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NCLA Amicus Brief Asks Supreme Court to Stop Presidential Edicts from Superseding Land Use Laws

Murphy Company, et al. v. Joseph R. Biden Jr., et al.

Washington, DC (December 18, 2023) – Presidents do not have the power to dispense with statutes. Today, the New Civil Liberties Alliance filed an *amicus curiae* [brief](#) emphasizing that point and urging the U.S. Supreme Court to grant certiorari in *Murphy Company v. Biden*. In this case, the U.S. Court of Appeals for the Ninth Circuit upheld a presidential proclamation that contradicts Congressionally-mandated land use in the Cascade-Siskiyou National Monument. The withdrawal of lawful land use in this monument designation is part of a legally disturbing trend: for the last 25 years, presidents of both parties have been exceeding their constitutional authority to designate monuments and inappropriately dispensing with statutes passed by Congress. On behalf of itself and the Arizona Farm Bureau Federation, NCLA calls for an end to this unlawful use of presidential proclamations.

Congress passed legislation in 1937 that designated certain timberlands in Oregon for “permanent forest production” to provide “a permanent source of timber supply” and to support local business and government. Subsequent presidential proclamations, however, designated the Monument *and* prohibited “commercial harvest of timber.” In doing so, the President unilaterally withdrew a major land use, dispensed with valid existing legislation, and took an action that he has no constitutional power to take on his own.

The Ninth Circuit wrongly held that Congress’s explicitly articulated use for the land was not absolute, so it could be disregarded in part and superseded by new presidentially ordered priorities. Lower courts make the mistake of routinely deferring to presidential monument designations that unlawfully withdraw tens or hundreds of thousands of acres of land from public uses such as grazing and timber production and that interfere with statutory policy priorities and protections for stakeholders. It is past time for the Supreme Court to take up this issue of flagrantly abused presidential power and reconfirm that presidents lack dispensing power, which even the King of England no longer enjoyed by the time the U.S. Constitution was written. The Court must police the boundary between Executive monument designations and presidents’ efforts to legislate land codes contrary to statute.

NCLA released the following statements:

“The federal government owns millions of acres of land in the Western United States, which gives it the power to promote or inhibit related industry. Since the Antiquities Act of 1906, which gave presidents the power to designate monuments, Congress has passed dozens of specific and general land use laws. No authority gives the president unilateral power to set aside these Congressional mandates and choke-off local business in the process.”
— **Zhonette Brown, Senior Litigation Counsel, NCLA**

“In recent decades, presidential monument designations under the Antiquities Act have grown in size and scope, often to the detriment of local communities. While lower courts have been reluctant to review such designations, the Supreme Court should not be reticent. This case provides an excellent vehicle to address the conflict between presidential monument designations and Congress’s power to regulate use of this nation’s lands.”
— **Kara Rollins, Litigation Counsel, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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