

# The *Litigator*

## 9th Circuit Ejects Proposition 200 Challenge

### MSLF BEATS ACLU IN ILLEGAL ALIEN CASE

In a stunning and somewhat surprising victory for the voters of Arizona, the U.S. Court of Appeals for the Ninth Circuit dismissed a lawsuit filed by the ACLU and the Mexican American Legal Defense and Education Fund (MALDEF) in early August. The Ninth Circuit, notoriously the most liberal and most often reversed of America's federal appellate courts, ruled that the plaintiffs represented by the ACLU and MALDEF, most of whom were using pseudonyms, had not been injured and could not sue. The Ninth Circuit's ruling tracked the assertions made by MSLF during oral arguments in San Francisco in June.

By rejecting the appeal and ordering the case returned to the Arizona federal district court where it was to be dismissed, the Ninth Circuit left intact an Arizona law that limits the payment of benefits to illegal aliens, requires the reporting to the proper authorities of those illegally in the United States, and requires voters to present proof positive of identification in Arizona elections. The Ninth Circuit's ruling is a huge victory for Randy Pullen, Yes on Proposition 200, and the Federation for American Immigration Reform (FAIR), all of whom were represented by MSLF, who were instrumental in the approval of the ballot initiative known as Proposition 200, or the "Arizona Taxpayer and Citizen Protection Act."

As unexpected and as welcomed as was the victory before the Ninth Circuit,

advocates of Proposition 200 know that the battle is not over. The ACLU and MALDEF have asserted repeatedly that they will continue their fight. Furthermore, Mexico, which has admitted that it is assisting opponents of

Proposition 200, has declared that, if the ACLU and MALDEF are unsuccessful in federal court, Mexico will take the case to the United Nations Commission on Human Rights!

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

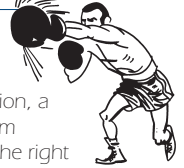
Proposition 200 creates a verification process to enforce current laws that prohibit state and local governments from providing non-essential public benefits to illegal aliens. This process has been used since 1996 to verify eligibility for federal benefits, but Proposition 200 makes Arizona the first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



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ten report with federal authorities when they uncover a violation of federal immigration law.

Proposition 200's opponents, led by the ACLU and MALDEF, sued on November 29, 2004. When Arizona officials who were supposed to be defending Proposition 200 failed to object, the Arizona federal district court imposed a temporary restraining order (TRO) on November 30, 2004. Fearing that Arizona officials would not mount a vigorous defense, MSLF's clients sought to intervene in the case, a motion that was granted quickly by the Arizona district court. With MSLF in the case and presenting argument, the Arizona federal district court, less than one month later, lifted the TRO and refused to enjoin permanent implementation of Proposition 200. The ACLU and MALDEF sought an emergency appeal from the Ninth Circuit, which was denied, and then proceeded with a regular appeal that was then dismissed for lack of standing.

## NEW MEXICANS FIGHT TO FIND ENERGY

With energy prices at all time highs, oil and gas operators in New Mexico have joined in defending a plan to search for oil and gas on federal lands in two counties in extreme southern New Mexico; in so doing, they are opposing efforts by Governor Bill Richardson and environmental groups to kill the plan. The Independent Petroleum Association of New Mexico (IPANM) intervened in a lawsuit filed by Governor Richardson contesting an oil and gas leasing plan issued by the federal Bureau of Land Management (BLM) in Otero and Sierra Counties; that lawsuit has been consolidated with one filed by environmental groups.

Although federal law requires that federal agencies obtain the views and recommendations of western governors with regard to the development of energy resources on the federal lands within their States, federal agencies may not accede to every demand that a governor might make when the nation's laws and the national interest, such as addressing the nation's energy crisis, dictate otherwise. Moreover, New Mexico will receive millions of dollars in royalties over the next several decades, not to mention hundreds of very high-paying jobs.



On January 24, 2005, the BLM approved its Resource Management Plan Amendment for Oil and Gas Leasing and Development in New Mexico's Otero and Sierra Counties. The final plan provides for leasing of federal minerals on more than 1.9 million acres of public lands; 40,500 acres will be available with a stipulation of No Surface Occupancy, 484,100 acres with a stipulation of Controlled Surface Use, and 1,406,600 acres with standard lease terms and conditions.

