laws that prohibit state and local governments from providing non-essential public benefits to illegal aliens. This process has been used since 1996 to verify eligibility for federal benefits, but Arizona is the first State to require presentation of a designated identity document at the voting polls.

In November 2004, the ACLU and MALDEF challenged Proposition 200's constitutionality. Mr. Pullen, Yes on Proposition 200, and the Federation for American Immigration Reform (FAIR) intervened. In December 2004, the Arizona federal district court ruled against the ACLU and MALDEF. In August 2005, the U.S. Court of Appeals for the Ninth Circuit dismissed the lawsuit holding that those challenging Proposition 200 had not demonstrated an injury.

MSLF AUDITED FINANCIAL REPORT FOR 2005



INCOME

Total Revenue – \$3,340,243

EXPENSES

Total Expenses – \$2,668,488



**MOUNTAIN
STATES
LEGAL
FOUNDATION**

Total Legal Activities and Public Education Expense - \$1,940,090 – 72.7%

2005 Operating Equity – \$3,259,499

Revenue Development Costs as Percentage of Total Revenue – 17.09%

PENDLEY'S VIEW

“The gall of Mexican officials does not end with the push for illegal entry,” writes Heather Mac Donald in City Journal (“Mexico’s Undiplomatic Diplomats”). “After demanding that we educate their surplus citizens, give those citizens food stamps, deliver their babies, provide them with doctors and hospital beds, and police their neighborhoods, the Mexican government also expects us to help preserve their loyalty to Mexico.”

“Since 1990,” she notes, “Mexico has embarked on a series of initiatives to ‘strengthen solidarity programs with the Mexican communities abroad by emphasizing their Mexican roots, and supporting literacy programs in Spanish....’” As if this were not enough, federal officials are collaborating. Says Mac Donald, “[t]he U.S. Department of Education...helps bring hundreds of Mexican teachers to U.S. schools for part of the school year or during the summer....”

The Department of Education is not alone in supporting Mexico’s bilingual education agenda in America. The U.S. Equal Employment Opportunity Commission (EEOC), for example, is committed to preventing American employers from ensuring that their employees speak English on the job. It would be one thing if the EEOC were implementing this radical agenda with some ostensible statutory support or an occasional judicial ruling in its favor. It is quite something else again that the EEOC does so without any legal basis whatsoever. Nonetheless, that is exactly what the EEOC is doing on both U.S. coasts. In two cases being litigated by MSLF, one in Page, Arizona, the other in Rochester, New York, the EEOC is suing businesses that demand that their employees speak English on the job.

Mexico’s agenda makes sense for Mexico. What does not make sense is that the EEOC, in conflict with congressional directives and court rulings, shares that radical agenda.

WEB PAGE POLL

Visitors to MSLF’s web site at www.mountainstateslegal.org responded to the following question: “A University of California - Santa Cruz job fair got ugly when a faculty and student mob drove the military recruiters away. Should the school lose \$80 million in federal funds for its actions?” Sixty-two percent (62%) said, “Yes. The U.S. Supreme Court upheld by 8-0 the Solomon Amendment, which strips federal funds from schools that deny equal access to the military.” Thirty-eight percent (38%) said, “No. The University should not suffer because it is unable to control its faculty and students; if the military offends some people, it should not go there.”

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.”

Law Unconstitutionally Attacks Property Rights

SMALL BUSINESSES SUE OVER NEW COLORADO SMOKING BAN

In a victory of junk science over good science, common sense, and the rights guaranteed by the U.S. and Colorado Constitutions, the Colorado State Legislature passed and, in March 2006, Governor Bill Owens signed into law, the "Colorado Clean Indoor Air Act." Notwithstanding the absence of scientific evidence to support the assertion by the Act's proponents as to the dangers of "passive smoking," "second-hand smoke," or "environmental tobacco smoke (ETS)," the Act determines that the presence of cigarette smoke in public places presents a clear and present health hazard that the State of Colorado may legitimately and constitutionally address.

