



MOUNTAIN  
STATES  
LEGAL  
FOUNDATION

2596 South Lewis Way  
Lakewood, Colorado 80227  
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[www.mountainstateslegal.org](http://www.mountainstateslegal.org)

**MOUNTAIN STATES LEGAL FOUNDATION  
ANNUAL REPORT - 2017**

**2596 South Lewis Way  
Lakewood, Colorado 80227  
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*Fighting for individual liberty, the right to own and use property,  
limited and ethical government, and the free enterprise system since 1977.*

## **PREAMBLE**

Mountain States Legal Foundation (MSLF) is an I.R.C. § 501(c)(3), nonprofit, public-interest legal foundation organized under the laws of the State of Colorado. MSLF is dedicated to individual liberty, the right to own and use property, limited and ethical government, and the free enterprise system. Formed in 1977, MSLF represents those unable to hire private counsel to support and defend constitutional liberties and the rule of law. MSLF is supported solely by the tax-deductible contributions from those who believe in its commitment to the vision of the Nation's Founders as set forth in the Declaration of Independence and the Constitution.

## **PURPOSE**

Life, liberty and property are cornerstones of American democracy and account for the unequaled prosperity and promise for America. It is the purpose of Mountain States Legal Foundation to defend and secure these precious rights, thus preserving and advancing the American dream.

## **MISSION**

MSLF'S mission is to provide high-quality, effective legal representation for those who share MSLF's commitment to fight for the right to own and use property, limited and ethical government, individual liberty, and the free enterprise system.

## **VISION**

MSLF's vision is to build MSLF into the preeminent foundation for litigation aimed at securing and protecting constitutional freedoms and the rule of law.

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MOUNTAIN STATES LEGAL FOUNDATION - Statements of Activities and Changes in Net Assets

Years ended December 31

	2017		
	Unrestricted	Temporarily Restricted	Permanently Restricted
<b>Revenues, Gains, and Other Support</b>			
Contributions	\$ 2,487,779		\$15,157
Litigation awards	65,673		
Net assets released from restrictions	53,438	(53,438)	
<b>Total revenues, gains, and other support</b>	<b>2,606,890</b>	<b>(53,438)</b>	<b>\$15,157</b>
<b>Expenses and Losses</b>			
Program services			
Legal	946,313		
Communication and education	499,844		
<b>Total program services</b>	<b>1,446,157</b>		
Supporting services			
General and administrative	375,535		
Fundraising	675,589		
<b>Total supporting services</b>	<b>1,051,124</b>		
Change in valuation of charitable gift obligations	(14,113)		
Loss (gain) on disposal of equipment	(121)		
<b>Total expenses and losses</b>	<b>2,483,047</b>		
<b>Change in Net Assets Before Investment Income</b>	<b>123,843</b>	<b>(53,438)</b>	<b>15,157</b>
<b>Investment Income</b>			
Interest and dividend income	8,064		
Net realized and unrealized gains on investments	911,245	145,638	
<b>Net investment income</b>	<b>919,309</b>	<b>145,638</b>	
<b>Change in Net Assets</b>	<b>\$1,043,152</b>	<b>\$ 92,200</b>	<b>\$15,157</b>
<b>Net Assets, Beginning of Year</b>	<b>\$8,491,453</b>	<b>\$ 75,743</b>	<b>\$941,974</b>
Change in net assets	1,043,152	92,200	15,157
<b>Net Assets, End of Year</b>	<b>\$9,534,605</b>	<b>\$167,943</b>	<b>\$957,131</b>

**ADMINISTRATIVE**

In 2017, MSLF continued to operate pursuant to the following documents, which were adopted by its Board of Directors in 2009: a Board Governance Manual, which sets forth MSLF's Strategic Plan, Obligation of Membership, Organization of MSLF, Board Committees, and Board Policies, which also includes as Appendices, Amendment and Restated Articles of Incorporation, Amendment and Restated Bylaws, Code of Conduct, Conflict of Interest Policy, Director's Statement, Organization Chart, and Planned Giving Gift Acceptance Policies and Guidelines.