Moreover, the plan strictly regulates and carefully monitors activity and allows a maximum surface disturbance of only 1,589 acres in Otero and Sierra Counties from well pads, roads, and pipelines—less than one-tenth of one percent of the total surface area. At most, 141 exploratory wells could be drilled, resulting in no more than 84 producing wells. Experts assert that the plan is the most restrictive oil and gas leasing plan ever issued by the BLM. However, New Mexico Governor Richardson asked that more than 1.5 million acres be placed off-limits to drilling or under stipulations that would place significant barriers to effective exploration and development, which the BLM rejected as not providing a reasonable balance between federal and state interests. Governor Richardson filed his lawsuit on April 22, 2005.

## PENDLEY'S VIEW

Things have gotten really weird at the U.S. Forest Service. In August 2003, the Forest Service closed Cave Rock near Lake Tahoe to climbing due to demands by American Indian religious practitioners. That is not the weird part; the Forest Service and other land managing agencies, under both the Clinton and Bush Administrations, have closed "sacred" federal land from public use before.

The weird part is the reason. The Forest Service concluded that there is a religious "power" at Cave Rock, which is a "renewable" resource, and that the Forest Service must ensure that "the short-term uses at Cave Rock...will not compromise the area's long-term [religious] productivity." That was not all. The Forest Service closed Cave Rock for the climbers' own good, concluding that "the intimate contact between climbers and Cave Rock leads to an exchange of power between the rock and climbers, [which] can have ill effects on both the visitor and [American Indian religious practitioners]."

Preserving the "power" of Cave Rock was not the Forest Service's only concern; it determined that recreational activities by climbers and non-climbers "would affect the property's pre-European encroachment feel and association." Plus, conversations by climbers on Cave Rock would "affect use by [American Indian] spiritualists, as rituals are intended to occur during serene and tranquil periods; this would affect the feel and association of the property."

The Forest Service considered closing Cave Rock only during specific time periods, but rejected that idea because American Indian religious "practitioners cannot follow a predictable schedule in knowing when the power that Cave Rock provides will be needed...." So, the Forest Service closed Cave Rock completely. The case is at the Ninth Circuit!

A stylized, handwritten signature in black ink, appearing to read "Pendley". The signature is written in a cursive, somewhat abstract style with long, sweeping strokes.

## WEB PAGE POLL

Visitors to MSLF's web site at [www.mountainstateslegal.org](http://www.mountainstateslegal.org) responded to the following question: "Pennsylvania requires that voters approve proposals to build so-called *Taj Mahal* schools. But, a school board will not let its residents vote on whether to raise taxes by 10-15 percent to pay for the building. Is this legal?" One hundred percent (100%) said, "No. Residents who will pay for this excessively expensive building, which is far in excess of needs given future enrollment, have the right, by law, to vote." Zero percent (0%) said, "Yes. The decision to build was okayed by a school board after checking with the school officials and Pennsylvania's Education Department. They know best."

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."

## SOUTH DAKOTA SUPREME COURT WILL RULE ON HUNTING LAW

Two farming families in central South Dakota, who successfully challenged the constitutionality of a state law that denies them the right to prevent hunters from trespassing on their property, appeared before the South Dakota Supreme Court on August 31. The families urged the Supreme Court to uphold the ruling of a South Dakota Circuit Court that the law, in the words of that court, "clearly and unmistakably" "violates constitutional principles" because it is "the very kind of thing that the Takings Clause[, which] 'stands as a shield against the arbitrary use of governmental power[,] was meant to prevent.'" On behalf of Jeff and Tricia Messmer of Wessington Springs, in Jerauld County, and Robert and Judith Benson of Winner, in Tripp County, MSLF argued that South Dakota had confiscated private land, made it a public easement, and allowed hunters to shoot over it.

Until recently, South Dakota law allowed hunting and fishing along sec-

tion lines or other highways if such rights-of-way are used for vehicular traffic; however, hunters were not allowed to fire over or onto privately owned land without the landowners' permission. In March 2003, that law was amended to permit hunters to fire at and kill small game that takes flight from a right-of-way; property owners are barred from preventing hunters from firing over or onto their land at small game that has traveled onto their land from the adjacent right-of-way.

The law affected a fundamental change in South Dakota law, which, for decades, barred hunting on private property without the owners' permission and recognized the right of owners to deny entry to all others. Plus, the U.S. Supreme Court has held that the firing of weapons over or onto private property is a physical invasion, which, in turn, is a taking "for public use" of "private property" without "just compensation."

On October 22, 2003, the families



filed their lawsuit. After full briefing and oral arguments, the trial court ruled in favor of the families on November 30, 2004. South Dakota appealed.

