

# SHATTERED DREAMS:

One Hundred Stories  
of Government Abuse

F I F T H E D I T I O N



**INTRODUCTION BY**  
**Judge Andrew P. Napolitano, FOX News**

**Foreword by Ted Nugent**



# Shattered Dreams: 100 Stories of Government Abuse

Fifth Edition

By

David W. Almasi, Ryan T. Balis, Chris Burger,  
Rosemarie Capozzi, Eric Chapman, Nick Cheolas,  
Matthew Craig, James P. Gelfand, Amy M. Ridenour

Center for Environmental and Regulatory Affairs,  
The National Center for Public Policy Research



*The Center for Environmental and Regulatory Affairs is a division of The National Center for Public Policy Research. It advocates private, free market solutions to today's environmental challenges and highlights the perverse nature of many government-first regulations by attaching human faces to very real problems caused by over-regulation.*

*The National Center for Public Policy Research is a non-profit, non-partisan educational foundation based in Washington, D.C.*

*In some previous editions, this publication was entitled the "National Directory of Environmental and Regulatory Victims."*

Copyright © 2007 by The National Center for Public Policy Research  
All Rights Reserved.

The National Center for Public Policy Research  
501 Capitol Court, N.E., Suite 200, Washington, D.C. 20002  
phone: (202) 543-4110, fax: (202) 543-5975  
Internet: <http://www.nationalcenter.org>  
e-mail: [info@nationalcenter.org](mailto:info@nationalcenter.org)

Library of Congress Cataloging-in-Publication Data

Shattered dreams : 100 stories of government abuse. -- 5th ed.  
p. cm.

Includes bibliographical references and index.

ISBN 978-0-9665961-3-7 (alk. paper)

1. Administrative agencies -- United States. 2. Administrative agencies --  
United States -- Management. 3. United States -- Politics and government.

I. Center for Environmental and Regulatory Affairs.

JK421.S53 2007

323.4'90973 -- dc22

2007009177

## Table of Contents

Foreword.....	5
Introduction.....	7
Air Quality.....	9
Americans With Disabilities Act.....	11
Building Restrictions.....	13
Commercial Activities.....	19
Education Regulations.....	28
Eminent Domain.....	32
Endangered Species.....	42
Federal.....	42
National Defense.....	60
Public Works.....	62
State & Local Species Regulations.....	67
Environmental Agencies.....	70
Free Speech.....	76
Language.....	83
National Defense.....	85
National Park Service.....	88
Police Power.....	90
Property Rights.....	93
Smart Growth.....	97
Transportation.....	98
Wetlands.....	100
Wildfire.....	105
Acknowledgments.....	107
Photo Credits.....	108
State Index.....	110
Alphabetical Index.....	112



## Foreword

What happens when the U.S. Constitution and the Bill of Rights get thrown out the window in the name of an extreme or poorly-conceived regulatory agenda? The answers lie in this book — and they have human faces.

The assault on American liberty certainly has its victims.

Victims like a New Jersey man who faced charges for shooting a 400-pound black bear that was threatening his family.

Or a Florida man who lassoed a wild alligator to prevent it from attacking a woman and four small children. Police “rewarded” him with a \$180 citation — for “possession of an alligator”!

Or an Oregon family who may lose the ranch they’ve owned since 1850 because of federal efforts to protect an endangered Canada lynx — though the lynx has never even been seen in the region.

Individual and property rights are at the heart of the American dream. Every time the government grows, a little piece of that dream dies. Three cheers for The National Center for Public Policy Research for exposing the tragedies that result when regulatory policies put human welfare dead last.

The fight for freedom begins at home. It’s good to know The National Center for Public Policy Research is standing guard.

*Ted Nugent*



Ted Nugent is a rock ‘n roll guitarist who has sold over 30 million albums worldwide. A renowned hunting enthusiast, television and radio personality, and *New York Times* bestselling author, Ted also serves on the board of directors of the National Rifle Association. He publishes his own magazine, and is the founder of Ted Nugent Kamp for Kids, designed to teach children the wholesome values of shooting sports, hunting and conservation. Ted is an avid supporter of the U.S. military, and travels to entertain our troops across the globe. He is a regular columnist and contributor to over 40 publications.



## Introduction

President Ronald Reagan famously said: “The nine most terrifying words in the English language are: ‘I’m from the government and I’m here to help.’”

The victims in this book have had about all the government help they can stand. Their stories will upset you, anger you, and make you wonder what happened to the land of the free.

The U.S. Constitution and Bill of Rights were designed to protect, not grant, what our Founding Fathers viewed as our natural rights. America’s forefathers knew that any government powerful enough to grant such rights would also be powerful enough to take them away.

Yet today we find that these sacred rights have been eroded by a constant wave of new laws, rules, and regulations. Even our most basic freedoms have been transformed into little more than government-sanctioned privileges. Each unconstitutional rule or regulation, no matter how seemingly benign, sets a new precedent for the continued erosion of liberty.

Every day, from the time we wake up to the time we go to bed, Americans tread through a sea of red tape that essentially dictates how we live. For some, this might mean simply coping with government’s burdensome and near-constant drain on productivity.

For others less fortunate, it might mean losing a home, a livelihood, or even a life.

As I point out in my book, *Constitutional Chaos: What Happens When the Government Breaks Its Own Laws*, a government that breaks its own laws is not your friend. I detail myriad instances in which the government has knowingly and willingly broken the law in pursuit of what it perceived to be the public good. Examples include cash-strapped cities that set up traffic cameras and illegally convict persons of crimes they have not committed, or eminent domain abuse, in which government takes private property from law-abiding citizens for the purpose of transferring that property to politically-connected elite.

In *Shattered Dreams: One Hundred Stories of Government Abuse*, The National Center for Public Policy Research shows why a government that tramples the rights and individual freedoms guaranteed by the Constitution is not your friend. Here are just a few examples of the tragedies discussed within:

- An elderly man in Virginia is barred from building a small, handicapped-accessible home for his wife because of a bald eagle’s nest located 90 feet away.
- A seven-year-old girl in Minnesota runs afoul of the city’s Office of Licenses, Inspections and Environmental Protection and consequently has her lemonade stand shut down for failure to pay a \$60 licensing fee.
- In New York City, one of the oldest coffee merchants in the U.S. is reprimanded by the city’s Department of Environmental Protection for “polluting” the air with the (wonderful) smell of fresh coffee.

In fighting regulatory abuse, The National Center for Public Policy Research is fighting for the freedom of all Americans. It is doing an excellent service in bringing these victims and their stories to light. “Shattered Dreams” is a must-read for patriots and policy makers who care deeply about America’s future and yearn to right her path.

After all, you can’t fix something until you know what’s wrong with it.

*Judge Andrew P. Napolitano*



Andrew P. Napolitano is the youngest life-tenured Superior Court judge in the history of the State of New Jersey. For eleven years, he was adjunct professor of law at Seton Hall Law School where he taught constitutional law and jurisprudence and was voted most outstanding professor in three different academic years. Judge Napolitano has been the senior judicial analyst for the Fox News Channel since 1999. He is the author of *The Constitution in Exile: How the Federal Government Has Seized Power by Rewriting the Supreme Law of the Land*, a *New York Times* bestseller.





## Small Business in Financial Trouble After Delaware Smoking Law Forces Patrons Across State Lines

The Delaware legislature has outlawed smoking in all public enclosed indoor areas. This ban extends to bars, restaurants, nursing homes, prisons and all other publicly-owned buildings.

The ban economically endangers many local establishments, such as Desiree Mulford's Breakers Bar and Billiards in Newark. Many of Mulford's customers have taken their business to neighboring states, where they can still enjoy smoking indoors. "I'm ten minutes from the Maryland line," said Mulford. "Not only do smokers go, but the non-smokers go, too. They want to go where the crowds are."

While 25 percent of Delaware's population smokes, Delaware bar owners estimate that about 80 percent of their patrons do.

After a 70 percent decrease in business, Mulford decided to allow smoking at Breakers despite the new law. "For every one person I lost because there was smoking here, I gained ten," she said. But things changed after these practices were published in a newspaper article, and Breakers received a \$350 fine from the Delaware Division of Public Health. Mulford began to receive registered letters from the state that described complaints it had received and unannounced visits state officials had made. The bar's previously-approved permits to construct a kitchen were revoked as a result of the decision not to enforce the ban. This compelled Mulford and her business partner to enforce it once more. After reinstating the ban, they lost more than 50 percent of their business and had to stop paying themselves just to keep the bar open.

The Delaware House of Representatives passed an amendment to their Clean Indoor Air Act in March of 2003. In an effort to help small businesses, this legislation would have allowed smoking in some bars. But strong campaigning by anti-smoking activists led to the bill's defeat in the state senate by a two-to-one margin. Delaware's Governor Ruth Ann Minner was also strongly opposed to the amendment despite the crippling effect the bill has had on some local businesses.

Dwindling crowds are making it difficult for Desiree Mulford's business to survive. She considered closing Breakers and opening a restaurant and nightclub in New Jersey, but New Jersey adopted a ban on smoking in public buildings, except gambling areas in casinos, in January 2006.

*Sources: Desiree Mulford, Washington Post (July 7, 2003), Baltimore Sun (June 22, 2003), Associated Press (January 27, 2003), News Journal (April 9, 2003; June 1, 2003), The Record, Smokefreeworld.com*

## Small Neighborhood Restaurants and Bars Hurt Most by Smoking Bans

The Royal Pheasant, a popular bar and restaurant in Buffalo, New York since 1944, has permanently closed its doors.

Owner Jacqueline O'Brien says her establishment was forced out of business by a drastic decline in customers attributed to a statewide smoking ban. Like many other



*Snuffed out*

*Breakers Bar and Billiards lost 50 percent of its business following Delaware's smoking ban.*

New York restaurant and bar owners, O'Brien contends that such establishments have the right to decide its own smoking policies.

The closing of the Royal Pheasant forced nearly 20 people out of work. While the smoking ban contains a provision allowing businesses to apply for a waiver, very few establishments have actually been able to acquire one.

Besides the Royal Pheasant, nine other Erie County bars and restaurants closed soon after the ban went into place. Small neighborhood restaurants have been the most adversely affected by the ban. Patrick H. Hoak of the Innkeepers Association of Western New York has reported that some of the smaller bars and restaurants that have not closed have experienced drops in sales of 50 percent.

*Sources: The Buffalo News (December 9, 2003; January 25, 2004; October 2, 2004), Innkeepers Association of Western New York, New York State Department of Health*



*Donald Schoenholt*

## In New York City, Smelling Delicious Can Get You Fined

New York City's Gillies Coffee Co., founded in 1840 and one of the oldest coffee merchants in the United States, has built its reputation on its own delicious, fragrant brand of coffee. But not everyone likes the aroma of freshly-brewed coffee: New York City's Department of Environmental Protection (DEP) has cited Gillies for "polluting" the air — in an industrial area — with the smell of roasting coffee.

Incredibly, the DEP ruled that the "fugitive odors" coming from the Brooklyn business — namely, the smell of roasting coffee — is an illegal air pollutant that violates the New York City Air Pollution Control Code. Hy Chabbott, the co-owner of Gillies, has agreed to pay the \$400 fine but says it will be impossible for the company to meet the DEP's demand that they completely eliminate the coffee smell in the future.

"Research has shown that coffee smells like coffee. There is nothing that can reasonably be done to separate the natural smell of already roasted coffee from a coffee business," explained Donald Schoenholt, president of Gillies. "Under the current interpretation [of the NYC Air Pollution Control Code]," Schoenholt asserted, "shoe stores, barber shops, doctor's offices and flower shops are all in violation of the law."

Gillies was convicted of the violation on April 2, 2003 by the city's Environmental Control Board, the municipal administrative court run by the DEP. The matter cost the company over \$30,000 on legal bills. Schoenholt is constantly aware that his company could be fined again, because the law has not been taken off the books.

"Once it has been established that you are a polluter either through conviction or because you admit guilt by paying a fine," Schoenholt told the *Tea & Coffee Trade Journal*, "you are on the slippery slope. It's only a matter of time before you're forced to move your business from New York City."

According to the *Philadelphia Inquirer*, New York City's DEP has also fined pickle companies, bagel bakeries, and doughnut shops for aroma violations.

Schoenholt says: "It's really hard to live like this as a business owner. I don't know if I'm going to be in business in one year, in five years. I can't really put a dollar amount on the harm that's been done."

*Sources: Reuters (April 22, 2003), Donald Schoenholt, Tea & Coffee Trade Journal, Philadelphia Inquirer (April 26, 2003)*

*"Once it has been established that you are a polluter... it's only a matter of time before you're forced to move your business from New York City."*

*— Donald Schoenholt*

## Candy Store Owner Takes a Licking

Lanny Rose has owned the Cottage of Sweets, a candy store in Carmel, California, for more than 24 years. He says he values every customer who visits his store, noting, “My specialty store is small enough that I make it a point to take care of each of my customers.”

Constructed in 1922, the building measures just 325 square feet and is designated as historic. Due to its historical classification, Rose has always been extremely careful not to remodel or alter any structural aspect of the building without the appropriate approvals.

In March of 2003, Rose received a demand that physical changes to his building were necessary. He was being sued over his business’ failure to comply with Title III provisions of the Americans with Disabilities Act (ADA). Enacted by the federal government in 1990, the ADA — and specifically Title III — prohibits discrimination against the disabled, and requires public places and commercial facilities to meet various “accessibility standards.” For Rose, the step leading into his store was the cause of the complaint.

To Rose’s surprise, he and several other local business owners were being sued by Joseph Tacl, a 52-year-old handicapped man who had visited Carmel in 2002. Along with the Cottage of Sweets, Tacl — who became disabled in a car accident in 1993 — sued seven other downtown Carmel shops, claiming “numerous architectural barriers” prevented him from “fully and safely” visiting them. Gene Zweben, Tacl’s attorney, called Carmel one of California’s “least accessible towns.” Zweben said the defendants in the cases were “businesses that my client had attempted to go to but was discriminated against because he wasn’t able to go inside the way everybody else can.”

