

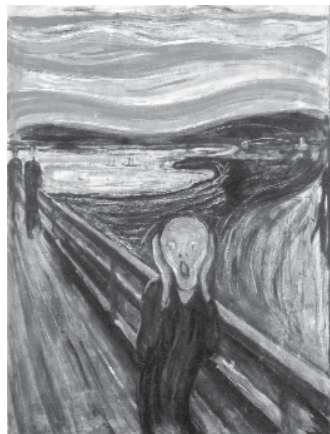
The *Litigator*

MSLF'S Clients Battle for Access to Oil & Gas

ENERGY GROUPS FIGHT CLIMATE HYSTERIA

Environmental groups may not use global warming hysteria to kill oil and gas leasing throughout the Mountain West, two oil and gas associations asserted in separate filings in federal district courts in New Mexico and Montana. The actions by the associations come as the "consensus" regarding "global warming" or—in a shift of phrase to accommodate ever increasing public skepticism about "warming" —"climate change" disintegrates.

The Independent Petroleum Association of New Mexico (IPANM), a non-profit organization formed in 1978 that protects and defends the interests of independent oil and natural gas producers, their employees and service companies, and the Independent Petroleum Association of Mountain States (IPAMS), which was formed in 1974 and includes more than 400 independent oil and natural gas producers, service and supply companies, banking and financial institutions, and industry consultants committed to environmentally responsible oil and natural gas development in the Intermountain West, each filed motions to intervene in lawsuits filed by environmental groups in New Mexico and Montana. Both associations aver that their members, who won the legal rights to scores of oil and gas leases issued by the federal Bureau of Land Management (BLM), will be affected adversely by the lawsuits filed by the environmental groups, which seek to void the leases. The environmental groups



claim that the BLM had a duty to investigate the amount of green house gases likely to be generated by the use of the leases and the impact of those gases on so-called global warming and climate change. The two oil and gas associations argue that the BLM has no such duty under federal law.

In March 2008, six environmental groups protested the BLM's New Mexico oil and gas lease sale of April 2008. Claiming that upstream oil and gas production emits greenhouse gas (GHG) emissions and thus contributes to global warming and climate change, the groups argued that the BLM should have addressed global warming issues at length in the environmental documents the BLM is required to prepare before issuing the leases.

On July 11, 2008, the BLM dismissed the groups' protest, concluding that the groups "have not alleged . . . nor demonstrated by competent evidence that BLM's decision . . . violated any law. The protest fails to identify any specific effect on global warming or climate change that will result from leasing the protested parcels. Further the protest fails to identify any change in the affected environment in which the action will occur that would alter our analysis of the other effects of the leasing action."

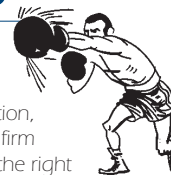
On January 14, 2009, the groups filed a federal lawsuit challenging the BLM's April 2008 lease sale, which includes 43 lease parcels totaling 28,729.51 acres, and the July 2008 sale, which includes 49 lease parcels totaling 39,946.12 acres. The groups seek to set aside the BLM's actions and void the leases.

Meanwhile in March, May, August,

Spring 2009

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.



MOUNTAIN STATES LEGAL FOUNDATION

Executive Offices:
2596 South Lewis Way
Lakewood, Colorado 80227

303-292-2021
Fax 303-292-1980

www.mountainstateslegal.org

and October, 2008, three environmental groups protested several of the BLM's Montana oil and gas lease sales held in 2008. In October 2008, the BLM dismissed the groups' protests on the same basis as had the New Mexico BLM. On December 17, 2008, the groups filed a federal lawsuit challenging the BLM's April 2008 lease sale, which includes 10 lease parcels totaling 6,050.34 acres; its June 2008 lease sale, which includes 24 lease parcels totaling 11,289.77 acres; its August 2008 lease sale, which includes 12 of 15 lease parcels totaling 7,957.42 acres; and, its November 2008 lease sale, which includes 17 leases totaling 14,879.31 acres. As in the New Mexico lawsuit, the environmental groups seek to set aside the BLM's actions and void the leases.

According to the most recent public opinion polls, more Americans are skeptical about the seriousness of global warming than ever before and global warming ranks dead last in a poll of the issues of concern to Americans!