**LEGAL ACTIVITIES**

After MSLF's successful appearance in 2014 at the Supreme Court of the United States in *Marvin M. Brandt Revocable Trust v. United States of America*, in which MSLF prevailed speedily and overwhelmingly, the case returned to the U.S. Court of Appeals for the Tenth Circuit in Denver and the Wyoming federal district court where the case began in 2006. MSLF's client got his land back in 2015; however, lawyers for the federal government refused to pay attorneys' fees and expenses under the Equal Access to Justice Act (EAJA) and the Wyoming district court ruled federal attorneys were substantially justified in the legal action they brought and owed no

fees pursuant to the EAJA. MSLF appealed to the U.S. Court of Appeals for the Tenth Circuit where, in 2017, the federal government agreed to Mr. Brandt \$50,000 in full satisfaction of his claims for attorneys' fees and expenses. Mr. Brandt then dismissed his appeal.

MSLF continued its headline making, class action lawsuit on behalf of 2,000 to 3,500 applicants to become air traffic controllers (ATCs) against three federal agencies and their officials; the applicants' files were purged, and they were told to reapply. MSLF's complaint in Arizona federal district court charged the Federal Aviation Administration's (FAA's) decision to end its use of a race-neutral program in place since 1991 for selecting ATCs to achieve "racial diversity" with violating the equal protection component of the Due Process Clause and Title VII of the Civil Rights Act of 1964. The Arizona district court dismissed aspects of the lawsuit and transferred the case to Washington, D.C. federal district court. MSLF relies on its huge 1995 victory in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995), in which Justice Scalia wrote, "In the eyes of government, we are just one race here. It is American." MSLF also relies on the Court's ruling in *Ricci v. DeStefano*, 557 U.S. 557 (2009). This will be a most challenging legal action that could well reach the Supreme Court.

In its efforts to advance the precedent it set in *Adarand Constructors, Inc. v. Peña*, MSLF urged the Supreme Court of the United States to review the ruling of the U.S. Court of Appeals for the District of Columbia as to the racial preference provision of the Small Business Act on behalf of its client, a small, woman-owned business that does federal contracts. Regrettably, the Court denied the petition.

On the same legal issue, consistent with a friend of the court brief filed by MSLF, the U.S. Court of Appeals for the Ninth Circuit reversed a Montana federal district court's ruling against a highway construction company whose low bids were rejected for federal highway projects because of the owner's race. The panel ruled that summary judgment in favor of Montana was improper considering factual disputes as to the so-called expert report and because the evidence relied on by the federal district court failed to prove a history of discrimination.

MSLF battled a decision by the Obama administration to cancel a man's longstanding, valid, and valuable federal oil and gas lease. This litigation has huge ramifications for every federal contract; in fact, the United States Chamber of Commerce filed a brief in support of MSLF's case making that argument. MSLF represents Sidney M. Longwell of Baton Rouge who was awarded a 6,247-acre oil and gas lease in the Badger-Two Medicine Area of the Lewis and Clark National Forest by the Bureau of Land Management in 1982. Over a decade, he sought and won, on four different occasions, an application for permit to drill (APD), but then the Clinton administration suspended the lease barring any drilling. In 2013, Mr. Longwell sued Obama officials to end the decades-old ban on drilling. In 2015, hearing his forlorn plight, a federal judge called it "Kafkaesque" and ordered a prompt decision. In 2016, Secretary Sally Jewell cancelled Mr. Longwell's lease and voided his APD. The decision is unprecedented. In fact, federal lawyers concede that the cancellation of the 33-year-old lease is not based upon any express delegation of authority from Congress. Instead, they propound vague "inherent authority" under the Constitution's Property Clause, which makes one thing clear: the power over all federal lands belongs solely to Congress and grants no authority, express or implied, to the Secretary of the Interior.

MSLF continued and won its defense of the Second Amendment in a key, nationally significant, landmark Second Amendment case. Earlier, MSLF won in an Idaho federal district court by invalidating the ban by the U.S. Army Corps of Engineers on self-defense firearms at its recreational sites. (One of MSLF's clients was granted an emergency concealed carry permit and she wanted to exercise her rights when hiking on federal and state lands.) Before the U.S. Court

of Appeals for the Ninth Circuit, the Corps of Engineers settled the case with MSLF's clients and agreed to change its unconstitutional regulation to permit the exercise of Second Amendment rights on the 12 million acres controlled by the Corps of Engineers, which includes a third of the nation's freshwater fishing areas.