Rose does not recall Tacl’s visit, but says he and his employees have always tried to cater to the needs of handicapped customers seeking to patronize the store. He said, “We have our own store policy where we will go outside to assist our handicapped patrons into the store. We try to be helpful and give all the assistance that we can.”

Those efforts apparently were unknown or not enough for Tacl. In his complaint to the U.S. District Court for Northern California in San Jose, Tacl claimed he received “unlawful discrimination and unfair treatment.” As part of the settlement eventually reached by the parties, Rose was forced to undertake a \$14,000 construction project to transform the store’s circular step into a slightly ramped walkway that complies with ADA’s Title III provisions. Rose’s insurance company, The Hartford, also paid Tacl monetary damages. Neither side will disclose the exact amount paid in damages.

It turns out Tacl is no novice when it comes to filing ADA complaints. As of April of 2003, Tacl had filed nearly 100 lawsuits against businesses in Northern California. This identifies the potential for abuse of the law. “The ADA is supposed to provide protection for the disabled, not provide an incentive or an excuse for people to sue a small business owner,” says Representative Sam Graves (R-MO). “Every time this law is abused and a frivolous lawsuit is filed, small businesses and their employees are left to pay the bill.” Representative Graves’ office says that during the ADA’s first eight years, businesses prevailed in 92 percent of ADA cases, for a total cost to them of \$309.1 million, or approximately \$25,000 per lawsuit.

*Sources: Statement of Representative Sam Graves (R-MO) (April 28, 2003), Carmel Pine Cone (April 4-10, 2003; July 23, 2004), The Cottage of Sweets, Gene Zweben, Lanny Rose, MontereyHerald.com (April 4, 2003), U.S. Department of Justice*



*The infamous step at Cottage of Sweets in Carmel, California*

*The Cottage of Sweets sells 56 varieties of licorices from around the world.*



*Lawyer Anthony Brady, Jr. has sued more than 100 companies for Americans With Disabilities Act violations.*

## Lap Dancing Location Leads to Lawsuit

Edward Law, who has been a quadriplegic since a diving accident in 1987, visited the Wildside Adult Sports Cabaret, a strip club in West Palm Beach, Florida, in May and June of 2002. A month later, he sued the club in U.S. District Court. He claimed it had violated the Americans with Disabilities Act because the room reserved for “lap dances” was inaccessible to the disabled. Law claims that the stage where dancers perform is too high and blocks the view from his wheelchair.

In order to get a lap dance, Law did not have to sue the club. Bret Rudowsky, Wildside’s general manager, said that because of Law’s disability, he would have allowed Law to receive erotic private time with a dancer in other areas of the bar. Before the lawsuit was filed, Rudowsky had never received a complaint from a disabled customer.

Steve Howells of the Advocacy Center for Persons with Disabilities believes that lawsuits should be one of the last resorts used to resolve ADA-related complaints. If a disabled person is unsatisfied with a business’ accommodations, Howells says, individuals should complain to the management. Had Law done this, the club would have complied with his request. Instead, Law hired Anthony Brady, Jr., a lawyer who has sued more than 100 companies for ADA violations, to represent him in court. They filed a lawsuit requesting compliance with the law as well as an unspecified amount of money in attorney’s fees. Since the only difference between what could be done in and out of court is money, suspicion was raised that the lawsuit was more about personal gain than protecting the rights of the disabled. Law also filed a lawsuit against another West Palm Beach strip club, the Landing Strip. Both of Law’s suits were voluntarily dismissed in 2002.

In response to these and other ADA-related lawsuits, including a high-profile suit filed against a hotel owned by actor/director Clint Eastwood, the ADA Notification Act was introduced in February 2003 and reintroduced in June 2005. The bill would require a person to contact a business and explain how it violated the ADA’s accessibility provisions before filing a lawsuit. The business would then have 90 days to correct the violation before a lawsuit can be filed.

*Sources: Adult Industry News (July 15, 2002), Ragged Edge Online (July 22, 2002), Thethoughtpolice.com, The Washington Times (February 13, 2002)*

## Government Approves Building Permit, Then Outlaws Construction

Residents of the Tenleytown neighborhood of northwest Washington, D.C. aren't happy with the quality of cellular phone service in their area. But when construction was started on a new tower that would improve both cellular service and television broadcasts, those same, politically-powerful residents complained to the District of Columbia City Council that the tower would be too tall. The council then halted the construction, at an estimated cost of \$250 million to the tower's owner, American Towers Corporation (AT).

In March 2000, 13 city agencies approved a permit for AT to build a 756-foot tower in Tenleytown to improve cellular phone service and serve as a new broadcast tower for several local television stations. The new tower was to be constructed in an area that already contained several broadcast towers.

Seven months after issuing the permits and after the building of the tower was well underway, then-Mayor Anthony Williams ordered a halt to construction. In conjunction with that order, the City Council invalidated AT's permits by passing the "Moratorium on the Construction of Certain Telecommunications Towers Emergency Act of 2001."

The D.C. government did not condemn the AT property or offer to buy the land from AT — officials merely outlawed the completion of the tower. It remains unfinished, standing at nearly 300 feet.

AT sued the District of Columbia and Mayor Williams in the Superior Court of the District of Columbia. AT argued that it was victimized by the Tenleytown residents who had the ear of local politicians and who wanted to stop the tower for aesthetic reasons. Although city officials had approved the permit to build the tower, lawyers for the city argued that AT's tower would have been too tall. AT asked for \$250 million in damages to permit it to recover money the company had already invested, delayed construction costs, the cost of litigation and projected profits the company would lose by not finishing the tower.

AT did not win its case in Superior Court, and the lawsuit was subsequently rejected by the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the D.C. Circuit. Seeing dim prospects and mounting legal bills in their federal case, AT decided not to appeal the case to the U.S. Supreme Court. The company's appeals to the D.C. Office of Zoning have been equally unsuccessful.

The District of Columbia then ordered AT to remove the unfinished tower. However, the D.C. Superior Court stayed enforcement of the District's order, while a separate lawsuit brought by AT seeking damages for the unfinished tower is before the court.

Bob Morgan, vice president and general manager of AT, expressed the company's dismay in an op-ed published in the *Washington Times*. "What seems clear to anyone who gives some serious thought to the situation is that the administration's decision is plainly a matter of favoritism. A few members of a small, politically-important neighborhood start pumping their fists in the air and the administration springs into action."

Not only is AT out millions of dollars, but many Tenleytown residents' cellular phones still don't work well.

Sources: Washington Post (November 1, 2002), Northwest Current (March 19, 2003), Washington Times (October 23, 2000; November 30, 2003)



*The unfinished cell phone tower in the Tenleytown neighborhood of Washington, D.C.*

*"A few members of a small, politically-important neighborhood start pumping their fists in the air and the administration springs into action."*

— Bob Morgan,  
vice president  
American Towers Corporation



*Home of Amy Bayer  
in Alexandria, Virginia*

*The “Design Guidelines” created by the Department of Planning and Community Development to govern the aesthetics of Alexandria, Virginia’s buildings is 197 pages long.*

## Arbitrary Regulations Give Neighbors More Power than Homeowner Over Home

Amy Bayer adores her stately home in the Old Town Historic District of Alexandria, Virginia. Built around 1815, its red brick walls and historic architectural design compliment the neighborhood. The only drawback is that the house isn’t big enough for her family’s needs. Yet when Bayer sought to add onto her home, she discovered that her neighbors believed they should have the final word on her plans. Worse, they possessed the means to create a bureaucratic nightmare for Bayer if she didn’t bow to their wishes.

Bayer purchased her home in 1994. In 2001, she decided to build a guest room and a family room to accommodate her children. After consulting the city’s design guidelines on home additions, she submitted plans to Alexandria’s Board of Architectural Review (BAR), which must grant approval to changes on historic properties. Bayer and her architect were careful to harmonize their plans with the historic fabric of Old Town Alexandria. They kept the plans within the architectural style of the rest of the home and met all regular zoning requirements. While most of her neighbors supported her plans, the neighbors on the side of the property where the addition would be built — Lawrence and Ashley O’Connor — believed the addition would hurt the historic district by “shrink[ing] the limited open space in the neighborhood.” While this concern may be true for most Old Town properties, the Bayer property is uncommon because the house sits on a spacious, multi-lot parcel of land. Nonetheless, the BAR rejected Bayer’s plans after the O’Connors and local preservationists voiced their opposition at hearings and public forums.

Bayer appealed the BAR decision to Alexandria’s City Council, arguing that her home was no different from hundreds of others in Old Town approved for similar improvements in the past. The City Council agreed with Bayer and approved her plans. The O’Connors and the preservationists appealed the decision in state court, contending that the Alexandria City Council failed to use proper standards when it decided the case. In May of 2003, Alexandria Circuit Court Judge Donald Haddock ruled against Bayer and ordered the City Council to rehear the case. At that point, Bayer sought a compromise by seeking BAR permission to build a free-standing addition connected to the house by a covered walkway. This idea was based on the notion that the BAR justified its original denial not with concern for open space, but on the grounds that any “demolition or encapsulation” (the tearing down of walls or closing in of original architecture) of the house — no matter how minor — threatens the goals of the historic district. Bayer offered this compromise despite the fact that the BAR routinely approves “demolition and encapsulation” plans similar to her original plans.

The O’Connors and preservationists again threatened to block Bayer’s plans. Not wanting to delay her addition any longer, Bayer capitulated. She submitted yet another new plan to the BAR in January of 2004 that proposed an addition on the opposite side of the house but with the same square footage as the plan submitted three years earlier. The BAR approved this new plan after her opponents dropped their legal challenge.

Three years and tens of thousands of dollars in architectural and legal fees later, Bayer was relieved that construction has finally started on the addition, but she was bitter about how cumbersome and costly Alexandria’s arbitrary historic district regulations are for property owners. To help cover the cost of her fight — and highlight the inconsistency of Alexandria’s laws — she is considering selling the lot on the northern

side of the house (her first choice for the addition) where a brand new house could then be built by a new owner in accordance with historic district regulations. A new structure would completely obstruct the O'Connors' view and leave no remaining open space. The addition to the Bayer home that was denied by the BAR would have left 65 percent of the lot open and green.

*Sources: Amy Bayer, The Washington Post (July 3, 2003; September 9, 2003)*

## The Squeaky Wheel, or in this Case, the Polka Dotted House, Gets the Grease

Avondale Estates, a suburb of Atlanta, is recognized as one of America's first planned communities. City officials are known to enforce strict guidelines regarding home improvements.

Some argue that the officials with the city's Historic Preservation Commission, which is the agency that oversees and approves renovations, use government power to impose their personal ideas of good taste, rather than historical accuracy, on the community.

When resident Stan Pike got caught up in a related regulatory nightmare, he found an inventive way to "brush aside" the problem.

Pike owns a second house in Avondale Estates that he was renovating to resell. The house has a previously-built addition with rounded corners, and an architect suggested that Pike build a matching rounded front stoop to balance out the house. The addition had been built in the 1960s with rounded edges because city officials told the previous owner that squared corners would not leave enough lawn between the house and the street. Nonetheless, the Historic Preservation Commission rejected Pike's request because a Commission consultant judged the project as "less appropriate" for the neighborhood.

Two days after the ruling, Avondale Estates residents discovered that Pike had repainted the house lime green with purple polka dots. He further threatened to plant flowers in old toilets and scatter them around the yard in protest of the Historic Planning Commission's rejection of his project. In less than a month, Mayor John Lawson and the City Commission overruled the Historic Preservation Commission, with Lawson saying Pike's plan would not be "substantially detrimental" to the home's appearance. Afterward, Pike said he would repaint the house.

Randall Carlson, a builder who has done work in Avondale Estates, told the *Atlanta Journal-Constitution* that the city's preservation officials should have their power curtailed: "Most people are not going to do anything that would detract from the value of their home. I think the [commission] should be a last resort, only if people do something way out of line."

As a result of years of complaints, city officials are entertaining changes to allow more flexibility for home alterations and additions. One proposed change would shrink the historical district, while a second one would establish four categories of homes. The strictest guidelines would apply only to homes with the most historical significance.

*Source: Atlanta Journal-Constitution (May 8, 2003; May 28, 2003; October 14, 2004)*



*Stan Pike*

*Avondale Estates residents discovered that Pike had repainted the house lime green with purple polka dots. He further threatened to plant flowers in old toilets and scatter them around the yard in protest of the Historic Planning Commission's rejection of his project.*





Larry Quillian's "shotgun house"  
in Washington, D.C.

## Tiny "Historic" Shack Prevents Development of Valuable Land

Capitol Hill is home to some of the most valuable real estate in the Washington D.C. metropolitan area. Since the 1970s, however, militant preservationists have prevented the development of a number of very valuable plots under the guise of protecting a form of run-down shack they call a "shotgun house."

Larry Quillian purchased ten adjacent, mostly-vacant lots on the 1200 block of Pennsylvania Avenue Southeast more than 25 years ago. He planned to remove the remaining structures and construct two-story buildings for retail tenants and residents. Quillian found his dreams for the land destroyed by a 1978 law — passed after he bought the land but before construction had started — that declared the entire Capitol Hill neighborhood a historic district.

Historic district rules dictate that new projects involving demolition of existing buildings must be beneficial to the neighborhood. To meet this requirement, Quillian planned a mixed-use development that would consist of ground-floor retail and second-floor residential units — exactly the type of structures city planning officials have urged developers to build for the last 30 years.

But the Capitol Hill Restoration Society (CHRS) took issue with Quillian's plan because it necessitated the demolition of a so-called "shotgun house," a tiny one-story residence so-named because a single shotgun blast through the front door would easily exit through the back window. Insisting that the ramshackle structure was an important piece of the "historic fabric of the community," the CHRS brought Quillian's project to the attention of the city's Historic Preservation Review Board in 1987, which shot down his proposal to build the commercial and residential units.