IDAHO MAY RESTRICT UNIONS "RIGHTS"

The Supreme Court of the United States, consistent with a friend of the court brief filed by MSLF, ruled that a State's restrictions on political payroll deductions do not violate a union's First Amendment rights. MSLF had argued that the rulings by the Idaho federal district court and the U.S.

Court of Appeals for the Ninth Circuit, which held that the restriction adopted by the Idaho Legislature implicates and interferes with the speech rights of unions as guaranteed by the Constitution, are in error.

The Supreme Court agreed by holding, in a 7-2 opinion written by Chief Justice John Roberts, "Idaho is under no obligation to aid the unions in their political activities. And the State's decision

not to do so is not an abridgment of the unions' speech; they are free to engage in such speech as they see fit. They are simply barred from enlisting the State in that endeavor."

The Ninth Circuit had concluded that the Idaho statute "does not prohibit Plaintiffs from participating in political activities, but it ... mak[es] the collection of funds for that purpose more difficult" and thereby embraced the holding of the district court that the Idaho statute "eliminates the easiest and least expensive way for unions to collect funds for political speech." MSLF argued that the Ninth Circuit erred and, if upheld, its ruling would produce outrageous results because it failed to recognize that "the First Amendment does not guarantee a right to the least expensive means of expression."



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: "Colorado's concealed carry law applies across the state; but the University of Colorado bars any permittee from carrying on campus. Is this legal?" One hundred percent (100%) said, "No. Colorado law is clear that anyone with a permit may carry throughout the State with certain very specific exceptions." Zero percent (0%) said, "Yes. University of Colorado campuses are 'gun free zones'. No concealed carry is needed there because students are safe."

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

In 2006, Illinois's General Assembly required the state's nine riverboat casinos to contribute "3 percent of their [daily] adjusted gross receipts" to a "Horse Racing Equity Trust Fund" because on-track betting revenues at the five Illinois tracks with live horse racing had declined, purportedly due to riverboat gambling.

Days after the Act became law, four Chicago area casinos sued arguing that the Act was an unconstitutional taking because it forced them to subsidize their competitors and did not serve a "public use." Although the trial court struck down the Act, it required the casinos to contribute to a protest fund which, by the time the litigation is completed, may exceed \$100 million. Illinois and the casinos both appealed to the Illinois Supreme Court.

In June 2008, the court ruled for Illinois declaring that, because the Act "is in no way tied to real property" or any other "identifiable property interest," an analysis of the Constitution's Takings Clause was not required. After the Illinois Supreme Court refused, in September 2008, to rehear the case, the casinos sought U.S. Supreme Court review in January 2009.

The Court should hear the case and—given the clear meaning of the Takings Clause and its own jurisprudence—hold for the casinos. Money is property; indeed, the Court has held that money involves the same rights the Constitution attaches to land or personal property: the "right to possess, use and dispose of it." A ruling reversing the Illinois court's misreading of a 1998 Supreme Court decision (in fact, a miscounting of the votes) and its mistaken view that the Takings Clause does not apply to taxation (it does by requiring that a tax support the government) will be welcome news, not only in Illinois, but also throughout the land as federal officials search for new revenues.

MSLF ENSURES SUPREME COURT REVIEW OF OUTDATED LAW

A powerful friend of the court brief by MSLF, in which it stood alone, ensured that the Supreme Court of the United States will review the constitutionality of an exceptional federal law that Congress adopted during unique circumstances but that Congress has not changed notwithstanding the passage of more than 40 years.

Northwest Austin Municipal Utility District No. 1, in Travis County, Texas, performs various governmental functions governed by an elected five-member board. Because the District is within a “covered jurisdiction” under Section 5 of the 1965 Voting Rights Act, any change in voting procedure requires prior approval—the “pre-clearance”—of the Attorney General of the United States. The requirement applies even though no election-related lawsuit has ever been filed against the District, no person has ever questioned its voting procedures, and no one has ever filed a complaint about its elections. In fact, despite the favorable record of Texas, Travis County, and Austin in protecting the right



to vote, when Congress reauthorized the Voting Rights Act in 2006, it continued to require “pre-clearance” by the District and all other “covered jurisdictions.”