MSLF continued and increased its defense of the Colorado Constitution and its requirement, set forth in the Taxpayer's Bill of Rights (TABOR), that Colorado's General Assembly and city councils submit new taxes to a vote of the people. Two of MSLF's lawsuits were argued before the Supreme Court of Colorado in 2017: a tax on grocery bags by the City of Aspen and taxation of an array of goods by the Regional Transportation District. Although the Aspen case will address the district court's curious holding that the bag tax is exempt from TABOR because it seeks to change behavior, both present the question of whether taxpayers must prove a TABOR violation "beyond a reasonable doubt," which is the criminal law standard for depriving a man of his liberty not the civil criterion to deny government a right to impose taxes without permission. In addition, MSLF elevated its challenge to the so-called hospital providers' tax, as to which the legal landscape was changed in 2017 with passage of S.B. 17-267, which created the "Colorado Healthcare Affordability and Sustainability Enterprise." After its passage, this new entity has levied and collected the taxes from hospitals and eliminated an estimated \$288.6 million refund that would have been due to taxpayers in fiscal year 2018-19. MSLF represents two taxpayer groups and two Colorado taxpayers affected adversely by this law. In a related matter, MSLF urged the U.S. Court of Appeals for the Tenth Circuit to uphold the ruling of a Colorado federal district court that individual Colorado legislators, elected officials, school districts, and others lack standing to challenge TABOR ostensibly because it limits their ability to impose new taxes.

MSLF continued its challenge to the unconstitutional closure by the Obama administration of over a million acres of uranium-rich federal land in northwestern Arizona. Earlier, an Arizona federal district court agreed with MSLF that a provision of the Federal Land Policy and Management Act (FLPMA) is unconstitutional, but held that it is severable from the provision under which the Secretary of the Interior acted. Subsequently, the federal district court deferred to the Secretary and upheld the withdrawal. On appeal, the U.S. Court of Appeals for the Ninth Circuit erroneously concluded that Congress was bent on providing withdrawal authority to Congress. To the contrary, the entire history surrounding the passage of FLPMA shows Congress specifically intended to limit the Executive's authority to withdraw large tracts of land. On behalf of the American Exploration & Mining Association and its affected members, including a Nobel Peace Prize-winning scientist, MSLF will seek review by the Supreme Court of the United States.

On behalf of its client, the Wyoming Farm Bureau Federation and its members, especially those in and near Riverton, MSLF prevailed before the U.S. Court of Appeals for the Tenth Circuit in its challenge to an order by the U.S. Environmental Protection Agency (EPA) granting the Northern Arapahoe Tribe and the Eastern Shoshone Tribe—of the Wind River Indian Reservation—jurisdiction over 1.48 million acres of Wyoming, including Riverton and all its residents. The panel ruled in favor of MSLF's clients and then rejected a motion to reconsider its ruling after MSLF filed its brief. MSLF argued that the EPA's December of 2013 decision to grant the Tribes "Tribe-as-State" status under the Clean Air Act over that land ignores more than one hundred years of actions by Congress, Wyoming, the Tribes, and rulings by federal and state courts and the Supreme Court of the United States. Importantly, the EPA order gave the Tribes jurisdiction over the economic activity of area ranchers, activity that is already regulated by the State of Wyoming. As a result, the ranchers, who are not tribal members, were faced with duplicative and costly regulations and appearances in tribal court. Recently, the tribes indicated they will seek Supreme Court review.



Two landowners who own property on Crooked Lake in the Upper Peninsula of Michigan, represented by MSLF, won their lawsuit against the U.S. Forest Service for denying them the right to use their waterfront property pursuant to Michigan law and a prior federal court ruling, which was won by MSLF on behalf of the couple's neighbors. The Michigan federal district court dismissed the lawsuit as untimely; however, the U.S. Court of Appeals for the Sixth Circuit reversed the ruling and reinstated MSLF's lawsuit. Subsequently, the Michigan federal district court ruled in favor of the Forest Service by holding it is both a landowner and sovereign and can make the rules that govern the reasonable use to which other landowners may put their property. The Sixth Circuit, in a 2-1 ruling, reversed that decision and held in favor of MSLF's clients. The ruling is hugely important, especially in the West, because environmental groups and federal lawyers argue a ruling by the Supreme Court of the United States gives the federal government "unlimited" power over private land that is near federal land. It is not true, of course, but MSLF continues to fight this battle wherever there is federal land. Nonetheless, the environmental groups are seeking Supreme Court review.

On behalf of an independent oilman MSLF has represented before federal agencies, MSLF filed a lawsuit in Colorado federal district court challenging actions of the federal government denying him his property rights. WillSource Enterprise LLC, which is owned by Reed Williams, holds seven federal oil and gas leases, all issued in 1996, in western Colorado. Over the decades, it has been cheated out of its right to develop its property by the delaying tactics of the U.S. Bureau of Land Management and the U.S. Forest Service working with environmental groups.