Quillian then offered to give the shotgun house to the CHRS for free two years later. He proposed a deal in which the CHRS would be able to restore and use the house as it saw fit while Quillian retained control of the lot. CHRS officials rejected Quillian's offer on the grounds that the deal was bad for the CHRS from an investment standpoint, but they continued to insist that Quillian restore and maintain the shotgun house, doing so with his own money.

Quillian refused to pay the estimated \$300,000 that would be needed to preserve the run-down shotgun house. Since he was unable to remove it and develop the property, its condition gradually worsened. Quillian hoped the city would demolish the shack due to sanitation concerns. The Washington, D.C. City Council, however, passed a law in 2001 specifically aimed at preventing "demolition by neglect." Under the new law, the city is given the ability to use taxpayer dollars to restore and refurbish broken-down properties and then bill the properties' owners. The Historic Preservation Review Board decided to use Quillian's property as a test case for the previously unenforced law.

Quillian, who had no intention of paying for the restoration of the shotgun house, did not plan on giving in to the demands of the CHRS or the Review Board. "I don't really care anymore," he explained. "I don't have to develop the site. I can always give it to my grandchildren and let them battle the Restoration Society for the next 30 years."

Although Quillian had been waiting to see if the District of Columbia would try to restore the shack and bill him for the repairs, it appears this will not be necessary. A Texas development company decided to purchase the house from him. It plans to include the old structure among new apartments it is constructing in the area.

Sources: Washington City Paper (November 1, 2002), The Hill (September 11, 2002; November 13, 2002; May 18, 2005), JPI Development Co.

*"I don't have to develop the site. I can always give it to my grandchildren and let them battle the Restoration Society for the next 30 years."*

— Larry Quillian

## City Tells Church It Must Spend \$262,000

For over 130 years, the Warrenton Baptist Church in Virginia has been recognized by its intricately-carved 65-foot steeple. While the structure has remained strong over the years, time and weather have taken a toll on the shingles, siding and molding. Church members proposed replacing the current wood steeple with a fiberglass replica, but city officials rejected the plan, instead demanding the church pay an estimated \$262,000 more than they have budgeted to have the existing steeple fully restored with wood.

The Warrenton Architectural Review Board rejected the fiberglass steeple replacement on the grounds that the material would “clash” with the vintage appearance of the historic district in which the church was located. Church officials appealed the decision to the Warrenton Town Council, but the Council unanimously rejected their appeal. Members of the church then filed suit in the Circuit Court of Fauquier County, arguing that the decision was “arbitrary, capricious, and unreasonable.”

The church had preferred to spend the funds on charitable works, and even considered relocating. Ultimately, however, it decided to acquiesce to the city’s demands.

*Sources: Washington Post (February 22, 2004), Fauquier Citizen, Fauquier Times-Democrat*



*Warrenton Baptist Church  
in Warrenton, Virginia*

## \$58,000 Spent Fighting Over a Treehouse

Two anonymous complaints about a treehouse have cost a Clinton, Mississippi homeowner at least \$28,000 in legal fees and local taxpayers about \$30,000 in a fight to have a playhouse torn down.

In early 1997, Mary Welch sought and received permission from the city’s permit department to build a treehouse — a structure that is not defined by city ordinances — in her front yard. After receiving the two anonymous complaints in 2002, however, Clinton Mayor Rosemary G. Aultman ordered the Welch family to tear the treehouse down. The family appealed the demand to the city’s planning and zoning board. Despite not being able to find any ordinance banning such structures, and the fact that 51 out of 54 neighborhood homeowners signed a petition in support of the treehouse, the board still ruled that the treehouse should be restricted from the Welchs’ front or side yard. City officials also denied the Welchs’ request for a conditional use permit that would have granted a special exemption and allowed the treehouse to remain in place.

The Welch family challenged the planning board’s claim in Hinds County Circuit Court, where Judge Tomie Green ruled in favor of the Welch family. In her ruling, Green pointed out that no city ordinance defines a treehouse. The city board voted to appeal the ruling to the Mississippi Supreme Court in August of 2003. However, the court sided with the Welches and will allow the treehouse to stay.

Despite the Supreme Court’s finding that the city’s use of the ordinance was “unconstitutionally vague,” the city has not offered an apology to the Welch family nor amended the zoning ordinance. The Welch family has accumulated at least \$28,000 in legal bills since the controversy began, while the city has spent roughly \$30,000 on a case that most Clinton residents did not want pursued. A poll conducted by the Southern Research Group found 76 percent of registered voters in Clinton preferred that city officials resolve the issue by granting the special exemption to the Welch family. Instead, the city remained on a crusade against a treehouse, adding frustration and mounting legal bills to the Welch family while wasting taxpayer dollars.

*Sources: Mary Welch, Saveourtrees.com, The Clarion-Ledger (July 24, 2003; August 5, 2004)*



*Clinton, Mississippi treehouse*

## Addition Request Leads to Extortion Demands

Grimm's Fuel Company specializes in landscaping, heating and yard debris recycling services in and around Washington County, Oregon. In May of 2000, owner Jeff Grimm applied to the City of Tualatin for a building permit to add a 7,200 square-foot extension to house an additional three employees and store extra office supplies. The permit was readily approved by city officials, but officials from Washington County intervened before Grimm received the permit. The County made additional demands for an extraordinary number of conditions they said had to be met before Grimm could begin construction.

County demands included the payment of a \$1,200 administrative deposit, installing concrete sidewalks along the business' property, eliminating one of three accesses to the county-owned Cipole Road (accesses Grimm had maintained for decades) and dedicating an additional right-of-way for "adequate corner radius" at the intersection of Cipole Road and Highway 99.

Grimm contended that all of the demands were expenses the county should pay for, and that he should not be required to incur the costs of the changes just to receive a building permit.

Tualatin officials reviewed the county demands, but refused to impose them. City officials argued that the addition to Grimm's property in no way required such radical changes.

The architectural review of Grimm's proposed addition, prepared by Tualatin officials, said: "The county has also required that right-of-way be dedicated along SW Cipole Road and that a sidewalk be installed along the property's frontage... The county has not submitted any findings supporting their requirements. Therefore, [Tualatin officials] are not recommending that these requirements be included as conditions of approval for this development." The city government, however, did not aggressively challenge county officials' continued assertion that the permit fell under their jurisdiction due to Grimm's county road access. This left Grimm at the mercy of county government and hostage to their demands.

After two years of negotiations with Washington County officials failed to reach an agreement, Grimm decided to officially apply for a county building permit. Since the problems revolved around the county's demands regarding the city permit, Grimm thought that applying directly to the county might force a resolution. But county officials refused to let him apply for a permit, creating legal standing for Grimm to file a lawsuit to force the county to take action. This led to a settlement before the case went to trial. The settlement allowed Tualatin officials to grant Grimm his building permit by waiving the condition for him to obtain an access permit from the County. Grimm's addition was finally completed as initially approved — without the county's conditions.

*Sources: Oregonians in Action Legal Center, Dave Hunnicutt, Jeff Grimm, City of Tualatin Planning Department*

## Rat Prevention, Prevented

When 17-year-old Christian Alf's grandmother had a problem with rats entering her home through exposed roof vents, she turned to her grandson for help. Using easily-obtainable diamond stucco mesh wire, Alf created a makeshift, yet very effective, way to prevent the rats from entering.

Talk of Alf's good work spread from his grandmother to her Bible study group and elsewhere in the family's Tempe, Arizona community. Alf soon began equipping other homes with similar rat-deterrence devices. Making \$30 per home, Alf was able to save money for college.

The *Arizona Republic* ran a story about Alf's part-time job in February, 2004. Approximately 250 callers inquired about his services. Not all of the calls, however, were requests for rat control. One caller was an inspection officer for the Arizona Structural Pest Control Commission (ASPCC). He informed Alf that a state-regulated license would be required for Alf to continue performing what was considered by the state to be commercial pest control.

The following day, the inspector arrived at Alf's home to tell him that he was in violation of state law and could face fines up to \$1,000 for performing pest control without an appropriate permit. To obtain a license, Alf would need to pay \$78 and pass an exam covering over 40 pages of laws and rules that are unrelated to his mesh wire rat prevention devices. Furthermore, even if Alf obtained a license, he would be required to work for a licensed pest control company as an apprentice to someone holding a Qualifying Party license. The time, energy and loss of income that would be required to meet these requirements brought the popular business to an immediate halt.

Legal experts contend Alf's business is not subject to ASPCC authority. Since Alf does not use pesticides or chemicals — he is only placing a mesh wire construction over roof openings — they argue he should not be subject to the regulatory policies. Lisa Gervase, executive director of the ASPCC, counters, "There is no discretion as to what method he is using to control the pest. If he's doing pest control work, it requires a license, both in terms of health concerns and financial concerns."

Alf appealed his case to the ASPCC, inquiring as to whether or not he can resume his work. Responding to the threat of legal action, Gervase and the ASPCC "determined that the limited, specific facts of this matter do not constitute the business of structural pest control." With the case ruled in his favor, Alf commented, "I'm glad that the Commission has now said I can go back to work. There are a lot of people who need my help."

*Sources: The Arizona Republic (February 28, 2004), The East Valley Tribune (March 16, 2004), The Goldwater Institute, The Institute for Justice, The Arizona Structural Pest Control Commission*

## A Rose, a Tulip, and a Carnation: May I See Your License?

Sandy Meadows, Shamille Peters and Barbara Peacock all consider themselves blessed with a knack for designing floral arrangements. Their keen sense of blending color schemes, foliage types and other design aspects was developed through years of experience



*Christian Alf*

*"There are a lot of people who need my help."*

*—Christian Alf*





*Shamille Peters*

in the floral industry. Meadows spent a combined nine years as both a floral clerk and supervisor. Shamille boasts a similar resume while Barbara has worked with flowers and designed floral arrangements for her church, friends and relatives since she was a child. But their goal of becoming florists turned out to be a much more difficult goal to accomplish than the women expected. Each woman's individual quest to become a professional florist was severely inhibited by Louisiana's mandatory florist-licensing exam.

As preposterous as a state-mandated flower exam might sound, the success rate of perspective applicants is even harder to believe. Over the past three years, passage rates for the exam peaked in 2003 at a mere 46 percent. The year before, the success rate was only 43 percent. Legal experts argue the reason for the low rate of success among applicants is not a viable one. The Louisiana Horticulture Commission (LHC) assumed the responsibility for administering the Retail Florist Exam in 1939, authorizing only those people who successfully pass a two-part exam. This \$150 exam consists of a written component and a practical, hands-on design test in which applicants create four different floral arrangements. The latter half of the exam is especially prone to subjectivity. Instead of using impartial judges to grade the Commission's exams, the LHC employs state-licensed florists with whom prospective florists will compete in the marketplace *if* they pass the test. Thus, legal experts note, a situation is created where the judges can effectively control development and competition within their own industry.

LHC judges are asked to determine whether an applicant's four floral arrangements meet indeterminable and subjective criteria such as a proper focal point, whether the arrangement was constructed in a size proportional to its container, if and how the flowers were effectively spread and whether or not the flowers and greens were properly picked. Many applicants have complained to the LHC that they believe the judges' discretion and subjectivity obstruct the opportunity for applicants to obtain florist licenses.

One example that aptly demonstrates the arbitrary and subjective nature of judging occurred when one aspect of an applicant's wedding arrangement received three perfect scores on the appropriate size of wire on her greenery (five out of five) and two failing scores (zero out of five) from the five-judge panel. These wide-ranging and inconsistent scores exhibit how the guidelines for grading and potential bias on the part of the judges toward future competition can contribute to the exam's exceptionally low rate of success.

Meadows, Peters and Peacock are only three of many victims of this licensing program. Combined, the three women have already flunked the exam ten times despite their many years of experience. After their initial failures, Peters and Peacock enrolled in floral design courses at local community colleges in hopes of bolstering their chances to pass the exam. These efforts have so far proved only to be both fruitless and costly.

All three women have dedicated innumerable hours in their quests to become licensed florists in Louisiana. While all three are currently employed in other fields, the extremely subjective nature of the state's licensing exam presents them from practicing their desired vocation. In December 2003, Meadows, Peters and Peacock filed a lawsuit against the LHC in the U.S. District Court for the Middle District of Louisiana in Baton Rouge, claiming that the requirements to become a licensed florist are anti-competitive and monopolistic. However, in March 2005, Judge Frank Polozola upheld Louisiana's florist licensing law, citing public health and safety concerns.

Despite the ruling, the women continue to fight for the opportunity to become professional florists in Louisiana.

*Sources: The Institute for Justice, The Louisiana Horticulture Commission*

## California Tries to Require Broker's Licenses for Web Sites Carrying Real Estate Ads

Some homeowners choose to forgo the high cost of real estate sales commissions by selling their homes themselves.

In 1997, Damon Giglio opened up a whole new world for independent sellers with the creation of the Forsalebyowner.com website. For up to \$700 a listing, sellers can make their homes available to a nationwide market of prospective buyers. Regulators in California, however, tried to force Giglio and the owners of similar sites to become licensed brokers. This would have ruined Giglio's business in California and may have led to new restrictions in other states.

In 2001, Giglio received notice from the California Department of Real Estate advising him that anyone advertising property listings in the state must be a licensed broker. In collecting a fee to "list," "advertise" or "offer" properties for sale without state certification, one runs the risk of individual penalties of up to a \$10,000 in fines and six months in jail and up to \$50,000 in fines for businesses.

Getting a broker's license is a costly endeavor. Giglio contends the two-year, college-level process is unnecessary for his service — essentially posting on-line classified ads. Even though for-sale-by-owner classified ads have appeared in California newspapers for years without newspapers being penalized, state regulators have forced at least one of Giglio's Internet competitors out of the California market.