In 1965, Section 5 and what the Supreme Court, in 1966, called its “uncommon exercise of congressional power”

were essential given persistent, pervasive, and intransigent State action undertaken to deny African-Americans the right to vote. The Court held that, “under the compulsion of these unique circumstances, Congress responded in a permissibly decisive manner.” In reaching that conclusion, the Court reviewed a voluminous legislative history demonstrating that an “insidious and pervasive evil” had been “perpetuated in certain parts of the country through the unremitting and ingenious defiance of the Constitution” and that the past remedies prescribed by Congress had been unsuccessful. Thus, the Court held that Congress’s response was harmonious with and in proportion to the historical record.

Not all enactments undertaken pursuant to Congress’s powers under the

Fifteenth Amendment, such as the Voting Rights Act of 1965, pass judicial scrutiny, however, given that congressional involvement in matters normally left to the States is extra-constitutional. Thus, beginning in 1997, the Supreme Court demanded that Congress set forth a historical record to justify “exceptional” and “unique” actions, such as those undertaken three decades earlier. Over the next several years, the Court struck down acts of Congress that failed to meet that test.

It was in this context that, in 2006, the District filed a federal lawsuit arguing, among other matters, that Congress’s 2006 reauthorization of Section 5, lacking any record as to why the “exceptional” action adopted in 1965 was still justified in 2007, was unconstitutional. In May 2008, a three-judge panel of the federal district court for the District of Columbia brushed the challenge aside. On January 9, 2009, the Supreme Court, with MSLF’s brief before it, agreed to review the ruling.

In its brief in support of the District, filed in time for the April 29 arguments before the Supreme Court, MSLF argued that Section 5 is unconstitutional.

CITY USES QUOTA TO PROMOTE FIREMEN

Governments may not discard the results of a civil service test because the test fails to provide what politicians conclude is a defensible racial balance, MSLF advised the Supreme Court of the United States. MSLF, which won a landmark 1995 Supreme Court case involving the U.S. Constitution’s guarantee of equal protection, wrote in an *amicus curiae*



© 2001 The Record (Bergen County, NJ)
Photo by Thomas E. Franklin

brief that the City of New Haven, Connecticut, and its politicians violated the Constitution and rulings of the Supreme Court when they discarded the final results of a test used to identify candidates for promotion to fire department captain and lieutenant because no African

Americans passed the test. A Connecticut federal district court and the U.S. Court of Appeals for the Second Circuit had upheld the City’s decision to promote no one.

In 2003, New Haven sought to fill fire department captain and lieutenant vacancies using job-related examinations and merit-selection rules. Although great care had been taken to ensure that the examination did not discriminate in any way against minority candidates, the results of the test

were unacceptable to the City because the process produced no African American candidates for captain or lieutenant.

Frank Ricci, who scored highest on the examinations, and others filed a lawsuit challenging the City’s decision. The District Court held that the “undesirable

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.

outcome” of the test “could subject . . . the City’s leadership to political consequences.” The District Court found that no race-conscious action took place because no one was promoted.

On appeal, a Second Circuit panel upheld the District Court’s decision. *En banc* rehearing was denied by a vote of 7-6. On January 9, 2009, the U.S. Supreme Court granted *certiorari*, and on February 26, 2009, MSLF filed its brief.

HORACE H. KOESSLER : A LIBERTY LEGACY

Horace H. "Shorty" Koessler, one of the original members of MSLF's Legacy Society who died in 1987 in a tragic plane crash, was a life-long supporter of MSLF.

He graduated from the University of Chicago in 1930 and received his medical degree from McGill University in 1938. He joined the Army Air Corps as a flight surgeon, served in the 441st Troop Carrier Command, and participated in the Normandy invasion in 1944. An avid hunter and fisherman, he moved to Montana where he enjoyed the family's Gordon Ranch in northwestern Montana, which his father had pur-



Photo compliments of www.gordonranch.com

chased in 1924.

In conjunction with others, he started Intermountain Lumber Company, which owned and operated a number of sawmills and finishing plants in western Montana; he retired as its president and CEO in 1972. A political conservative, he supported MSLF and its mission to protect and preserve individual liberty, the right to own and use property, limited and ethical government and the free enterprise system. He demanded excellence of himself and of those he supported, which included MSLF, which, he always said, "does an excellent job!"

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 your 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..

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.

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!

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!