## CLINTON'S UTAH DECREE AT 10TH CIRCUIT

President Clinton's designation of 1.7 million acres of federal land in Utah as a national monument and off limits to all economic and many recreational uses was before the U.S. Court of Appeals for the Tenth Circuit, almost nine years to the day after Clinton's controversial designation of the Grand Staircase-Escalante National Monument in Kane and Garfield Counties.

In September 1996, Clinton issued his decree due to frustration over Congress' refusal to designate more Utah land as wilderness and in order to kill an underground coal mine that would have employed 1,000 Utahans and would have produced a \$20 million annual revenue stream for the local economy. According to official White House documents, Clinton also



acted to get environmental groups to aid his 1996 re-election. MSLF sued on October 31, 1996.

After years of foot-dragging by Clinton lawyers and tardy demands to intervene by environmental groups, on April 19, 2004, the Utah federal district court ruled that it lacked

authority to rule whether Clinton acted unconstitutionally. MSLF argues that the Supreme Court has ruled consistently that federal courts may determine whether a president has acted in accordance with the Constitution and the power granted to him by Congress. Most recently, the U.S. Court of Appeals for the District of Columbia rejected Bush Administration arguments that courts could not review President Clinton's monument decrees.

### 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](http://www.mountainstateslegal.org)!

# MSLF'S FIGHT FOR LIBERTY AND RULE OF LAW SOON 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* to be released by Regnery Publishing, Inc., in Washington, D.C. is the inspirational and exciting behind-

**"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."**

the-scenes tale of the headlines that MSLF made, not only 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

**"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."**



## WARRIORS FOR THE WEST:

*Fighting Bureaucrats, Radical Groups, and Liberal Judges on America's Frontier*

**William Perry Pendley**

respected and thought-provoking books to conservative readers who seek great reading that counters the dominant political leanings of the main stream media. Regnery, which published William Perry Pendley's *War on the West: Government Tyranny on America's Great Frontier*, has enjoyed record sales with more than a dozen *New York Times* bestsellers in the last two years. *Warriors for the West* will hit the book stores in the first days of 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 preferences 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

**"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."**

taking of "private property" for ostensible "public use" without "just compensation"; denial of access to private land as guaranteed by law makers more than 100 years ago; and, the newest battles of the day, illegal immigration and restric-

tions 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 agenda, 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 FREE 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 a copy of this impressive and inspirational work in the first days of 2006.

**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!**

- 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.

## MSLF CANNOT REST; ITS ROLE ESSENTIAL TO REMAINING FREE

In 2005, MSLF will have been going to court for 28 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 28 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!

- 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 2004 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 \_\_\_\_\_

## UTAH FAMILY SUES FEDS FOR REFUSAL TO CLEAN UP WORLD WAR II BOMB RANGE

In 1945, as U.S. Marines continued their assault on the islands of the Pacific and the units of the Japanese Imperial Army massed there, the U.S. government approached Jesse Fox Cannon of Toole County, Utah, to obtain permission to use 1,425 acres of mining claims he owned near the Army Dugway Proving Grounds in west-central Utah. Jesse Fox Cannon quickly agreed and entered into a contract that allowed the Army to test explosive munitions in a corner of his property on and near his Yellow Jacket mining claim.

The Army's "Project Sphinx" was to be conducted on mineshafts to simulate Japanese cave fortifications, like those the Marines had encountered on Saipan and Iwo Jima. Contrary to terms of the contract, however, the Army not only bombed all of Jesse Fox Cannon's claims, it also used non-explosive munitions: phosgene, mustard agent, and defoliants. In total, the Army utilized more than 3,000 rounds of ammunition, 12,000 pounds of conventional bombs, and 23 tons of



chemical weapons in the testing project. To make matters worse, the Army continued using Jesse Fox Cannon's property, without permission, until the 1960's.

Although the contract between the U.S. government and Jesse Fox Cannon provided that, within 60 days from the end of its testing, the Army would restore the property to the same condition it was in prior to the bombing, the Army did no reclamation. Over the years, the Cannon family sought to be paid for the damages and to have the federal government do as it promised to do, all to no avail. Finally, in desperation, the family sued. The federal government argued that it could not be sued; the U.S. Court of Appeals for the Tenth Circuit agreed and dismissed the case.

Douglas Cannon, Allan Cannon, and Louise Cannon have filed a lawsuit charging that the United States is in violation of the Resource Conservation and Recovery Act (RCRA) and must clean up its mess.