With the assistance of the Institute for Justice, Giglio won a lawsuit against California regulators in the U.S. District Court for the Eastern District of California in Sacramento. Federal District Judge Morrison England found the distinction that requires independent websites to obtain a broker's license while exempting newspapers that print real estate advertisements was "wholly arbitrary" on First Amendment grounds. The court ruled that "there appears to be no justification whatsoever for any distinction between the two mediums."

In 2004, the State of California decided not to appeal the decision.

*Sources: Institute for Justice, USA Today (May 19, 2003)*

## Seattle Eliminates Businesses for the Long Haul

Ron Haider of Haider Construction in Seattle, Washington could rely on Joe Ventenbergs' Kendall Trucking to haul construction-related debris from his work sites more quickly, less expensively and, he said, more reliably than competitors Rabanco, Ltd., and Waste Management of Washington (WMW). Haider said, "Joe provided better service at a better price and worked in a timely fashion. He was more environmentally conscious, too." But Haider's ability to work with Ventenbergs began to be curtailed in April 2001 when the Seattle City Council entered into a seven-year contract with the two other companies for the removal of the city's commercial and residential waste.

An ordinance in Seattle's municipal code mandated that all hauling of commercial and residential waste was exclusively delegated to Rabanco and WMW, affiliates of the national companies Allied Waste Industries and Waste Management Incorporated, respectively. Each company was awarded a territorial monopoly (Rabanco in the northern part of the city, WMW in the southern). No other companies were legally



*Damon Giglio (right) with business partner Colby Sambrotto*

*In collecting a fee to "list," "advertise" or "offer" properties for sale without California state certification, one ran the risk of individual penalties of up to a \$10,000 in fines and six months in jail and up to \$50,000 in fines for businesses.*

allowed to collect or remove these types of debris. Initially, smaller local haulers like Kendall could still legally haul construction waste — but that soon changed.

In October 2002, largely as a result of successful lobbying efforts by Rabanco and WMW, Seattle's municipal code was amended to expand the scope of its contract with the two companies to include construction waste. For Ventenbergs, the City Council's action was a drastic blow to his business, as the removal of construction waste is Kendall's main service. In February 2003, city officials informed small business haulers that most of their work would be eliminated. Privately-owned businesses like Haider's would be required to use the services of either Rabanco or WMW. Jeanette Peterson, an attorney representing both Ventenbergs and Haider, commented that, "with the stroke of a pen, the city of Seattle [had] transformed a legal business into an illegal business."

Based on the assertion that the municipal code constricts economic liberty, Haider and Ventenbergs filed a lawsuit against the city in May 2003, claiming that the change in the municipal code creates territorial monopolies and is therefore unconstitutional. Haider also asserts he has the right to hire the hauling company of his own choice. In addition, the suit argues, the city is engaging in economic favoritism by creating an oligopoly over the waste-hauling industry that benefits Rabanco, WMW and their parent companies. City Councilwoman Margaret Pageler disagrees with Haider and Ventenbergs, saying, "We'd like to be kind to small-business people, but in fact we have a contract that's consistent with state law, and the ordinance simply brought the city law in compliance with the contract and the state law that precedes it."

On February 23, 2004 the King County Superior Court in Seattle ruled that Haider and Ventenbergs were not entitled to relief under the privileges and immunities clause in Washington's state constitution. The Washington State Court of Appeals Division I upheld the ruling in February 2005, and the territorial monopolies over hauling construction waste in Seattle continue.

*Sources: The Seattle Times (February 25, 2004; February 15, 2005), Seattle Post-Intelligencer (May 16, 2003), Cascade Policy Institute, The Institute for Justice, Ron Haider, Seattle City Council, Jeanette Petersen*



*Reverend Nathaniel Craigmiles*

## Casket Salesmen Required to Have Embalming Expertise

After his mother-in-law's funeral, Nathaniel Craigmiles saw the exact casket that had cost him \$3,200 in Tennessee selling for only \$800 in a New York City store.

Craigmiles, pastor of Marble Top Missionary Baptist Church in Chattanooga, Tennessee, saw a good business opportunity. He opened his own casket store and set his prices 30 to 50 percent below what other Tennessee casket dealers were charging.

After the business was open one week, however, the Tennessee Board of Funeral Directors ordered Craigmiles to stop selling caskets. If he refused to stop, Craigmiles risked having his business shut down, the imposition of fines and, possibly, a jail sentence. That's because Tennessee law states that anyone who sells a casket must also be a licensed funeral director. To accomplish this, one must go through two years of training (which costs thousands of dollars), embalm 25 bodies and pass a license exam.

Craigiles filed a lawsuit in U.S. District Court for the Eastern District of Tennessee, arguing that Tennessee's regulation violates the due process and equal protection clauses of the Fourteenth Amendment.

Chief Judge R. Allan Edgar agreed, saying consumers should have a choice when purchasing caskets and ruling that the requirement of a license to sell a casket was illegal. Edgar also said caskets sold by funeral directors are marked up between 250 and 400 percent, with some examples as high as a 600 percent markup.

The state of Tennessee appealed the ruling to the U.S. Court of Appeals for the Sixth Circuit in Cincinnati, Ohio. That court found the only difference between caskets sold by individual retailers and the Tennessee Board of Funeral Directors was the cost. The court ruled unanimously in favor of Craigiles, and he was allowed to re-open his business.

"The government's good old boy network drove me into bankruptcy, but now I'll finally be able to help my parishioners and others cut their funeral costs," said Craigiles.

*Source: Institute for Justice*

## Bicycle Carriages Outlawed After Taxi Drivers Find Them Threatening to Business

Bill Jones is used to maneuvering around roadblocks. As pedicab driver on the Las Vegas Strip, Jones would maneuver his half-bicycle, half open-air carriage through congested streets where locals and tourists alike flock.

Now Jones and other employees of Silver State Pedicabs must contend with a potentially monumental barrier in the form of the Nevada Transportation Services Authority (NTSA), which wants to eliminate pedicabs altogether.

Clark County pedicabbers say they provide a valuable and unique service for this bustling area. The NTSA, created in 1997 to regulate limousines, tour buses, moving companies and tow-trucks, argues that pedicabs are a threat to pedestrian safety.

The Clark County taxi industry also considers pedicabs a threat — to its own business.

In an effort to eliminate the pedicabs, Clark County officials began creating obstacles that threatened the pedicabs' survival. Pedicabbers are already prohibited from charging a fare for their services. To counter this, pedicabs often display "not for hire" signs, so driver's earn their pay solely on tips. Drivers like Jones say they can earn between \$100 and \$300 for rides on the five-mile Las Vegas Strip, making the pedicab industry a viable and lucrative form of employment.

However, in March 2004, Clark County commissioners voted to ban pedicabs on the busiest thoroughfares of the Strip, from Russell Road (South end) to Sahara Avenue (North end), and 200 feet east of the Strip. Pedicabs may operate outside the restricted area where far fewer pedestrian and tourist traffic are present, but operators must carry insurance. The regulations follow an example initiated by the city council in Santa Barbara, California, where bureaucratic requirements resulted in the extinction of the pedicab industry.

*Sources: Associated Press (November 13, 2003), Nevada Transportation Services Authority, Las Vegas Review-Journal (March 3, 2004), Business Week (February 8, 2005)*



*Pedicab*



*Statue of Liberty*

*“You know what is not in the test? How do you get 8<sup>th</sup> graders interested in New York?”*

*— Jane Marx*

## New York Requires City Tour Guides to Pass Stringent Tests

For 23 years, Jane Marx has led tours in New York City. She can tell visitors about the history and geography of the Big Apple, as well as humorous and informative anecdotes about the city, but she doesn't know exactly how big the Bronx is in proportion to cities in Europe. Because she is unaware of this bit of trivia, city officials do not consider her among New York City's best tour guides. She considers it insulting, but is nonetheless thankful it didn't rob her of her livelihood — as it once threatened to do.

In May 2003, Gretchen Dykstra, commissioner of New York City's Department of Consumer Affairs (DCA), decided to replace the existing tour guide licensing exam, which all tour guides at the time had taken and passed when they were first licensed, with a much longer and more arcane version.

Many questions expected guides to know information that has little real use in their line of work. For example: “The physical size of the Bronx is approximately the equivalent to what European city? (a) Paris, France (b) Copenhagen, Denmark (c) London, England (d) Brussels, Belgium.” One month after the new test was required, only 36 percent of those who took it were able to correctly answer the 120 questions out of 150 needed to pass.

A chief complaint among New York City's approximately 1,300 licensed tour guides at the time was the new testing requirement essentially revoked their licenses. According to the Guides Association of New York City, the test punished guides “without provocation, just cause, due process or misconduct.” There were no complaints on record against the conduct of a tour guide to spur such a radical overhaul of the licensing system.

“You know what is not in the test? How do you get 8<sup>th</sup> graders interested in New York?” notes Marx. She maintains the qualities which make a good tour guide — humor, warmth, kindness, presentation of information — cannot be gauged by mini-essays and multiple choice questions. While knowing facts is certainly important, a test that quizzes minuscule dates and names cannot be an accurate arbiter of excellence in tour guiding. Marx asserts that tour guides' customers are on vacation and not “going for [a] Ph.D.” She says they want to be entertained as much as they want to be educated.

After half-a-year of bureaucratic wrangling with the DCA and the New York City Council, the Guides Association succeeded in relaxing the requirements of the new test. In January 2004, threatened with yet another City Council hearing on the test, DCA commissioner Dykstra went along with Guides Association demands that tour guides who already have licenses not be required to take the new exam. In addition, the number of questions new applicants must get right to pass has been lowered from 120 to 97, the average score of applicants who took the exam in the first months it was administered. However, those who take the exam and score 120 or above are awarded a star on the DCA's online list of licensed tour guides. “I am starless,” says Marx, who refuses to take the exam, “which leads the reader to interpret I took the test but got less than 120.”

*Sources: The Gotham Gazette (July 7, 2003), Fox News (June 30, 2003), National Public Radio (June 2, 2003), Jane Marx*

## Fourteen-Year-Old Worker Fined \$352 for Not Filing Tax Return on \$3.16 Paid in Taxes

Laurie Hanniford, a 17-year-old high school junior in Carlisle, Pennsylvania, was mystified by the certified letter she picked up at the post office in May, 2003.

Was it her senior driver's license, or perhaps something from a college?

Unfortunately, no. It was a criminal complaint threatening her with arrest.

Hanniford called her parents from the post office. According to the Associated Press, Hanniford's mother said Laurie "couldn't drive, she was crying so hard."

When she was 14 years old, Hanniford had worked part-time as a swim instructor. That summer, she made \$316. The \$3.16 she owed in taxes was deducted from her paychecks. Three years later, the letter said, she was being fined \$352 — more than she had made — for not filing a local tax return in conjunction with the \$3.16 she had paid in taxes.

The Capital Tax Collection Bureau, which collects taxes from 75 localities and school districts, said it had sent her three notices informing her that she had to file a return. It took legal action when she did not respond. The Hannifords said they never received the letters, and the CTCB's own bureau director admitted that the notices are often mistaken for junk mail.

"It's the stupidest thing I've ever heard of to fine her — she was 14 at the time — for taxes that have already been paid," said Hanniford's mother Sarah.

Even though Hanniford had paid her taxes on time, she still paid a heavy price for not filing the paperwork. The teenager was forced to appear in front of District Justice Susan Day to defend herself, where she pleaded no contest. Her fine was then reduced to \$77.

According to the Associated Press, about two dozen other teens received letters similar to Laurie's.

*Sources: Pittsburgh Post Gazette (June 6, 2003), CBS News (June 6, 2003), Associated Press (June 8, 2003)*

## Seven-Year-Old's Lemonade Stand Shut Down by Government Regulators

If an entrepreneurial child in St. Paul, Minnesota wants to set up a lemonade stand, he or she must first learn about the costly and overbearing world of government regulation. That's because before serving the first customer, the child will need to obtain a \$60 license to sell beverages. That's what seven-year-old Mikaela Ziegler found out after the city's Office of Licenses, Inspections and Environmental Protection shut down her refreshment stand.

On August 27, 2003, Mikaela was in her fourth day of selling packaged lemonade, orange juice, water and soda pop. A woman identifying herself as a city inspector approached her stand and told her, "You can't sell pop without a license."

Mikaela was considered to be in violation of St. Paul's Legislative Code Chapter 331A.04(d)(24), which mandates a license for "a temporary establishment where food



*\$3.16 in taxes earned a 14-year-old a \$352 fine.*

*"It's the stupidest thing I've ever heard of to fine her — she was 14 at the time — for taxes that have already been paid."*

*— Sarah Hanniford*



*Lemonade*

sales shall be restricted to pre-packaged nonpotentially hazardous foods or canned or bottled nonalcoholic beverages; operating no more than fourteen (14) days annually at any one location.” Although no one had complained about Mikaela’s stand, Licensing Director Janeen Rosas cited complaints about unlicensed vendors operating at the nearby state fair.

Mikaela’s father, Richard, calls the situation “laughable” and “tragic.” He rhetorically asked the *Minneapolis Star-Tribune*: “Is there anything sacred anymore? We’re not running a business here. This is fun and games for kids. I think [Mikaela] netted, after paying me, a whole \$13.”

*Source: Minneapolis Star-Tribune (August 29, 2003)*



*Josh Wexler and Anne Jordan Blanton*

## “Big Easy” Made Selling Books Not-So-Easy

Josh Wexler and Anne Jordan Blanton love books and have always dreamed of starting their own bookstore. After moving to New Orleans in August 2001, they decided to start a street vending business to sell books because they did not have enough money to open a storefront operation. The City of New Orleans, however, kept them from opening their business for nearly two years.

New Orleans requires that street vendors obtain specific permits to sell their goods, which Wexler and Blanton were willing to do. While street vendors in New Orleans can get permits to sell razor blades, flowers or food, nowhere in the city code does it mention permits to sell books. Their Catch-22 situation was that vending without a permit — something that was required yet didn’t exist — is a misdemeanor crime punishable by up to five months in jail.