- 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.**

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 _____

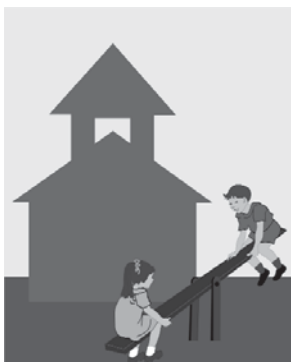
Street _____

City _____ State _____ Zip _____

Day Phone (_____) _____ E-mail Address _____

JUDGES MAY NOT RUN STATE SCHOOLS

An Arizona federal district court and the U.S. Court of Appeals for the Ninth Circuit overstepped the limits imposed upon them by the Constitution and its embrace of federalism, MSLF advised the Supreme Court of the United States in a friend of the court brief in support of Arizona voters. According to MSLF, America's Founding Fathers intended that the federal courts' authority would be limited; in fact, Alexander Hamilton wrote that the "necessity of local administrations for local purposes, would be a complete barrier against the oppressive use of such a [federal] power."



In 2000, individuals filed a class action lawsuit against Arizona officials for failing to provide English Language Learner (ELL) students of the Nogales Unified School District with a program reasonably calculated to teach them English, in violation of the federal Equal Education Opportunity Act (EEOA). In

January 2000, the District Court held that Arizona's system for financing education was arbitrary and had led to a series of ELL deficiencies. Remedial orders followed, all requiring Arizona to "rationally fund" ELL programs. In December 2005, the District Court imposed sanctions against the State that leveled off at \$2,000,000 per day until and unless the state legislature passed a law that "appropriately funded ELL programs."

Arizona officials appealed the order and filed a motion to have the original 2000 order declared satisfied. The motion was denied in April 2006 and an appeal taken that resulted in a remand and subsequent evidentiary hearings to determine if changed circumstances required modification of the original court order. The evidence at the evidentiary hearing showed that, between 2000 and 2006, there had been such a change.

Nevertheless, the District Court and the Ninth Circuit denied relief.

OFFSHORE ENERGY RULING IS TESTED!

The U.S. Court of Appeals for the Ninth Circuit must rehear a 2-1 ruling issued by a panel of the appeals court that halted offshore drilling in Alaska's Beaufort Sea, MSLF urged on behalf of its members and on behalf of the National Association of Manufacturers (NAM), and the Chamber of Commerce of the United States of America. In so doing, the three organizations argued that the ruling conflicted with an earlier *en banc* ruling that limited legal challenges of environmental studies.



In fact, the judge who dissented from the panel's ruling wrote that the new decision overturned the *en banc* ruling. In its earlier 2008 ruling, the Ninth Circuit held that, so long as there is a "full and fair discussion of the environmental impacts" that "inform[s] decisionmakers and the pub-

lic," the agency has met its duty. The ruling was seen as a blow to the litigation efforts by environmental groups to force "paralysis by analysis" by endless environmental studies.

In 2002, the Minerals Management Service (MMS) issued a five-year lease sale schedule for the Outer Continental Shelf of Alaska, which involved three separate lease sales in the Beaufort Sea. In 2006, Shell Offshore, Inc., which had won some of the leases, submitted the first version of its exploration plan for the Beaufort Sea region. The final version of Shell's exploration plan was approved in February 2007.

In April 2007, environmental groups and others sued. In August 2007, the Ninth Circuit, which has original jurisdiction of the matter, stayed the MMS's decision. In November 2008, the panel ruled.

ENERGY STUDY DONE

A Montana voluntary, non-profit trade association, whose members include oil and natural gas producers, gathering and pipeline companies, petroleum refineries, and service providers and consultants that strive to maintain a positive business climate for the petroleum industry in Montana moved to intervene in a lawsuit filed by environmental groups challenging the Montana Board of Oil and Gas Conservation's approval of 23 new gas wells in eastern Montana. The Montana Petroleum Association told a Montana State Court in Fallon County that its members will be affected adversely if the court grants the relief sought by the groups, which is not only the invalidation of the new drilling permits but also a requirement that a new programmatic environmental study be prepared for all of eastern Montana, which will shut down all oil and gas drilling in Montana.