MSLF continued its long-standing fight against illegal uses of the Endangered Species Act (ESA). After the Obama administration issued Draconian and illegal regulations regarding the use of federal lands ostensibly to protect the sage-grouse, MSLF filed and intervened in lawsuits across the West. With the arrival of the Trump administration, those legal proceedings were placed on hold as the Fish and Wildlife Service developed new regulations and land use plans, a process in which MSLF was involved in assistance to and on behalf of its clients. Meanwhile, MSLF filed friend of the court briefs in support of landowners besieged by abuses of the ESA in a federal district court in Texas and as to a petition for *writ of certiorari* at the Supreme Court of the United States in a matter that originated in Louisiana.

MSLF's Quiet Title Act lawsuit on behalf of Caribou County, Idaho against the United States of America for the actions of the Bureau of Land Management (BLM) land regarding so-called R.S. 2477 (public) roads across federal land to keep roads open to rural Americans was settled to the full satisfaction of its client.

Although MSLF's lawsuit in Idaho state district court asserting that a Boise school district violated the Idaho Constitution's gift clause by its agreement with a teachers' union was dismissed on procedural grounds, research demonstrated that the litigation resulted in substantial savings to local taxpayers.

In its long running efforts to restrict application of the Clean Water Act to that intended by Congress, MSLF continued its challenge of the EPA's "waters of the United States" rules at the U.S. Court of Appeals for the Sixth Circuit and at a Washington, D.C. federal district court. MSLF joined with others in urging the Supreme Court of the United States to review a ruling of the Sixth Circuit regarding jurisdictional issues. With the arrival of the Trump administration, the EPA and the Corps of Engineers began the process of revising the "waters of the United States" rules with the full participation of MSLF on behalf of its clients.

After a Michigan federal district court rejected claims by families that they may bring their Takings Clause lawsuit in an Article III court where a jury will determine the amount of “just compensation,” contrary to a friend of the court brief by MSLF, MSLF joined in the appeal to the Sixth Circuit with another strong *amicus curiae* brief. In 2017, in response to an unfavorable ruling by the Sixth Circuit, MSLF filed *amicus curiae* briefs in support a petition for rehearing *en banc* and then in support of a petition for *writ of certiorari* to the Supreme Court of the United States.

MSLF has a long and singular history of defending the General Mining Law. It did so in a brief before the Supreme Court of the United States urging it to review a ruling by the California Supreme Court that the State may restrict mining in a national forest. In addition, MSLF filed a friend of the court brief at the U.S. Court of Appeals for the Tenth Circuit, challenging misapplication of Superfund to mining claims in New Mexico. Consistent with its *amicus curiae* brief, a three-judge panel held the federal government shares Superfund liability for waste sites on federal land.

On behalf of Wyoming’s oldest and largest oil and gas industry trade association, MSLF battled a scheme by a host of environmental groups to all but shut down environmental studies necessary for energy development by requiring endless reviews regarding so-called climate change.

Finally, MSLF’s agreement with Texas Tech University School of Law for a fellowship program to the benefit of both institutions was fulfilled in 2017 with its first Texas Tech University legal fellow from June to August. In 2018, MSLF is working closely with Texas Tech University officials to improve and expand the program.

During 2017, MSLF received 168 requests for assistance, which along with litigation proposed by Directors, Board of Litigation members, Director *Emeriti*, and officers and staff, led to the approval of 12 Board Approval Requests (BARs).

At the beginning of 2017, MSLF cases broke down as shown below:

Supreme Court - Petition stage	1
Supreme Court - Merits stage	0
Federal Appeals Courts	8
Federal Trial Courts	8
State Appellate Courts	2
State Trial Courts	2
<i>Amicus curiae</i> - U.S. Supreme Court	4
<i>Amicus curiae</i> - Other Courts	17
Administrative Proceedings	3
Other	5
Approved but not yet filed	1

At the end of 2017, MSLF cases broke down as shown below:

Supreme Court - Petition stage	0
Supreme Court - Merits stage	2
Federal Appeals Courts	6
Federal Trial Courts	10
State Appellate Courts	2
State Trial Courts	1

<i>Amicus curiae</i> - U.S. Supreme Court	5
<i>Amicus curiae</i> - Other Courts	20
Administrative Proceedings	1
Other	5
Approved but not yet filed	1

Only one case that has been approved is in various stages of review, administrative proceedings, or awaiting final action for litigation.