City officials were steadfast in preventing Wexler and Blanton from selling books on the street. The couple sued the City of New Orleans in the U.S. District Court for the Eastern District of Louisiana. Judge Stanwood Duval, Jr. ruled in their favor on June 17, 2003, determining that the city’s restriction on selling books on streetcorners just because it had not created a permit to regulate the practice was unconstitutional.

Since the ruling Wexler and Blanton have opened their bookstand, successfully completing their personal “Battle of New Orleans.”

*Sources: Institute for Justice, Josh Wexler*

## Braiding Hair Requires a License?

Essence Farmer first began braiding hair when she was ten years old. Specializing in African-style hair braiding, which is considered a form of natural hair care because it does not use chemicals or artificial hairstyling techniques, over the years Farmer refined her skills and developed a devoted and trusting list of clients. In 1999 and 2000, she was braiding five to six clients per week out of her parents’ West Valley, Arizona home. Like other African hair braiders and natural hairstylists, Farmer operated her business “underground” because she was not a state-certified cosmetologist.

While attending Prince George’s Community College in suburban Maryland in 2000, Farmer practiced her trade legally and without regulatory interference at the

Blowouts Salon and Hairstons. She later returned to Arizona, intending to open her own legitimate hair-braiding business. Unfortunately, her plans went against a 1996 law requiring all hairstyling professionals to be licensed by the Arizona Board of Cosmetology. Acquiring this license is not an easy task for naturally-skilled stylists such as Farmer. To become a licensed cosmetologist in Arizona, one must attend a board-approved cosmetology school and pass an examination. Both criteria result in unnecessary hardships for prospective natural hairstylists. A one-year course at an approved institution can cost nearly \$10,000. The training is also rigorous: 1,600 hours of study are required to master a variety of styling and beautifying techniques. Not a single hour is dedicated to natural hairstyling or to the African-style hair-braiding. The required examination is on matters unrelated to African hair-braiding.

Farmer filed a lawsuit in Superior Court of Maricopa County in December, 2003 challenging Arizona's cosmetology licensing statutes, claiming the occupational licensing laws inhibit viable employment opportunities. Relief proved to be at hand, however. Arizona Governor Janet Napolitano signed into law Senate Bill 1159, which exempts natural hairstylists from the onerous cosmetology requirements.

Commenting on her victory, Farmer said, "I've already begun the process of opening Rare Essence Braiding Studio. It is thrilling to be at the center of a movement that will allow entrepreneurs to take their first step on the road to self-employment."

*Sources: The Institute for Justice, Tim Keller, Arizona Board of Cosmetology*

## City Council Shuts Down Free Transportation Service

Imagine a free public service that relieves the aching feet of tourists, gives kids a safe ride home from the movies at night or keeps someone who might have had one too many drinks at the local pub off the roads. Then imagine government regulations shutting the service down.

It happened in Santa Barbara, California.

Pedicabs — bicycle rickshaws able to carry up to six people per trip — were becoming increasingly popular in Santa Barbara. The young men who peddled people around town maintained an informal business, didn't keep regular hours and did not charge a fare for rides. While they accepted tips, drivers did not demand them. The Santa Barbara City Council effectively put them out of business, however, by passing a law in December of 2002 that required pedicabbers to jump through expensive bureaucratic hoops. These requirements included getting a driver's license, undergoing an FBI criminal background check and obtaining a business license and proof of insurance. All of this was to be paid for by the pedicabber. Insurance alone can cost more than \$1,000.

Thanks to these imposed costs, pedicabbers were unable to continue operations. Most of Santa Barbara's pedicabbers are now out of business.

*Sources: ABC News (August 28, 2003; August 29, 2003), Commuter Bicycles*



*Essence Farmer*



*Soft Top Pedicab*





*Pencils*

*Department of Social Services officials and four police officers arrived at the Bryant home at 7:45 am and ordered the children be taken to a hotel, where they would be given a standardized test.*

## Parents Lose Legal Custody of Home-Schooled Children

To the consternation of officials from the Waltham Public Schools and the Massachusetts town's Department of Social Services (DSS), Kim and George Bryant decided to home-school their son, Nick, and daughter, Nyssa.

This decision ignited a legal fight between the local government and the Bryants that lasted over six years and became so contentious that the DSS took legal custody of the children.

The DSS was awarded legal custody of the Bryant children after the school district obtained a court ruling in 2001 stating the Bryants were "unfit" parents because they didn't file an educational plan or grading system meeting school district approval. The Bryants countered that their plan was very similar to one accepted for a family in Framingham, another eastern Massachusetts school district.

Nonetheless, Kim and George were determined to be in "educational neglect" of their children, and the DSS was awarded legal custody of Nick and Nyssa. The children, however, continued to live with their parents and Bryants continued to provide and pay for all of the children's expenses. At no point did the DSS offer or provide any services. George Bryant explained, "DSS did virtually nothing to support the 'health' of my family," while claiming legal custody of the children. Both sides additionally agree the children were never abused mentally, physically, sexually or emotionally by their parents.

On June 12, 2003, DSS officials and four police officers arrived at the Bryant home at 7:45 am and ordered the children be taken to a hotel, where they would be given a standardized test. DSS worker Susan Etscovitz charged: "We have legal custody of the children and will do with them what we see fit... They are minors and they do what we tell them to do."

After the DSS failed to convince Nick and Nyssa to go to the hotel to sit for the test, the Framingham Juvenile Court issued a same-day ruling ordering their parents to take them. At the hotel, the children continued to refuse to take the test. Nyssa said, "We don't want to take the test. We have taken them before, and I don't think that they are a fair assessment of what we know." George Bryant echoed his daughter's complaint, saying, "Private school students do not take standardized tests. Why should our children be subjected to this, against their will?" He added: "We do not believe in assessing our children based on a number or letter. Their education process is their personal intellectual property." Surprisingly, Waltham School Superintendent Susan Parrella provided support to the Bryants' cause when she weighed in on the matter in quote to a local newspaper: "An acceptable home school plan is in place right now. I was not aware of any testing occurring today."

Nonetheless, a court hearing to determine whether a complete transfer of custody of the Bryant children to the DDS would take place due to their noncompliance was scheduled for the next day. But the hearing was later postponed indefinitely. George Bryant commented, "We were told [Thursday] that we must show up [Friday]. Several hours later we received a note in our door from DSS saying that it will be discussed at a later time." Since the issue was left unresolved, the Bryants were burdened for some time by the possibility that DSS officials and police officers would arrive at their door

to demand their compliance with school district regulations, or perhaps to take the children to foster homes.

The Bryant case may be an extreme example, but home-schooling families in the Bay State often face hostile local governments. Scott Somerville, a staff attorney for the Home School Legal Defense Association, notes “Massachusetts is a barbaric [state] for homeschoolers.”

While Nick continued to be home-schooled, Nyssa chose to enroll in a public high school in the neighboring Belmont Public School District in the fall of 2003. To facilitate her placement, Kim compiled a transcript highlighting the work Nyssa completed during her home schooling. As a result of her past educational achievement, Nyssa began high school a grade above most students in her age group. She made the school’s highest honor roll every semester.

*Sources: Townhall.com (June 18, 2003), WorldNetDaily (June 2003 coverage), PrisonPlanet.com, Talon News (June 17, 2003), GOPUSA News (June 17, 2003), Childrenfirstamerica.org, Penwing.com, Home School Legal Defense Association, Kim Bryant, George Greeley Bryant*

## Activities Banned From Community Center: Alcohol, Crime... and Home Schooling?

You can take a foreign language class at community centers in Calvert County, Maryland. You can play ultra-violent fantasy wargames, possibly even ones based on pagan beliefs. You can even participate in Bible study classes. But Lydia Goulart and Kyle Travers have found out the hard way that you can’t teach a class in fiber arts or host a geography club there if your lessons happen to be in conjunction with home schooling.

In Calvert County, using a county building to “home school” children ranks among prohibited activities like alcohol use, criminal acts or hosting for-profit events. According to county officials, allowing home schooling parents to use public facilities for their classes and extracurricular activities would be a waste of taxpayer money because it would create “duplicate services” already provided by the public schools. This decision stands despite the fact that Goulart and Travers planned on opening their activities to the public and sought to utilize rooms that otherwise were empty.

The Home School Legal Defense Association (HSLDA) filed a lawsuit in the U.S. District Court for the District of Maryland, arguing Calvert County officials violated the Fourteenth Amendment’s guarantee of equal protection of the law. The court ruled against Goulart and Travers, allowing the ban on homeschooling activities to continue. HSLDA appealed the case to the United States Court of Appeals for the Fourth Circuit in Richmond, Virginia. On September 26, 2003, the Fourth Circuit Appeals Court overturned the District Court, affirming that teaching the young is protected under the First Amendment. However, the court also held that the Community Center had not violated the rights of the homeschoolers by excluding them from the facilities. HSLDA decided not to appeal to the U.S. Supreme Court.

*Sources: The Home School Legal Defense Association, The Daily Record (Baltimore, Maryland) (September 29, 2003)*

*A survey of 5,402 home schooled students found these students, on average, outperformed their public school counterparts by 30 to 37 percentile points on national standardized tests.*

*— Dr. Brian Ray, “Strength of Their Own: Home Schoolers Across America,” National Home Education Research Institute, Portland, Oregon, 1997*

## Family Investigated for Sending Child to College

When child prodigy Angela Lipsman graduated from the eighth grade at New York City's Public School 187, she immediately began taking full-time college-level courses at the Borough of Manhattan Community College and the Fashion Institute of Technology. Although the 15-year-old earned enough credits for an associate's degree, her father, Daniel, became subject to an investigation for alleged educational neglect because Angela skipped high school to go directly to college.

Angela and her father live in the Washington Heights neighborhood. Daniel had vowed that he would "go to prison before my daughter goes to a city high school." Local high schools suffer from overcrowding, and the educational environment is so poor that Washington Heights' George Washington High School saw just 37 percent of the student body graduate on time in 1998.

New York Education Department regulations require children to be enrolled in school until the age of 17, and say that Angela cannot get a general equivalency diploma until she is 19. Even though Angela had maintained a 3.84 grade point average in her collegiate classes, the college would not give her the degree she earned because she never received a high school diploma. Daniel filed an age-discrimination lawsuit challenging the age requirements, but New York State Supreme Court Judge Bernard Malone ruled that Angela should not have been allowed to skip high school — even if it was to go straight to college.

Daniel Lipsman asserts that the state should not dictate what age a child must be in order to move on to the next level of schooling: "If the kid can demonstrate the achievement, give him or her the credential. She has a birth certificate. A G.E.D. is *not* a substitute birth certificate. This law is irrational and serves no legitimate governmental interest."

Angela had to travel to New Jersey in order to take her GED test. She then faxed the results to Excelsior College in Albany. Ironically, she received her associate's degree a week before she got her GED. In January, 2005, Angela received her bachelor's degree with a 3.87 G.P.A. from her 53 undergraduate courses. She has completed four graduate courses and plans to earn a master's degree before she turns 18.

*Sources: New York Daily News (July 16, 2003), New York Post (July 16, 2003), Mr. and Mrs. Daniel Lipsman*

*"I'll go to prison before my daughter goes to a city high school."*

— Daniel Lipsman

## Children Banned from Participating in Private Schools' Sports Teams

Students Douglas and Laura Pelletier, who are home-schooled, participated in the track and cross-country teams at Seacoast Christian School. But Douglas and Laura's future in interscholastic sports was threatened when the Maine Principals' Association (MPA) selectively prevented home-schooled students from playing for private schools' athletic teams.

Under Maine state law, home-schooled children are allowed to play on the teams of both public and private schools. In November of 2002, however, MPA executive director Richard Durost issued a memorandum to MPA member schools, which comprise all of Maine's public schools and many private schools, that said a private school would jeopardize its eligibility to compete with other MPA schools if home-schooled children played on its athletic teams. Although this conflicted with state law, Durost and the MPA were steadfast in enforcing the new ban. As the MPA regulates high school interscholastic extracurricular activities in Maine, a school's sports program could be significantly impaired if it violated an MPA policy.

In March of 2003, the Home School Legal Defense Association filed a complaint in U.S. District Court for the District of Maine in Portland, Maine on behalf of the Pelletiers and other Maine home schoolers, arguing that home-schooled children should be allowed to participate in high school sports at private schools. In May of 2003, a judge ruled against the family, forcing the children to go through their local public school if they want to take part in interscholastic sports. The judge ruled that the family's right to choose private education was not burdened because they had the option to enroll in private or public schools if their children wanted to participate in sports. The Pelletiers have not appealed the decision.

In a letter to the MPA, the Home School Legal Defense Association pinpointed what it believed the issue had always been about: a desire "to give public schools a monopoly on homeschool students who are also athletes."

*Source: Home School Legal Defense Association*

## City Destroys One Auto Business to Make Landscaping for Another

In Toledo, Ohio, city officials waged a five-year campaign to oust Kim's Auto and Truck Service to accommodate the expansion of an existing DaimlerChrysler Jeep manufacturing plant.

Kim and Herman Blankenship, the owners of Kim's Auto and Truck Service, are the last remaining holdouts in the city's campaign. They are also the targets of one of the most egregious examples of eminent domain abuse because their property, if turned over to DaimlerChrysler, is expected to simply become open space.

The Blankenships steadfastly refuse to allow city officials to condemn their land, which is located on a corner lot approximately 300 yards from the manufacturing plant. Terry Lodge, the Blankenships' attorney, doesn't understand why city officials are fighting so hard to take his clients' property. Lodge said: "From the very start of planning for the manufacturing plant, the area currently occupied by Kim's Auto was designated as a landscaped green-space." Kim adds: "They just want landscape. Why uproot somebody's business for that?"