In 1915, a natural gas field was discovered in the Cedar Creek Anticline in Fallon and Carter Counties of far-eastern Montana. In 1925, gas production began, and, by 1995, the Cedar Creek gas field consisted of 150 wells producing 10 billion cubic-feet of natural gas per year. Since 1995, both the number of wells and the gas produced has expanded significantly. Before 1997, gas well spacing rules limited development to one well per 320 acres. In 1997, well spacing was increased to one well per 160 acres. In 2003, well spacing was again increased to one well per 32 acres. This spacing continues today.

In 1998, a programmatic environmental impact statement was prepared by the Board as to oil and gas drilling in Montana. Pursuant to that study, as of 2008, more than 1,100 wells had been drilled, and the Board estimates an average of an additional 71 wells will be added to the field per year.

On August 11 and 12, 2008, the Board issued environmental assessments for 23 new gas wells proposed by Fidelity Exploration and Production Company in the Cedar Creek gas field. On October 9, 2008, two environmental groups filed suit. The Montana Petroleum Association argues that the studies comply with state law and the drilling should go forward.

LEGAL



ACTION

- Efforts by a Montana man who sought to gain access to his private property via a national park ended when the Supreme Court of the United States declined to review a decision by the U.S. Court of Appeals for the Ninth Circuit that non-motorized access was “reasonable.”
- The U.S. Supreme Court declined to review a Ninth Circuit ruling allowing environmental groups to intervene in Quiet Title Act lawsuits.
- A national group and three Colorado students replied to a motion by the University of Colorado to dismiss a lawsuit arguing that the university’s ban on concealed carry on campus violates state law and the Constitution.

MSLF ENTERS BATTLE FOR GUN RIGHTS!

A rule adopted by the National Park Service to bring its policies regarding carrying weapons within units of the National Park System in accordance with those of the U.S. Forest Service and the Bureau of Land Management is legal, MSLF asserted in seeking to intervene in a lawsuit filed by groups attempting to invalidate the rule. MSLF, which was a friend of the court in *District of Columbia v. Heller* as to the scope of the Second Amendment, previously had urged adoption of the new rule as consistent with the Constitution’s commitment to federalism and to the right of citizens to protect themselves and their families and to defend against tyranny.

In late December and early January, the Brady Campaign to Prevent Gun Violence and the National Park Conservation Association, Coalition of National Park Service Retirees, and



Association of National Park Rangers challenged the rule in separate lawsuits. MSLF sought to intervene in those lawsuits on behalf of its members, many of whom live near and pass through units of the National Park System.

In 1916, Congress authorized the Secretary of the Interior to publish rules and regulations for the use and management of the parks, monuments, and reservations. In 1966, the Secretary published a rule making it unlawful, with limited exceptions, to carry or discharge a firearm in a national park. In December 2007, 51 U.S. Senators wrote the Secretary urging him to amend this regulation by adopting each State’s own firearms laws. Such final rules were promulgated in December 2008, and became final on January 9, 2009.

In March 2009, a Washington, D.C. federal district court allowed MSLF to intervene but stayed the new rules.

- MSLF filed a brief in support of the petition for U.S. Supreme Court review of the ruling by the Illinois Supreme Court that money is not property and thus not protected by the Constitution’s Taking Clause.
- A Utah family’s demand that the U.S. Department of Defense clean up property bombed during World War II was denied by the Supreme Court of the United States; two lower federal courts ruled that they had no ability to hear the case.
- A Wyoming federal district court ended its consideration of a Wyoming “trail” case; the landowners will now appeal while seeking “just compensation” in two separate courts.
- On behalf of Young America’s Foundation, MSLF appeared before the U.S. Court of Appeals for the District of Columbia arguing that the Secretary of Defense must cut off funds to the University of California at Santa Cruz, which denied access to military recruiters contrary to the Solomon Amendment.

NOTABLE



QUOTES

“Keep up the good work!”

Louis P. Crane
Sierra Vista, AZ

“Keep up the good work. I’m sending a donation in today.”

Charles S. Williams
New Orleans, LA

“[K]eep up the battle!”

Dale Bungee
Dearborn, MI

“Really appreciate all your hard work.”

Becky P. Cruz
Saipan, MP

“I will always have a ‘soft spot’ for MSLF....”

Elissa McGarry
Mulino, OR

“Thanks to all at MSLF for your efforts to protect our rights.”