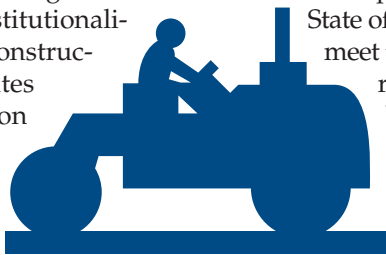
## DELAWARE HIGHWAY SUIT IS NOW A GO

A lawsuit filed in Delaware federal district court in February 2003, by a small, family owned, Wilmington business challenging the constitutionality of a federal highway construction program that mandates the issuance of contracts on the basis of race was revived recently when President George W. Bush signed the \$286.4 billion federal highway bill into law. Action on the lawsuit by Enterprise Flasher Company, of Wilmington, Delaware, was delayed when the federal statute lapsed.

Enterprise Flasher Company bids to do the traffic control work on highway projects throughout the Middle Atlantic States; however, at least one company said not even to bother to bid

on that company's work due to the requirements of a federally-mandated racial preference program. The State of Delaware, which must meet those requirements, recently concluded that between 85 and 90 percent of the mandated 10 percent federal racial set aside was achieved using only traffic control subcontractors.

The federal racial set aside was adopted first in 1982; it has remained unchanged since then. Only in 1997 and 1998 did Congress debate whether to keep the controversial racial preference provision. Many experts believe the program will not survive court scrutiny especially given a 1995 ruling by the U.S. Supreme Court.



## FEDS TRY TO STIFF INJURED LESSEE

The federal government's unlawful breach of a producing and valuable geothermal lease requires that the former lessee be compensated in accordance with well-established legal principles, the former leaseholder asserted last summer in arguments at the U.S. Court of Federal Claims in Washington, D.C. Mr. Stanley K. Mann, who won a ruling from the U.S. Court of Appeals for the Federal Circuit that the United States had breached his lease and who now seeks damages for that breach, argues that the federal government's assertions that it owes him nothing and that it is not required to reimburse him for the \$1 million spent discovering that the lease is valuable, are nonsense.

In 1981, the Bureau of Land Management (BLM) issued a geothermal lease near Las Cruces, New Mexico, which became a 40-year lease after geothermal resources were discovered.

In 1993, the BLM mailed a notice that the lease would be cancelled in 30 days unless Mr. Mann took specific action. That notice was not sent to Mr. Mann's personal address; instead, it was sent to a former address of a company of which Mr. Mann was an officer. When the notice was returned to the BLM unclaimed, the BLM terminated Mr. Mann's lease. Two years later, during a visit to the local BLM office, Mr. Mann was advised that his lease had been cancelled. When his appeal to the Interior Board of Land Appeals (IBLA) was unsuccessful, Mr. Mann sued, in April 1998, in the U.S. Court of Federal Claims in Washington, D.C.

In September 2002, the court ruled in favor of the United States and dismissed Mr. Mann's lawsuit. In June 2003, however, the Court of Appeals reversed the trial court, ruled in favor of Mr. Mann, and remanded the case to the trial court for the determination of "an appropriate remedy." Since that time, Mr. Mann and the BLM have been engaged in discovery. A trial is scheduled for late November and early December 2005.

## NOTABLE



## QUOTES

"You're doing a great job!"

**John M. Ventrella**  
*Punta Gorda, Florida*

"Please accept my donation and continue your good work."

**George Bennett Klemm**  
*Redding, California*

"Thank you for a job well done—keep it up!"

**Neil C. Terhune**  
*Miles City, Montana*

"You're doing good works."

**Junious G. Montgomery**  
*Carlsbad, California*

"Thank you for your great service and expertise!"

**Mary Field Arehart**  
*Baltimore, Maryland*

"Thank you so much for *Born Fighting*. My whole family is enjoying it."

**Sarah Paris Kraft**  
*Lake Zurich, Illinois*

"Read *The Litigator* each month. Spend the next day angry at the Feds! Keep up the good work."

**R.A. Forker**  
*Savannah, Georgia*

"Keep up your excellent work... God bless America."

**Clayton H. Nielsen**  
*Racine, Wisconsin*

"Thank you for your dedication to saving our democracy and way of life."

**Peggy D. Robichaud**  
*Canton, Michigan*

"You are doing amazing work!"  
**Harriett Porch**  
*Laguna Hills, California*

"Great; keep it up."  
**Elbert Bicknell**  
*Northwood, New Hampshire*

"Congratulations on the defense of Proposition 200 for the citizens of Arizona, a remarkable achievement considering you appeared before the outlandish 9th Circuit."

**Barbara J. Anable**  
*Hot Springs, Arkansas*

"Keep up the great work!"  
**Jerry D. Monson**  
*Mahtomedi, Minnesota*

"I'm from Arizona and voted for Proposition 200. I thank God you are doing this noble deed."