In 1999, the Blankenships and other area residents and business owners were informed by the city that 83 homes and 16 businesses were slated to be condemned under the city's power of eminent domain — the government's ability to take private property, with just compensation, for the public good. This taking was to facilitate the expansion of an existing DaimlerChrysler Jeep Plant. City officials agreed to transfer the land — approximately 160 acres — to the company to begin construction. In order to keep the manufacturing plant in Toledo, city and state officials offered Chrysler over \$280 million in tax breaks and other incentives. The city also took out a \$28 million loan from the U.S. Department of Housing and Urban Development to cover the costs of relocating property owners.

Lodge asks, "How can you condemn property and have it handed over to another business entity?" Former Toledo Mayor Carty Finkbeiner, who approved the manufacturing plan, said it was necessary to maintain 4,900 jobs. Opponents of the plan, however, insist the plant's assembly line draws heavily on automated lasers and robots and will not create the spinoff jobs promised.

The dispute over the Blankenship property went to trial in September of 2002, after the manufacturing plant's addition was completed and fully operational. A Lucas County Common Pleas Court jury ruled in favor of the Blankenships, valuing their business at \$104,000. Toledo's law director, Barbara Herring, applauded the jury's decision, claiming, "They've been offered a very fair value for their property." The Blankenships disagree, saying that rebuilding their business would cost nearly \$500,000. In addition, Kim's clientele includes a large number of small trucks. Their current location, approximately 150 feet from Interstate 75, is an ideal location that would be extremely difficult to duplicate elsewhere. Public interest attorney Dana Berliner, who, in her study, "Public Power, Private Gain," called this ouster of property owners "one of the top ten abuses of eminent domain," has pointed out, "many, if not most, condemned businesses never reopen."

The Blankenships appealed the ruling, claiming the market value cited for their property is too low. They also continue to assert that the city is attempting to condemn their property without an appropriate public cause. The Ohio Sixth District Court of Appeals upheld the jury award in October of 2003, arguing that the city did not abuse its discretion in condemning the land. In their quest to keep their property, the

*10,282 properties nationwide were threatened or taken by the government's abuse of eminent domain power between 1998 and 2002.*

— Dana Berliner, "Opening the Floodgates: Eminent Domain in the Post-Kelo World, Institute for Justice, Arlington, Virginia, 2006

Blankenships have enlisted the support of the Center for Study of Responsive Law, a non-profit organization of Ralph Nader. Commenting on the Blankenship case, Nader said, “The purpose of eminent domain should be for a public purpose. It should be for a bridge, a dam, a highway.”

However, in October of 2004, the Supreme Court of Ohio declined to issue a stay to protect the property and refused to hear the case. The Blankenships’ shop was destroyed in 2004. A subsequent appeal to the U.S. Supreme Court did not provide the Blankenships any relief. An application referred to Justice John Paul Stevens of the Supreme Court for injunction pending appeal was denied in October of 2004, and the Supreme Court eventually declined to hear the Blankenships’ case in August of 2005.

*Sources: The Pacific Legal Foundation, The Institute for Justice, Toledoblade.com (March 7, 2002; June 4, 2004; July 15, 2005), Terry Lodge, Herman Blankenship, Associated Press (June 17, 2004; August 17, 2005)*

## Urban Redevelopment Commission Can’t Take Curley’s Diner

Greek immigrants (and sisters) Maria Aposporos and Eleni Begetis have owned Curley’s Diner — a revered staple of downtown Stamford, Connecticut — since the 1960s. That almost changed in October of 1999, when Stamford Urban Redevelopment Commission (SURC) attorney Bruce Goldberg flatly told Aposporos, “We’re taking your property and we’re giving you \$240,000 for it.”

Aposporos believed SURC officials were abusing their powers of eminent domain — the government’s ability to take private property for a public use — because the SURC wanted to transfer the property to Corcoran Jennison and Berkeley Partners Incorporated, a private company seeking to build an upscale 11-story apartment complex and new office space and retail stores on the Curley’s Diner site. Aposporos filed a lawsuit against the SURC to keep her restaurant. In a demonstration of community support against the condemnation, nearly 7,000 Stamford area residents signed a petition protesting the SURC’s plans to close the beloved diner.

In February of 2002, the Connecticut Supreme Court ruled in favor of Aposporos. The city was ordered to pay over \$100,000 in legal fees incurred by Aposporos and Begetis. Commenting on her victory, Aposporos said, “This is my paradise. I [still] have my view of the park, of the trees and the flowers.” But not willing to admit defeat, SURC’s now former executive director Laszlo Papper proclaimed, “They [Aposporos and Begetis] have the property and the [development] is going to go around it.” Since the case’s closing, the city hardened its push for development with a “super-block” Target retail store that opened just north of Curley’s Diner. Its latest plans are to erect three buildings for 410 apartments and a 500-car parking garage on land around the diner. Aposporos says there are those in the city government “who think they can do whatever they want.”

*Sources: Fairfield County Weekly (April 17, 2003; May 15, 2003), Connecticut Libertarian (August 2002), Mugged by the State (Regnery, 2003, pp. 24-27), Stamford Urban Redevelopment Commission, Connecticut Post (October 13, 2004), New York Times (October 9, 2004)*

*“We’re taking your property and we’re giving you \$240,000 for it.”  
—Bruce Goldberg, Stamford Urban Redevelopment Commission*





*Susette Kelo*

## Supreme Court Rules Governments Can Take One Property Owner's Land and Give It to Another

There were families who lived on Walbach Street in the historic Fort Trumbull neighborhood of New London, Connecticut, whose members had resided there since 1895. Susette Kelo, who purchased her dream home there in 1997, does not boast such a lineage, but has nonetheless been overjoyed with her view of Montauk Point and Fisher's Island. But these happy times may soon be over. Since the fall of 2000, Kelo and other residents have been engaged in a fight to save their homes from a redevelopment plan that advances private business interests.

On the day before Thanksgiving in 2000, Kelo and her neighbors were informed their community would be taken from them and demolished under the city's power of eminent domain. Rather than building a hospital, road, park or other public necessity usually associated with eminent domain evictions, the land is instead being redeveloped to benefit the Pfizer pharmaceutical company — which first moved into the area in 1998 — and other non-public businesses. These plans are being executed by the New London Development Corporation (NLDC), which is exercising the city's power to implement eminent domain decisions as part of a transfer of authority authorized by New London city officials in January 2000. In addition, the NLDC has final authority to make decisions with regard to contractors.

Among the proposed redevelopment plans is an expansion of the existing Pfizer campus, the construction of a new hotel and athletic club and a new high-end housing development. Prior to the announcement of the NLDC's redevelopment efforts, the historic Fort Trumbull area was regarded as one of the poorest communities in Connecticut. It was also listed in 2000 by the Connecticut Trust for Historic Preservation as one of the state's most threatened historic places. While NLDC president Claire Gaudiani contends the overall goal of her group is to enact urban planning promoting "social justice," she has not specified how exactly the NLDC's plan to expand private businesses and build luxury homes translates into positive change for the area's lower classes.

Kelo and her neighbors believe the NLDC is engaging in an unconstitutional abuse of eminent domain powers. In addition, they argue the economic redevelopment plan, as currently designed, seeks to benefit only the rich and politically powerful. For example, the Italian Dramatic Club — a prestigious social club with influential members located within the proposed redevelopment area — was spared demolition. Private homeowners were not granted exemptions.

Political and economic patronage also seems to resonate throughout the NLDC's proposal. George M. Milne, Jr., is a member of the NLDC's board of directors. When the proposal was being developed, Milne was Pfizer's senior executive vice president for global research and development. A significant portion of the redevelopment plan calls for the creation of a bioscience research park to accommodate Pfizer research partners and related businesses. The NLDC plan also includes the creation of a conference center and hotels. Milne retired from Pfizer in 2002.

Kelo and her neighbors filed a lawsuit against the NLDC. Their case was heard before the Connecticut Supreme Court in December 2002. By a 4-3 majority, in March 2004 the Connecticut Supreme Court ruled against the Fort Trumbull homeowners. Their lawyer, Scott Bullock of the Institute for Justice, warned that, "If allowed to stand,

this decision gives local officials a virtual blank check to condemn private property at the whim of private parties.”

The residents appealed their case to the U.S. Supreme Court. But in a very controversial decision, a slim 5-4 majority established a troublesome and perhaps far-reaching precedent by siding with NLDC. The Court’s decision effectively expanded the power of eminent domain to permit local governments to clear homes and businesses for private development.

“Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded — *i.e.*, given to an owner who will use it in a way that the legislature deems more beneficial to the public — in the process,” Justice Sandra Day O’Connor wrote in her sharply-critical dissent. “Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory.”

The U.S. Supreme Court denied the Institute for Justice’s request for a rehearing in August 2005. In September, Fort Trumbull residents received eviction notices. Connecticut Governor Jodi Rell intervened on the residents’ behalf, according to Kelo, but a statewide moratorium on eminent domain takings, which NLDC voluntarily agreed to, applied only to *new* takings. The state legislature did not act to address eminent domain abuse, and the city government gave the remaining residents a May 31, 2006 deadline to accept a settlement or be evicted.

Exhausted, and faced with forever losing her home, Kelo reached a compromise with the City of New London in June 2006. The agreement saves Kelo’s home, though it will have to be moved to another neighborhood. Kelo says she submitted the same compromise agreement “years ago but was turned down flat” by the NLDC. “I am not happy about giving up my property, but I am very glad that my home, which means so much to me, will not be demolished and I will remain living in it,” says Kelo.

*Sources: New London Development Corporation, The Heartland Institute (September/October 2001), Pfizer, The Institute for Justice, Reason Magazine (2004-2005 coverage), Washington Times (2004-2006 coverage), Hartford Courant (2004-2006 coverage), Tom Blumer’s BizzyBlog (June 30, 2006)*

*“Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner.”*  
— Justice Sandra Day O’Connor

## Ohio Supreme Court Smacks Down Effort to Eject Families from Homes

Carl and Joy Gamble lived on Atlantic Avenue in Norwood, Ohio for more than 35 years, but real estate developer Jeffrey R. Anderson wanted them and their neighbors out. Anderson wanted to add the Rookwood Exchange — a new community that was to include condominiums, offices and stores — to his neighboring Rookwood Commons development. To displace the Gambles and other community residents, Anderson convinced city officials that the Gambles’ community was “blighted.”

Anderson paid for an August, 2003 study that declared 99 homes and small businesses in the community as “blighted.” Designations were based on factors such as broken pavement on sidewalks, standing water on roads and the subjective determination that streets were of poor design.

With a designation of “blight,” the city is equipped with the power to condemn any land in the neighborhood. The properties were condemned and were turned over for Anderson’s use.



# Eminent Domain



*Carl and Joy Gamble*

*"We are not interested in selling our home... We just want to be left alone to enjoy what is rightfully ours."*

*— Joy Gamble*

In reality, the Atlantic Avenue neighborhood is far from blighted. It is populated with well-maintained homes. In fact, the study Anderson requested indicated that not one house was dilapidated or had an owner who was delinquent in tax payments.

Norwood City Councilman Will DeLuca conceded, "We all agree that we're not going to find houses with broken windows, gutters falling down and your typical blight." Of the 99 properties, the City cleared all of them except for one business and two homes — including the Gambles' — whose owners have refused to sell their property. Joy Gamble says she has no desire to move: "We are not interested in selling our home... We just want to be left alone to enjoy what is rightfully ours. The city shouldn't try to take our home just so a developer can make money off of our land."

The Gambles and eight other community homeowners filed suit against the city of Norwood in September of 2003 to remove the "blighted" distinction from their homes. Berliner, the homeowners' attorney, regards the "blighted" label as misleading. She argues, "This is a thriving, mixed-use neighborhood. [It's] conveniently located and highly desirable, that's why the city wants it and that's why [the developer] wants to build there." Tim Burke, the lawyer for Anderson and the City of Norwood, disagrees, arguing that Rockwood Exchange is a public purpose. "It does create a beneficial use. It does benefit public welfare."

In December of 2003, the trial court dismissed the blight challenge. Although the Ohio Court of Appeals sent the case back to a lower court for review, the Hamilton County Court of Common Pleas ruled in favor of the city's application of eminent domain. On appeal, the Court of Appeals for Hamilton County ruled in January of 2005 that the development group headed by Jeffrey Anderson was free to demolish the Gambles' home. However, although the Gambles were forced to move out, the Ohio Supreme Court granted a stay to the demolition, and agreed to hear the case.

On behalf of the property owners, Institute for Justice attorney Dana Berliner argued the case before the Ohio Supreme Court on January 11, 2006.

On July 26, 2006, as an Institute for Justice press release put it, "The Ohio Supreme Court unanimously held that the City of Norwood could not use eminent domain to take Carl and Joy Gamble's home of 35 years, as well as the rental home of Joe Horney and tutoring center owned by Matthew Burton and Sanae Ichikawa Burton, for private development — specifically, a complex of chain stores, condominiums and office space planned by millionaire developer Jeffrey Anderson and his Rookwood Partners."

The Institute further noted that "the Ohio Supreme Court explicitly rejected the U.S. Supreme Court's infamous *Kelo* decision of June 2005, in which that Court held that local governments can take property from one person and transfer it to another because the new owner might produce more taxes or more jobs than the current one."

*Sources: Cincinnati Enquirer (March 25, 2003; September 10, 2003; September 24, 2003; June 15, 2004), Business Courier (April 12, 2004), Institute for Justice, Tech Central Station (October 1, 2003)*

## Sports Arena Hat Trick Penalizes Property Owner

Detroit property owner Freda Alibri received an offer she couldn't refuse. The Detroit/Wayne County Stadium Authority, a public entity, approached her in 1997 wanting to purchase land she owned. The stadium authority wanted the land for two new sports stadiums and parking lots.

Alibri gladly sold the government the property, but later discovered that some of the parking lot land, which she sold to them at a parking lot price, was instead intended to be the site of a third sports venue that made the land worth a whole lot more. Furthermore, the third venue wasn't even a public project presided over by the Stadium Authority, but rather a private venture. When Alibri protested, she was told to be happy with what she got, but she considers the transaction to be an abuse of the government's power of eminent domain.