Effective July 1, 2006, the Act prohibits smoking in all indoor areas, with exemptions including casinos, bars and restaurants at public airports, businesses having three employees or less, private homes and residences, automobiles if not used for child care or public transportation of children, limousines under private hire, up to 25 percent of rooms of a hotel or motel, retail tobacco businesses, and the outdoor area of any business. Even for exempt places of employment, the Act requires employers to provide a smoke-free work area if requested by an "employee." In addition, local governments may adopt and enforce similar smoking regulations, so long as the requirements are at least as strict as the provisions of the Act. A violation of any provision of the Act is a class 2 petty offense, punishable by a fine of as much as \$200 for the first violation, \$300 for a second violation, and \$500 for each additional violation within a calendar year.

In response, days before the smoking ban went into effect, a coalition of business-

es and the owner of a small tavern filed a lawsuit challenging the constitutionality of the new law. The Coalition for Equal Rights, Inc., a nonprofit association of more than 700 independent bar and tavern owners, bowling alleys, billiard halls, bingo parlors and other similar facilities, military service clubs, restaurants, liquor stores, fraternal orders, beverage

wholesalers, amusement device retailers, and individual smoking members of the Colorado public, joined with Shari Warren, sole owner of Spirit Keeper, a tavern in Black Forest, Colorado, which offers alcoholic beverages, live music, karaoke, billiards, video games, and free-entry "Texas Hold'em" tournaments, in suing Colorado and a long list of Colorado officials, all in their official capacities.

The issue of "second-hand smoke" became a cause célèbre during the Clinton

Administration after the Environmental Protection Agency announced that second hand-smoke kills 3,000 Americans each year. After Clinton's EPA chief made the issue a "national imperative," states, counties, and cities across the country moved to ban indoor smoking; however, in 1998, a federal judge blasted the EPA report for "cherry picking" its data, deleting studies that "demonstrated no association between [second-hand smoke] and cancer," and "publicly commit[ing] to a conclusion before research had begun." That same year, the World Health Organization (WHO) admitted that its own study failed to show a "statistically significant" link between second-hand smoke and cancer. Nonetheless, the EPA's report is still cited authoritative by smoking ban proponents! Unfortunately, that may be enough to save legislation grounded in junk science; courts have held that legislatures need not prove

that the public will benefit by the legislation they pass; they need only show they "believe" the public will benefit.

In the case of the Colorado Indoor Clean Air Act, a plurality of "true believers" in the Colorado State Legislature may not save the new law given the abundance of constitutional violations that it commits against the Coalition and Shari Warren. For example, the Act violates their rights to equal protection and substantive due process as well as their rights to be free from the deprivation of rights, privileges, and immunities and from retroactive legislation and special legislation. In addition, the term "employee" is defined so broadly as to include volunteers, family members, contractors, independent contractors, and virtually any one who provides a service to a business or non-profit entity, which allows them to demand a smoke-free work environment upon another's private property.

The lawsuit was filed in federal district court in Colorado where the Coalition and Ms. Warren sought a temporary restraining order (TRO) to prevent the law from going into effect. That motion was denied. A trial on the merits of the lawsuit has yet to be scheduled.



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.

PLANS TO GIVE!

All you ever wanted to know about planned giving but were afraid to ask is at www.mountainstateslegal.org!

MSLF'S FIGHT FOR LIBERTY AND RULE OF LAW NOW IN PRINT!

For the last decade and a half, Mountain States Legal Foundation has been engaged in the most precedent-setting and history-making litigation of its nearly 30 years of fighting for the rule of law and constitutional liberties. With a number of appearances before the U.S. Supreme Court and regular arguments at federal courts of appeals all across the country, MSLF has become the nation's most courageous defender of individual liberty, the right to own and use property, limited and ethical government, and the free enterprise system!

Now, for the first time, MSLF's historic work in defense of the vision of the nation's Founding Fathers is documented in thorough, thoughtful, and thought-provoking detail. *Warriors for the West: Fighting Bureaucrats, Radical Groups, and Liberal Judges on America's Frontier* by Regnery Publishing, Inc., is the inspirational and exciting behind-the-scenes tale of the headlines that MSLF made, not only

"With his designation of vast portions of the American west as national monuments and hence 'wilderness' areas and off limits to economic and recreational activity, Clinton gave environmental groups a victory that they could not have achieved in Congress."

when it filed its hundreds of lawsuits, but also when, against all odds, it won those lawsuits. Written in his typical hard-hitting, take-no-prisoners, hold-no-punches style, William Perry Pendley, MSLF's president and chief legal officer, tells the unvarnished truth about battling covetous bureaucrats, left-wing groups, and activist judges.