Jane Mauch
Russellville, AR

“[Y]ou all are working to assure that we citizens can remain free....”

John Salsgiver
Ford City, PA

“I admire what MSLF has done.”

Catherine C. Kinney
Sevierville, TN

“I support your efforts; get morality back in our Government.”

William B. Jacky
Las Vegas, NV

“Thank you very much for your excellent work.”

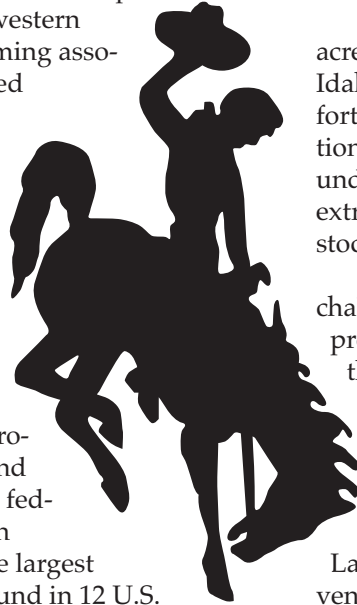
James H. Porter
Castle Rock, CO

“You are performing a wonderful service....”

Peter Roberts
Park City, UT

WYOMING GROUPS TO FIGHT MASSIVE LAND-LOCKUP LAWSUIT

An environmental group's attempt to lock up 25 million acres of federal land in six western states drew a response from two Wyoming associations whose members will be affected adversely by litigation filed by the group. The Wyoming Stock Growers Association and the Petroleum Association of Wyoming filed a motion to intervene in Idaho federal district court to challenge assertions by the Western Watersheds Project that 18 Resource Management Plans (RMPs) prepared by the Bureau of Land Management (BLM), as they relate to the greater sage-grouse, are procedurally defective, must be redone, and may not be the basis for any use of the federal land involved until they have been rewritten. The greater sage-grouse, the largest grouse species in North America, is found in 12 U.S. States and 3 Canadian provinces. Since 1999, at least seven times, environmental groups have sought, unsuccessfully, to put the sage-grouse on the Endangered Species Act list. The Wyoming associations believe these listing efforts and now this lawsuit are attempts to kill livestock grazing



and oil and gas development throughout the West.

Since 2006, the BLM has issued 18 RMPs, on 25 million acres of purported greater sage-grouse habitat in California, Idaho, Montana, Nevada, Utah, and Wyoming, which set forth the permissible uses of the lands and outline the conditions under which each use is allowed. Each RMP permits, under certain conditions and with various limitations, extractive uses such as oil and gas development and livestock grazing.

On December 17, 2008, the Western Watersheds Project challenged the 18 RMPs alleging that the BLM had failed to protect various sage-grouse populations. The group asserts that, in violation of the National Environmental Policy Act (NEPA) the BLM failed to take a "hard look" at the direct, indirect, and cumulative impacts of livestock grazing and energy development, including the impact on global warming, and failed to consider a reasonable range of alternatives, and, in violation of the Federal Land Policy and Management Act (FLPMA), failed to prevent undue degradation of the public lands and resources.

On February 20, 2009, federal lawyers filed a motion to dismiss or, in the alternative, to sever and transfer, arguing, in part, that the Idaho court may not consider land management actions taken in other states. The Wyoming associations joined in support of that effort.



**MOUNTAIN
STATES
LEGAL
FOUNDATION**

2596 South Lewis Way
Lakewood, Colorado 80227

ADDRESS SERVICE REQUESTED

PRESIDENT AND CHIEF OPERATING OFFICER

William Perry Pendley

VICE PRESIDENT AND CHIEF LEGAL OFFICER

Steven J. Lechner

VICE PRESIDENT OF ADMINISTRATION

Janice K. Alvarado

EXECUTIVE COMMITTEE

Karen Kennedy, WY: *Chairman*

Stephen M. Brophy, AZ: *Vice Chairman*

Peter K. Ellison, UT; *Treasurer*

James V. Taranik, NV; *Secretary*

Peter A. Botting, WA

John R. Gibson, UT

James Graham, TX

Ron Krump, NV

L. Jerald Sheffels, WA

Don Sparks, TX

Non Profit Organization
U.S. Postage
PAID
Denver, CO
Permit No. 847