The taxpayer-funded Stadium Authority was reportedly acquiring land so new stadiums could be built for both the Detroit Tigers baseball team and the Detroit Lions football team. In addition to property Alibri owned directly on the site of the planned stadiums, she also owned a one-acre parking lot located several blocks away. While the Stadium Authority bought the property she owned directly where the stadiums were to be built for more than \$6 million, they also said they needed her parking lot, ostensibly for stadium parking. Alibri sold the lot to the Stadium Authority for \$268,498.

It was later discovered that the money the Stadium Authority used to buy Alibri's parking lot was "borrowed" from Mike Ilitch, the owner of the Detroit Tigers and the Detroit Red Wings hockey team. Ilitch owned several properties close to Alibri's parking lot. He was considering building a new hockey arena on the site of the property the Stadium Authority bought from Alibri with his "loan." In 1998, the Stadium Authority tried to repay the loan by transferring Alibri's former property to an Ilitch firm. Alibri cried foul, arguing that she was deceived by the Stadium Authority so Ilitch could cheaply acquire land for his new hockey arena. She estimated her parcel would sell for almost \$2 million as land for a prospective arena as opposed to \$268,498 for stadium parking.

Fred Steinhardt, a condemnation lawyer with clients in the same area, told the *Detroit News*, "Sweetheart doesn't adequately describe what's going on. They're condemning parking lots so Mr. Ilitch can have parking lots? What's that all about?" If Ilitch's private firm could acquire the land at 1997 prices through the public Stadium Authority, then he would avoid having to buy the property for his hockey arena from individual owners at higher prices in the future. Alibri went to court and got an injunction to stop the deal. She then sued to have her property returned. After a favorable trial court ruling was overturned on appeal, the case was brought before the Michigan Supreme Court. In July 2004, the Court sided with Alibri and returned her land.

*Sources: Detroit News (August 14, 2000), Metro Times (April 23, 1997), Alibri v. Detroit/WayneCounty Stadium Authority (Michigan Supreme Court, Lansing, Michigan)*

*“The Ottofaros’ case serves as an instructive example of the potential harm inherent in the condemnation power when political entities use broad discretion in its application and commercial development is in play.”*

— John Taylor,  
president,  
Virginia Institute for  
Public Policy

## Family’s Land Confiscated to Create Shopping Center

In September of 1999, city officials in Hampton, Virginia declared their intention to take a three-quarter-acre property owned by Frank and Dana Ottofaro. It was only after the City acquired the land from the Ottofaros that the couple discovered that the majority of the property would be transferred to a \$129 million private retail development that would include the entertainment club, “Five,” as well as McFadden’s Salon and a 105,000 square-foot Bass Pro Shop for hunters and fishermen.

The land officials sought to condemn under the city’s power of eminent domain was supposedly needed for the construction of a new public road, which was claimed to “serve a public purpose by improving the City’s transportation network and by providing improved access to underutilized property within the city of Hampton.” To compensate the Ottofaros for their property, the city proposed paying the couple \$164,000. The Ottofaros rejected the offer, claiming that similar properties in Hampton were valued at much higher rates. Then they filed a lawsuit against the city to keep their property. At the time, they didn’t even know the city wanted their property for a shopping and entertainment center.

The Ottofaros lost the battle for their land in January 2003, when the Supreme Court of Virginia ruled in favor of the city, and allowed their property to be condemned. The couple was compensated only \$170,000 for their land. It was only after reading the ruling that the Ottofaros learned that in reality only 18 percent of the condemned land would be used for the proposed road. The remaining 82 percent of the Ottofaros’ former land that was not needed for the construction of the road would instead be transferred to the Hampton Industrial Development Authority, a governmental body that oversees the city’s economic development plans. It then planned to lease the land to a shopping mall.

The court’s ruling produced a great deal of confusion over the city’s ability to transfer the condemned property. In the opinion, Justice Leroy R. Hassell wrote, “The City asserts that the landowners’ property was condemned for public use and that the residue of the property will not be transferred to a private entity for a private purpose.” In a subsequent paragraph, however, he continues, “According to the record, the City may transfer the residue of the landowners’ former property to the Hampton Industrial Development Authority, a political subdivision of the Commonwealth, which will lease the property to a private developer.” In effect, the judge’s ruling allowed the taking because the property would be *leased* for a private developer’s use — not *sold*.

Following the ruling the Development Authority, which had entered into a development agreement with Hampton Roads Associates, LLC in November of 1999, was given the go ahead to create the Power Plant of Hampton Roads retail shopping center. The Bass Pro Shop opened in November 2003, joined by numerous other retail shops, hotels and restaurants.

Hampton officials project that the 18 percent of the Ottofaro property that will be used for the new roadway will serve a public benefit by serving an estimated 25,000 vehicles each day by 2018. However, questions of political patronage are raised by the court’s ruling on the remainder of the land. John Taylor, president of the Virginia Institute for Public Policy said, “The Ottofaros’ case serves as an instructive example of the potential harm inherent in the condemnation power when political entities use broad discretion in its application and commercial development is in play.”

*Sources: Defenders of Property Rights, Virginia Institute for Public Policy, Bacon’s Rebellion (April 28, 2003), Ottofaro v. City of Hampton: January 10, 2003, Virginia Supreme Court Ruling. Hampton-development.com, Daily Press (April 12, 2004), The ChesapeakeBay.com (October 24, 2003), Virginia Business (October 2004), Coliseum Central*

## City Condemns Family Home, Citing Lack of Two-Car Garage

Jim and JoAnn Saleet have lived in their home since 1965. They raised their four children there. They relax on its porch while they listen to the Cleveland Indians baseball games on the radio.

The Saleets had planned on leaving the property to their daughter Judy after their deaths, but the City of Lakewood, Ohio has proposed plans that would force the Saleets to instead sell their home to the government so it can be turned over to a real estate developer.

The Saleets live in an area of Lakewood called the West End. Citing its eminent domain power — the government’s ability to purchase private property to use for the good of the public — Lakewood Mayor Madeline Cain announced that the city planned on taking the homes of the Saleets and other West End residents. Normally, land taken through eminent domain is used for projects such as building schools or highways. Mayor Cain, however, wants to turn over the land in the Saleets’ neighborhood to private corporations seeking to build condominiums and a high-end shopping center. She justifies the use of eminent domain because the increase in tax revenue for the city is a “public use.”

In December 2002, the Lakewood City Council officially approved Cain’s eminent domain proposal through both a “community development plan” and a finding that labeled the Saleets’ neighborhood as “blighted.” By designating the area “blighted,” city officials could be justified for taking privately-owned land and turning it over to developers, Jeffrey R. Anderson Real Estate, CenterPoint Properties and Heartland Developers, LLC.

The designation of the Saleets’ home as blighted, however, is misleading and deceitful. Factors used to classify the West End homes as “blighted” include the lack of a two-car garage and having less than two bathrooms or three bedrooms. Ironically, the homes owned by Mayor Cain, all of the members of the City Council and the vast majority of Lakewood residents would be considered blighted by these standards. But only the West End has been targeted for condemnation by the city.

The Saleets and other families, with the help of the Washington, D.C.-based Institute for Justice, sued the City of Lakewood in Cuyahoga County Common Pleas Court in May 2003. Judge Kathleen Ann Sutula ruled against the city’s request to dismiss the case in July 2003. Finally, in November of 2003, the citizens of Lakewood rejected the development plan through a referendum vote. Moreover, in March 2004, the citizens approved a second ballot initiative to repeal the blight designation that had threatened the community.

*Sources: Institute for Justice, Washington Post (June 22, 2003),  
Cleveland Plain Dealer, Associated Press (November 5, 2003)*



*Jim and JoAnn Saleet*



*A wiener dog*

*"I could have either thrown up my hands or fight."*

— *Fane Lozman*

## City Evicts Houseboat Resident for a “Biting” Wiener Dog

Fane Lozman is accustomed to heat. He lives on a two-story houseboat docked on Slip 452 of Florida’s Riviera Beach Municipal Marina. The area once served as a fishing village and is universally known for its hot and humid summers. But Lozman’s challenge to the City of Riviera Beach’s plan to uproot thousands of residents for part of an economic development plan landed him in a different kind of heat — the thuggish political payback sort.

In May 2006, at the request of Mayor Michael Brown, the Riviera Beach City Council hastily approved a \$2.4 billion economic redevelopment plan for a 400-acre area on the Municipal Marina, which is owned and operated by the City of Riviera Beach. It did so knowing that then-Governor Jeb Bush would soon sign into law new state property protections that would prohibit the use of eminent domain for economic purposes. Nevertheless, as the *Palm Beach Post* reported, “A condition of the agreement was the city’s promise to use eminent domain on behalf of Viking.”

Lozman and thousands of other Riviera residents, private home and business owners were at risk of being evicted so that Viking Inlet Harbor Properties, a private company, could build a hotel, condos, restaurants and an aquarium on the waterfront. In addition to Viking, Wayne Huizenga, owner of the Miami Dolphins professional football team, stood to benefit because of his heavy investment in the project.

Lozman believed that the city was abusing its powers of eminent domain by seizing property to transfer it to a private company. In June 2006, Lozman sued the city for inadequately notifying the public of its development plan.

After Lozman filed the lawsuit, the city and, literally, the city’s henchmen, harassed Lozman repeatedly. One month alone, George Carter, the marina operator where Lozman’s boat is docked and a longtime city employee, called the police on Lozman at least six times for dubious violations. Responding to one such call by Carter in August 2006, police threatened to arrest Lozman for changing a door on his own private boat, which Hurricane Wilma had damaged, before the arrival of another approaching storm.

“[Carter] doesn’t want me doing work on my boat,” Lozman explained. “But there’s no rule against it. He’s just going after me because of what I’m doing with the city. He’s good friends with Mayor [Michael] Brown. They’ve got him doing this to me.”

In July 2006, Carter ordered Lozman to muzzle his dog, a ten-pound Dachshund “wiener dog” named Lady, to prevent it from biting. Though the dog was leashed and had never hurt anyone, Carter claimed that two people had complained that the dog lunged towards them. “If your dog was to bite someone the liability may be a problem for the marina,” wrote Carter. If Lozman did not comply, “The city must ask you to vacate the marina at the end of this month.”

Despite the threat, Lozman refused to follow the order because the extreme summer heat would kill Lady. As Lozman explained, “It’s 110 degrees heat out here, and this dog has a black coat, and she has to pant when it’s hot. She would drop dead of a heat stroke.”

On August 11, 2006, the city sent Lozman an eviction notice, citing insubordination. The letter claimed Lozman “knowingly put the City of Riviera Beach in a defenseless position if [his] dog was to bite someone.” It continued, “Mr. Lozman, we both know it’s not if, but when the dog bites someone.”

Lozman had until the end of August to move his boat. But refusing to be bullied into submission, Lozman filed another suit against the city on First Amendment grounds, contending that his eviction from a public area was, in effect, politically-motivated retaliation for obstructing the city's waterfront redevelopment plan.

"What about these mom-and-pop people who live here [in Riviera]?", asked Lozman. "[The city is] going to turn this place into a giant megayacht marina for only the richest people. So I could have either thrown up my hands or fight a rotten group of corrupt a\*\*holes."

In November 2006, Lozman was arrested at Riviera Beach City Hall for disorderly conduct, trespassing and resisting arrest without violence. During the public comment portion of a City Council meeting, Lozman had spoken out against public corruption. Councilwoman Liz Wade ordered police to forcibly remove Lozman from the hearing room.

"It is outrageous that a citizen gets arrested because he chooses to participate in a public meeting," said Lozman. Florida prosecutors eventually dropped the arrest charges, citing difficulty of prosecution.

Meanwhile, Lozman continued his suit against being wrongfully evicted from the Municipal Marina. In March 2007, Florida's 15<sup>th</sup> Circuit Court ruled in favor of Lozman. A jury determined that Lozman's protected speech "was a substantial or motivating factor" in Riviera Beach City's decision to evict Lozman. "This is a victory for all Americans," said Lozman after the ruling. "What makes America beautiful is our freedoms."

Lozman is currently seeking damages from the city. Meanwhile, the City of Riviera Beach abandoned its plans to use eminent domain as part of its multi-billion dollar redevelopment plan. Because of Florida's 2006 legislative action limiting municipalities' eminent domain powers, as well as an unfavorable real estate market, Viking Inlet Harbor Properties has stopped work on the redevelopment project and is considering a scaled down plan that does not rely upon the use of eminent domain.

*Sources: Broward-Palm Beach New Times (August 10, 2006, August 24, 2006, March 8, 2007), City of Riviera Beach v. Fane Lozman (Circuit Court of the 15<sup>th</sup> Judicial Circuit, Palm Beach County, FL, March 2, 2007), Palm Beach Post (May 9, 2006, June 25, 2006, October 20, 2006, January 23, 2007, February 17, 2007, March 7, 2007)*

*"What makes America beautiful is our freedoms."*

— Fane Lozman





Missouri River Bridge

*“The increased congestion and air pollution stemming from the loss of river transportation [will] be immense.”*

— Jay Nixon,  
Missouri Attorney General

## Missouri River Plan Hurts Local Residents, Environment

Citing the need for lower water levels to protect the endangered Least Tern, Piping Plover and Pallid Sturgeon, a coalition of environmental groups sued the government to restrict the amount of dammed water that would be permitted to flow into the Missouri River.

Missouri Attorney General Jay Nixon, commenting on the region’s economic reliance on the river, noted that “water for Missouri is like blood for our bodies; the flow of the Missouri River helps keep our economy alive.”

Though she acknowledged the economic hardship that would result, a federal judge ruled the well-being of these protected birds and fish outweighed human concerns.