Regnery, which was founded in 1947, is well known for delivering respected and thought-provoking books to conservative readers who seek great reading that counters the dominant political leanings

"As bad as the federal government can be as a business partner, it is even worse as a neighbor. Then the federal government makes no pretense that it is a friend, partner, or colleague; it is in charge."

of the main stream media. Regnery, which published William Perry Pendley's *War on the West: Fighting Government Tyranny on America's Great Frontier*, has enjoyed record sales with more than a dozen New York Times best-sellers in the last two years. *Warriors for the West* hit the book stores on January 23, 2006.

Warriors for the West describes and details the fight against: so-called environmental laws; bureaucrats who break the law and the lawyers who cover for them; racial preference undertaken in the name of trust responsibilities to American Indians; Clinton's monument decrees; attacks on logging, mining, and energy development; the seizure of private land for public recreation; the closure of public and private land as worship sites for American Indian religious practitioners; government's refusal to abide by the contracts it enters into; government when it becomes a bullying bad neighbor; the criminalization of almost all activity in the name of protecting the environment; racial quotas and preferences; demands that voting districts be racially gerrymandered; the taking of "private property" for ostensible "public use" without "just compensation"; denial of

"No wonder westerners believe that the federal government is all too often a bad neighbor. Things become even worse when federal bureaucrats arm themselves with badges, summons, and cease and desist orders and go looking for trouble."

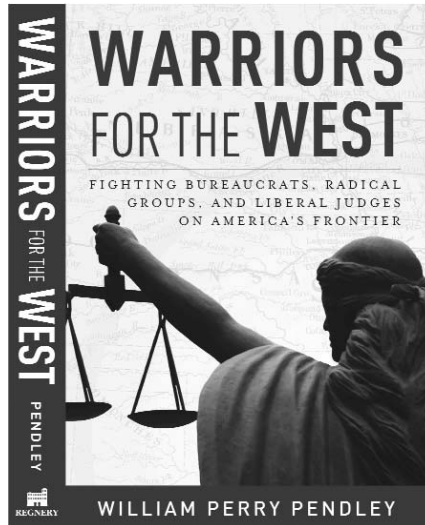
access to private land as guaranteed by law makers more than 100 years ago; and, the newest battles of the day, illegal immigration and restrictions on the ability of Americans to speak out and be heard.

In fifteen readable, shocking, and fact-filled chapters documented with hundreds of endnotes, William Perry Pendley tells the inspirational fight of MSLF's clients and

their battles against Congress and the laws that it writes, bureaucrats and the rules that they publish, environmental and other special interest groups and their radical agendas, and the judges, both district court and appellate, and justices who decide it all. No one escapes the harsh truth-telling for which William Perry Pendley has become well known in officialdom in Washington, D.C., before august courts in urban centers, or at the podium in meeting halls

and rooms in every state in the nation.

MSLF supporters will want their own autographed copy of *Warriors for the West*, not only as a great legal and historical reference, but also and primarily as proof positive that their tax-deductible contributions made a real and lasting difference. An owner of *Warriors for the West* will be able to point proudly to it on his bookshelf and say, "This is what Mountain States Legal Foundation was able to do with my contribution; this is what I did!"



WILLIAM PERRY PENDLEY'S NEW BOOK TO MSLF SUPPORTERS

MSLF is delighted to offer to its loyal supporters an autographed copy of *Warriors for the West: Fighting Bureaucrats, Radical Groups, and Liberal Judges on America's Frontier* free with each contribution of \$50 or more to MSLF's precedent-setting and history-making litigation. Please send your contribution today to ensure delivery of your copy of this impressive and inspirational work.

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

Therefore, Your Generous Contributions to MSLF Are Tax Deductible!

MSLF CANNOT REST; ITS ROLE ESSENTIAL TO REMAINING FREE

In 2006, MSLF will have been going to court for 29 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 that more than a quarter century 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 29 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.

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!