**George E. Jardee**  
*Tucson, Arizona*

"Isn't it a shame we must pay to defend the God given rights that are supposed to be protected in the Constitution?"

**Sheila E. Ford**  
*Caldwell, Idaho*



## LEGAL ACTION

■ MSLF filed its brief at the Ninth Circuit urging that a Forest Service decision closing Nevada's Cave Rock as "sacred" be stricken.

■ A federal district court in Utah has ruled that the National Park Service may close a trail to Angel Arch; Congress intended that the trail stay open.

■ A group of Montana ranchers that was forced to sue the U.S. Forest Service when denied access to its dam and reservoir filed its reply brief in Montana federal district court.

■ Yet another group of Montana ranchers denied access to its dam and reservoir by the Forest Service has filed its motion for summary judgment.

■ Several elite law schools that assert that they may not be required, on loss of federal funds, to allow military recruiters on campus filed their briefs at the U.S. Supreme Court.

■ Taxpayers who want local voters to decide if the school board may build a *Taj Mahal* school filed an appeal of a ruling dismissing their lawsuit.

■ Landowners who asserted that use of the Endangered Species Act to protect cave bugs that exist only in two counties in Texas have lost their appeal to the U.S. Supreme Court; they may now file to receive "just compensation" for the taking of their property.

■ A group of Montana ranchers has appealed an adverse ruling by a Water Master; the Forest Service challenged the group's water rights.

■ The U.S. Supreme Court ruled that "public use" means whatever local governments say when those governments want private property to give to other private owners.

■ MSLF has challenged the ruling by a federal appellate court in Washington, D.C. that the federal government is exempt from a Supreme Court ruling that agencies may not moot a case by voluntarily abandoning their illegal activity.

■ A Texas organization has sued in Oklahoma state court contending that a law that discriminates against out of state taxpayers is unconstitutional.

■ The District of Columbia government has been denied federal funds to use to seize a family's property.

## AFTER 4 YEARS, COURT SAYS CLINTON HAD UNLIMITED POWER

Four years, one month, and 21 days after briefing was completed in a case in which Clinton officials conspired to circumvent federal law and deny miners the right to use their claims, a federal district court ruled against the miners. Plus, the court twice refused to hear arguments in the fact-bound case. Finally, the court relied on a 1915 U.S. Supreme Court case that had been overturned by a federal land statute adopted in 1976! An appeal is planned.

Mount Royal Joint Venture and Ernest Lehmann alleged that federal officials in the Clinton Administration plotted to kill their Montana claims, even though federal studies proved the claims could be used without environmental harm. All briefing on the case, in which the Bush Administration defended the Clinton Administration, had been completed on July 5, 2001. Earlier this year, the case was assigned to a federal district court judge in Florida. He wrote the decision.

The case involves the Tootsie Creek Deposit in the Sweet Grass Hills Area, that is, the East Butte, Middle Butte, and West Butte Mining Districts in Liberty and Toole Counties in north central Montana, an area that has been mined since the first miners came west. The area has seen so much mining activity over the years that it now consists of intermingled private, state, and federal surface and mineral interests; in fact, most of the area is privately owned. In the 1980's and early 1990's, the Bureau of Land Management (BLM) prepared the environmental studies necessary to permit



mining to go forward in full compliance with various federal and state environmental laws.

However, shortly after President Clinton was inaugurated, BLM employees searched for ways to end all mining in the Sweet Grass Hills Area. In a secret government document, one senior official proposed "[w]ith careful handling, the approval [of the miners' plan] could be delayed many months or even years." The Director of the BLM quickly approved that proposal, after which a high-level task force convened in Washington, D.C. to "stop [mineral] development" in the Sweet Grass Hills Area. The BLM withdrew the area from mining for two years; however, its asserted bases were a sham, having been rejected in an earlier BLM decision. Then, when that withdrawal expired, the BLM adopted another illegal withdrawal and later, yet another. The miners sued in October 1999.

One legal issue in the case is the extent of a president's authority and the authority of his officials to withdraw federal lands from activity such as mining. In the early part of the 20th Century, the Executive Branch usurped the power over federal lands granted by the Constitution, culminating in a Supreme Court ruling in 1915 that Congress had "acquiesced" in the Executive's seizure of Congress' power. In 1976, Congress reasserted its power when it adopted the Federal Land Policy and Management Act (FLPMA), which sharply limited the Executive's withdrawal authority. In its August 2005 decision, the district court ignored FLPMA.



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