- 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 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.
- 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 2005 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 ➤ Contribution of stock can be made electronically to the Foundation brokerage account. When transferring stock, indicate account # C9C006602, NFP Securities, DTC 226. Please notify the Foundation when contributing stock as there is no way to identify the donor without prior notification.

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 \$50; please send William Perry Pendley's Warriors for the West: Fighting Bureaucrats, Radical Groups, and Liberal Judges on America's Frontier.
- Enclosed is my 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 \$ _____ payable to MSLF Fund for MSLF's endowment fund.
- PLEASE send me information on planned giving.

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

BILL OF RIGHTS COVERS ALL AMERICANS

The U.S. Supreme Court must agree to hear an appeal by an American Indian from Montana who was denied civil rights most Americans take for granted, MSLE, which won what many legal experts regard as the most important civil rights ruling of the last several decades, argued in a friend of the court brief in support of a petition filed by Thomas Lee Morris.

Morris, who as a minor was charged with speeding on a reservation, challenged the constitutionality of a federal law that subjects him to the jurisdiction of a tribe to which neither he nor any member of his family may belong. The Montana federal district court and the U.S. Court of Appeals for the Ninth Circuit refused to apply *Adarand Constructors, Inc. v. Peña*, a Supreme Court ruling won by MSLE, which bars racial discrimination by Congress, to Morris, an American Indian.

Mr. Morris lived with his family in Ronan, on the Flathead Reservation, for many years; his late father was a member of the Minnesota Chippewa Tribe of Leech Lake Reservation, as is Mr. Morris. His mother is not an Indian. Thus, no member of his family qualifies for membership in the Tribes on the Flathead Reservation and may not participate in tribal government.

On June 13, 1999, when he was 16, when Mr. Morris was driving his family's vehicle near Ronan, he was stopped by a member of the Ronan City Police Department for speeding. The officer cited Thomas to appear in the Flathead Reservation Tribal Court to answer to a charge of violating Tribal Code. Non-Indians are not sent to Tribal Court but, instead, go to Montana State courts where, unlike tribal courts, the Bill of Rights and the Fourteenth Amendment apply.

Mr. Morris filed a petition for a writ of habeas corpus with the U.S. District Court for Montana claiming that the Flathead Reservation Tribal Court lacked jurisdiction over him. The Montana federal district court's dismissal of that motion was reversed by the U.S. Court of Appeals for the Ninth Circuit. Subsequently, the Montana federal district court, relying on the Indian Civil Rights Act, rejected Mr. Morris's constitutional arguments. In August 2005, the Ninth Circuit affirmed the Montana federal district court's ruling. Mr. Morris filed his petition for Supreme Court review in April 2006. In a highly unusual move, the Flathead Tribal Court objected to the filing of MSLE's brief; MSLE had to file a motion with the U.S. Supreme Court.

FOLKS OR FAUNA? TOWN TAGS CORPS

Citizens of Libby, Montana, are up in arms as a result of a plan by the federal government to flood the area to "save" protected fish. Because waters are running unseasonably high already, locals believe implementation of the new plan will bring disaster.

The plan by the U.S. Army Corps of Engineers is the result of a lawsuit by environmental groups and involves changes in the Corps' operations at Libby and Hungry Horse Dams pursuant to the Endangered Species Act (ESA). In November 2005, the Corps released a draft environmental statement stating a preference to increase flows at Libby Dam to 25,000 cubic feet per second (cfs). In its final document in April 2006, the Corps determined to increase flows to 35,000 cfs. Not only is such a rate 10,000 cfs above the capacity of the powerhouse, a similar effort by the Corps in 2002 flooded several Libby homes and businesses and resulted in crop losses.

Locals notified the Corps that they intend to file a lawsuit under the ESA; federal law requires 60 days notice before filing ESA lawsuits.

KANSAS TAX IS OK; TRIBE ROUTED IN SUPREME COURT 7-2!

A Kansas Indian tribe is not exempt from taxes on its purchases of motor fuel and a ruling by the U.S. Court of Appeals for the Tenth Circuit that it is exempt is in error, the U.S. Supreme Court ruled recently. In a 7-2 opinion by Justice Thomas, the Court reversed an August 2004 ruling of the Tenth Circuit that the Prairie Band of the Potawatomi Nation is exempt from a Kansas tax on the purchase of motor fuel by wholesale distributors. The federally recognized Tribe buys the fuel for retail sale at a tribal service station, which is near a tribal casino. The Tenth Circuit had held that, because non-Indians come to the reservation for the casino, the motor fuel sold by the Tribe is an "integral and essential" part of the casino and its value is attributable to the reservation. The Supreme Court ruled

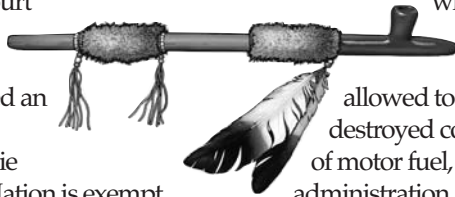
instead that the tax was imposed off reservation on non-Indians.

MSLE had filed a friend of the court brief on behalf of three trade associations in which it argued that, had the Tenth Circuit's ruling been allowed to stand, it would have destroyed competition in the sale of motor fuel, disrupted State tax administration, prevented States from raising revenue, and created commercial chaos. The National Association of Convenience Stores (NACS), the Petroleum Marketers Association of America (PMAA), and the Society of Independent Gasoline Marketers of America (SIGMA), which represent 80 percent of the nation's convenience stores, 8,000 independent petroleum marketers, and 250 independent motor fuel operators, are made up of individuals

affected directly by the case.

Kansas imposes a tax on the first receipt of motor fuels by wholesale distributors who, in selling that motor fuel, are not prevented from increasing the price of the fuel. Some of these distributors sell to the Tribe, which sells the motor fuel from a convenience store and gasoline station near its casino in Jackson County. The district court held for Kansas, ruling that the tax was not preempted by federal law and did not interfere with the Tribe's sovereign right to self-government. The Tenth Circuit reversed on both issues.

The associations argued that, because the tax is on non-Indian, off-reservation economic activity, federal law does not preempt it and that any federal preemption must be unequivocal. Plus, because the value of the motor fuel is due to off-reservation activity, Kansas' interest is paramount.



NOTABLE



QUOTES



LEGAL ACTION

"Knowing you are battling also gives us hope."

Mike Kindred
Oral, South Dakota

"Knowing we can depend on Mountain States for legal counsel is a godsend."

Larry and Janet Harshfield
Emmett, Idaho

"Keep up the good work."

Robert R. Baney
Sterling, Colorado

"I appreciate the good work that you do on behalf of constitutional rights."

Erik C. Kelley
Tempe, Arizona

"Escorting our military off campus instead of escorting the 'mob' off campus is beyond comprehension."

Ronald E. Johnston
Pawleys Island, South Carolina

"I admire the things you do."

John E. Weir
Independence, Missouri

"Keep up the good work."

John C. Eastman
Long Beach, California

"Stay after 'em, fellows."

Raleigh R. Ross
Utopia, Texas

"You are doing a terrific job."

Roger F. Williams
Tulsa, Oklahoma

"Thanks very much for all you do for people."

Marie L. Crum

■ MSLF filed a brief in support of San Juan County, Utah, challenging the right of environmental groups to intervene in Quiet Title Act lawsuits in which they claim no property rights.

■ A South Dakota family filed a petition seeking U.S. Supreme Court review of a ruling by the South Dakota Supreme Court that a state law allowing hunters on the family's land was not a "taking."

■ A group of Montana miners objected to a brief filed by federal officials claiming that the Clinton Administration did not illegally withdraw land from mining activity.

■ Congressman Ron Paul (R-TX 14th) filed a brief at the U.S. Supreme Court in support of a petition by Texas State Bank claiming that federal regulations caused an unconstitutional "taking."

■ A Utah family whose property was used by the federal government as a bombing range has added more counts to its federal complaint.

■ A Colorado landowner claimed victory when the City of Sheridan abandoned its plans to condemn the landowner's building; the city also agreed to award land and pay several hundred thousand dollars.

■ MSLF appeared at the U.S. Court of Appeals for the Ninth Circuit to argue for an Arizona family seeking access to its ranch.

■ MSLF rebuked the Governor of Virginia for the state's assertion in an official document used to train state employees that "property rights activists" are "domestic terrorists."

■ MSLF urged a Colorado panel to abandon any plans to request that so-called "roadless" federal lands be managed as wilderness; such a plan is clearly illegal.

■ A tiny, family-owned, Montana oil and gas company filed comments questioning the federal government's plans for managing a national monument that contains significant energy supplies and existing federal leases.

■ MSLF filed a complaint on behalf of a property owner in southern Wyoming to prevent the seizure of his land under Forest Service implementation of a rails-to-trails program.

■ MSLF filed a lawsuit on behalf of a Colorado landowner contesting the failure of officials to allow land once used for railroad purposes to revert to him as the law requires.

■ A Montana miner filed a request with the U.S. Forest Service seeking the right to access his patented mining claims.

■ MSLF filed a friend of the court brief with the U.S. Supreme Court urging it to reverse an appellate court ruling that allows a federal agency to avoid a statutory limitation on how many years in the past the agency may demand the payment of royalties after it changes its policy on how royalties are calculated.

■ MSLF filed a friend of the court brief with the U.S. Supreme Court to hear an appeal from a ruling by the Ninth Circuit that the Environmental Protection Agency (EPA) may ignore the requirements of federal law in demanding reimbursement for Superfund activities.

■ MSLF asked Defense Secretary Donald Rumsfeld to withhold \$80 million in federal funds from the University of California – Santa Cruz after a riot by professors and students drove military recruiters from the campus; the Solomon Amendment requires such action.

MSLF FIGHTS FOR LOCAL CITIZENS ON HEALTHY FOREST PLAN

Montana property owners, including a church camp, have sought to intervene in a lawsuit filed by two environmental groups challenging a healthy forest initiative proposed by the U.S. Forest Service south of Big Timber. State Senator Jeff Essmann leads the group, which includes the Boulder Watershed Association, the Clydehurst Christian Ranch, and Donald A. Bray in seeking to become parties in the case to defend the plan by the Forest Service to reduce the likelihood as well as the severity of forest fires along the Boulder River corridor in the Gallatin National Forest. In past fire-related evacuations, Boulder River Road became congested, resulting in delays in evacuating residents and recreationists as well as in deploying firefighters to fire lines.

One would have thought, after the devastating forest fires that swept Montana in 2000 and with drought conditions continuing, that environmental groups had learned their lesson and would support healthy forest initiatives such as the one planned by the Forest Service. Nonetheless, radical environmental groups continue to place the alleged needs of flora and fauna above the needs of people even as to the Forest Service's plan along Boulder River Road, which is a vital component of a watershed-wide fuels reduction effort, the loss of which would defeat private landowners' efforts to protect their homes and properties from wildfires.

After consultations with adjacent private homeowners, the local watershed association, and State, county and local officials and groups, the Gallatin National Forest developed the Main Boulder

Fuels Reduction Project along Boulder River Road. The Project area includes a narrow strip of non-wilderness land 1/2 mile wide and 24 miles long that projects into the Absaroka Beartooth Wilderness Area. The Boulder River corridor is served by a single, in some places one-lane, dirt road. The project would reduce fuel loads by: thinning large-diameter green conifers, selectively harvesting insect- or disease-damaged conifers, cutting small-diameter conifers, slashing trees encroaching into meadows or aspen stands, prescribed burning in meadows and the understory of treated stands, and piling and removing or burning downed woody debris. The plan would reduce the chances of accidental ignitions and fire intensity and rate of spread. Meanwhile, the Boulder Watershed Association is working with landowners to conduct similar fuels reduction projects on private lands.

On April 24, 2006, after unsuccessful administrative appeals, the Alliance for the Wild Rockies and the Native Ecosystems Council sued the Forest Service in Montana federal district court alleging violations of several environmental and natural resource statutes, including the National Environmental Policy Act (NEPA), National Forest Management Act, and the Endangered Species Act. MSLF believes the lawsuit is totally without merit. That is particularly the case given the Healthy Forests Restoration Act of 2003, which significantly modifies the requirements of NEPA: in the case of hazardous fuels reduction projects near an at-risk community, federal officials need study only two alternatives, the proposed project and a no-action alternative.



MOUNTAIN
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