Noting, “there is no dollar value that can be placed on the extinction of an animal species,” U.S. District Court for the District of Columbia Judge Gladys Kessler ordered a reluctant U.S. Army Corps of Engineers to reduce the flow of the Missouri River beginning in July of 2003. While the Corps initially refused to obey the order and was cited in contempt of court, Kessler’s decision was later sustained on appeal and water levels were dropped in August.

Almost immediately, the reduction in flow caused the river level in Kansas City, Missouri to fall by six feet. This virtually eliminated the ability of barges to operate on the Missouri River and forced local farmers to seek more costly alternatives, such as air, rail and road, to transport their products. Transporting goods by barge makes good economic sense for farmers. An average 15-ton barge can carry the equivalent of 870 truck payloads.

In the spring of 2004, towing companies normally serving Sioux City, Iowa announced they would not be able to deliver the 50 to 60 regular bargeloads of fertilizer due to uncertain river depths. Big Soo Terminal manager Kevin Knepper lamented: “We have lost our spring and the most profitable season. It’s just too late to get up and running and make any money... [W]e’re [now] concerned the rail industry will not be able to service the additional tonnage that we’re going to need to move this spring.”

As a result of a diminished Missouri River, pollution and other environmental harm became an unintended and pressing concern for the region. Nixon predicted “the increased congestion and air pollution stemming from the loss of river transportation [will] be immense.” Within weeks of the river dropping to levels not seen since the dustbowl era, water temperature rose to a point nearly exceeding Missouri water quality standards.

Although Kessler’s decision in 2003 had been upheld, a different federal judge assigned to the river litigation has since ruled differently. In June 2004, U.S. District Judge Paul Magnuson in Minneapolis ruled in favor of the Corps and blocked the contempt citation.

*Sources: Associated Press (June 21, 2004; February 17, 2005; May 25, 2005),  
Sioux City Journal (February 28, 2004)*

## Amazonian Tribal Art or Endangered Species?

The government entrusts Lawrence M. Small, the former secretary of the Smithsonian Institution, with overseeing America's national museums, research centers and libraries and the National Zoo. When he opened his own private art collection, however, Small found himself entangled in allegations that he was violating a federal law related to protected bird species. As punishment for his violation, the government required Small to serve a hard labor sentence of 100 hours, involving planting trees or other such outdoor projects for the community.

Prior to entering public service, Small visited South America several times as a bank executive and became enamored with Amazonian art. In 1998, Small purchased approximately 1,000 pieces of Amazonian tribal art from anthropologist Rosita Herita for roughly \$400,000. The collection contained various exotic headdresses, capes, masks and armbands adorned with vibrantly colored feathers. Small contends that he submitted the appropriate permit and legal documentation necessary for the purchase. Small believed none of the feathers nor species included in the collection were protected by the Endangered Species Act.

Photographs of Small's collection were published in *Smithsonian* magazine in 2000. Officials with the U.S. Fish and Wildlife Service later claimed several pictures showed feathers from endangered species, including the Scarlet Macaw, Harpy Eagle and Roseate Spoonbill. Possession of a collection with such feathers constitutes a violation of the Migratory Bird Treaty Act and the Endangered Species Act. Small, who was hired for the Smithsonian position because of his management rather than research skills, argued he had no prior knowledge that some of the feathers came from endangered bird species, and that he sought and acquired the proper documentation for the purchase. Assistant U.S. Attorney Banumathi Rangarajan, however, contended Small could not have been an uninformed buyer because of the extensive amount of research he already performed with regard to the art and the time he spent in South America. Small, responding to the charges against him, commented, "I can state categorically that I [had] no knowledge that any species in the collection [was] listed under the Endangered Species Act or that [I] imported any pieces in the collection other than in a lawful manner."

Small pled guilty to federal misdemeanor charges related to the Migratory Bird Treaty Act in January 2004. His position with the Smithsonian was unaffected, but Small was sentenced to two years probation, required to perform 100 hours of community service and submit a letter of apology to five national publications as a result of the incident. Small had hoped to read books on endangered species and to lobby Congress to alter the Migratory Bird Treaty Act as his community service. Instead, in June, 2005, a federal judge ordered Small to perform physical labor on a "project or projects designed to improve the natural environment."

*Sources: Washington Post (January 21, 2004; January 22, 2004; January 24, 2004), Associated Press (January 26, 2004), The Washington Examiner (August 1, 2005), U.S. Fish & Wildlife Service, Archaeology Magazine (September 19, 2002)*



*Lawrence M. Small*

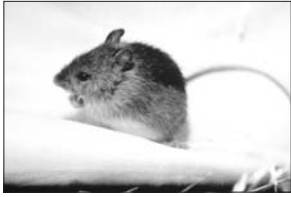


*Roseate Spoonbill*



*Harpy Eagle*





*Preble's Jumping Mouse*

*"I've had more of an education in endangered species than I've ever wanted."*

— Amy LeSatz

## Possibly Non-Existent Mouse Shatters Family's Dreams

When Jim and Amy LeSatz inherited property in Chugwater, Wyoming from Amy's grandfather in 1998, they had visions of building their own indoor horse-riding arena. They planned to raise and train horses and host clinics for other horse owners. Instead, the LeSatzes are forced to continue to use an arena 25 miles away because of Endangered Species Act restrictions designed to protect the Preble's Meadow Jumping Mouse — an animal whose very existence is currently under debate.

The Preble's Meadow Jumping Mouse was listed as a threatened species under the ESA in May of 1998. As the LeSatzes began formulating their plans to build their own riding arena, they found the only suitable area where it could be built was among 31,000 acres designated as critical habitat for the mouse. The host of restrictions governing the use of the land made development too costly. Therefore, the LeSatzes must chauffeur their horses back and forth to the existing indoor arena. The cost to rent the arena and transport the horses — something they've had to do for nearly seven years — continues to be significant. The LeSatzes believe that constructing their own arena would dramatically ease these escalating costs. Thus far, however, the critical habitat designation for the mouse has prevented that from happening.

This situation may change as research puts the very existence of the species in question. New research by Rob Roy Ramey II, former curator at the Denver Museum of Nature and Science, indicates that the mouse never really existed. Instead, he argues the mouse is genetically identical to another species, the Bear Lodge Meadow Jumping Mouse, which is common enough that threatened status or critical habitat designations aren't necessary. But Ralph Morgenweck, regional director of the U.S. Fish and Wildlife Service in Denver, says the new research doesn't mandate immediate changes, saying "we're trying to be deliberate in our work, trying to get the best science we can and review of the science we do have, in making this decision [to de-list]." LeSatz is not happy with the delays: "Jim and I have always been good stewards of the land. We covet it. Once they de-list the mouse, we can finally begin our plans to build our own arena."

Coincidentally (or not), environmental groups are now asking for the protection of the Bear Lodge Mouse — which is known to reside in areas as far north as South Dakota and as far south as Colorado Springs — based on claims that it suffers from habitat degradation similar to what has been alleged for the Preble's Mouse. This is disputed by Kent Holsinger, an attorney for Coloradans for Water Conservation and Development. Holsinger requested the de-listing of the Preble's Mouse, and claims: "The bottom line is, [critical habitat designation] has been a wonderful tool for environmental groups to try to stop things."

Commenting on her family's enduring hardships, Amy LeSatz said, "A tiny little mouse comes in and changes your whole perspective. I've had more of an education in endangered species than I've ever wanted." FWS officials said they hoped to resolve the issue of whether to de-list the Preble Mouse by 2006, but the year came and went without a determination. Plans for the LeSatz family's riding arena remain on hold. Meanwhile, radical greens have been able to force the Denver Museum to terminate Dr. Ramey because he dared to do genetic research on the true status of the mouse.

*Sources: CNNnews.com (June 11, 2004), Associated Press (June 11, 2004), Amy LeSatz, U.S. Fish and Wildlife Service*

## Beach Bummed in Favor of a Bird

Oregon officials have proposed declaring an additional 48 miles to the existing 18 miles of state beaches that are already off-limits between the months of March and September over concerns that the presence of humans is harmful to the Pacific Coast population of the Western Snowy Plover, a bird protected by the Endangered Species Act since 1993. In total, the bird's protection affects over 180 miles of Pacific coastline.

This plover's protection as a threatened species already prevents people from walking dogs, flying kites, horseback riding and making campfires on as many as 24 public beaches in Oregon and several others in Washington and California during the restricted mating and nesting months. Experts, however, are not confident the bird even should be listed as a threatened species.

Because the small bird lays its eggs in a small depression in dry sand, U.S. Fish and Wildlife Service (FWS) officials argue, they can easily be destroyed, and therefore the FWS wants to extend restrictions to any beach site where the plover might possibly nest.

Michelle Michaud, a biologist with the Oregon Parks and Recreational Department, says, "The plover's been here for a long time. It used to nest in 24 areas along the Oregon coast, and... this is an attempt to recover its habitat."

Oregonians fear an economic backlash could result from beach closings. Doug Olsen of the Pacific City Chamber of Commerce worries, "People will go to Bend [along the western border in the center of the state] instead of the Oregon Coast. Many businesses [on the coast] would lose out." FWS officials claim the recovery plan might create a profit for coastal businesses. Phil Carroll, spokesman for the FWS, argues that, "In 2001, 46 million birdwatchers generated \$32 billion in retail sales." But this statistic is national in scope and in no way a predictor of future economic benefits specifically for Pacific coastline states.

Working on behalf of small business owners, avid beach users and other residents, in July of 2002, the Surf Ocean Beach Commission (SOBC) — a grassroots organization of people affected by the plover's listing — petitioned the FWS to remove the Pacific Coast population of the Western Snowy Plover from the federal list of threatened species. FWS officials are required by law to make a finding within 90 days to determine if the request is warranted.

After prolonged inactivity on the petition — 18 months — the Pacific Legal Foundation filed suit on behalf of the SOBC against the FWS in the U.S. District Court for the Eastern District of California in February of 2004, requesting that the plover be delisted. The PLF cited over 500 pages of scientific data, university studies, government documents and news articles to justify the plover's delisting and, as a result, for eliminating the restrictions on beach access and use. The PLF's Greg Broderick commented, "The government is still keeping people off of hundreds of miles of beaches based on junk science... It just goes to show that the government puts people last when it comes to the Endangered Species Act." Officials from the FWS initially suggested a reexamination of the listing date in March of 2004, determining that the delisting of the Western Snowy Plover "may be warranted."

However, in April, 2006. The FWS announced that these Pacific Coast plovers would continue to be listed under the ESA, so restrictions placed on human access to the beaches will continue.

The FWS responded to petitioners' arguments that the Pacific Coast populations of the Western Snowy Plover do not qualify as a distinct subspecies by arguing that "the Pacific Coast population of the Western Snowy Plover is markedly separate from other

*"It just goes to show that the government puts people last when it comes to the Endangered Species Act."*

— Greg Broderick,  
Pacific Legal Foundation

populations of plover due to behavioral differences. With only very isolated exceptions, the birds of the Pacific Coast breed and stay on the coast their entire lives.”

*Sources: The Register Guard (December 17, 2004), Pacificbio.org, Katu News (March 16, 2004), GlobeandMail.com (April 13, 2004), Associated Press (2004 coverage), Pacific Legal Foundation, U.S. Fish and Wildlife Service*

## Ranch May Be Condemned by “Casual Visitor”

John Hays found his cattle ranching business in jeopardy after United States Forest Service officials decided that parts of his rangeland contained habitat of the threatened Canada Lynx.

The Hays family has occupied and ranched the same land in Baker County, Oregon — now roughly 15,000 acres — since 1850. In 2001, USFS staffers informed Hays that he might be required to reduce or possibly even eliminate his herd of cattle entirely because parts of his property and additional federal land that he grazed his cattle on contained a suitable habitat for the lynx.

Hays was shocked to discover the lynx habitat even existed in his area. No lynx has ever been spotted on the Hays property. Furthermore, there have been only 14 confirmed sightings of the Canada Lynx in the entire state of Oregon since 1897. Larry Cooper, a staff biologist for the Oregon Department of Fish and Wildlife, commented that the “lynx are a casual visitor to Oregon and no reproduction has ever been found... The documentation was presented under the ruse of science.”

At a meeting between USFS staff members and Hays and his attorney in May of 2001, an advisor to the USFS confirmed portions of Hays’ property were determined to be lynx habitat. The official, however, did not believe that “there were any lynx in the area, but that they are required to manage for lynx anyway.” While no rancher, naturalist or member of the USFS witnessed or discovered any evidence of the Canada Lynx in the region, the USFS still recommended a drastic reduction in the number of cattle simply because the Hays property presented a suitable habitat for them.

The severe economic strain on Hays and his family prompted Hays to sell over half of his cattle stock in 2002 in order to keep his ranch operational. Hays testified in 2003 before the U.S. House Rural Enterprises, Agriculture and Technology Subcommittee that the USFS would issue him a one-year grazing permit, not a 10-year permit Hays needed to present to his banker to obtain operational financing for his business. The financing is essential, as Hays contends, “My livelihood is dependent on the timely and continual issuance of the grazing permit.”

The U.S. Forest Service also cancelled Hays’ grazing permit in 2004. Facing financial difficulties, Hays sold part of his ranch in March of 2005. “I will probably have to end up selling my entire ranch and do something else as they have about broke me,” says Hays.

Hays is considering a lawsuit against the U.S. Forest Service for a Fifth Amendment takings violation without just compensation, along with other damages to his business. As Hays explains, he believes the canceling of his grazing permits was done unjustly: “I appear to have been singled out and not given any accommodations because the Forest Service officers had a desire to terminate my permit by all means available to them.”

*Sources: Environment and Energy Daily (July 17, 2003), National Cattlemen’s Beef Association, Prepared Remarks of Mr. John Hays before the hearing of the Committee on Small Business’ Rural Enterprises, Agriculture and Technology Subcommittee of July 17, 2003, John Hays*

*“I will probably have to end up selling my entire ranch and do something else as they have about broke me.”*

— John Hays

## Water is Good Enough for Pronghorn, but Not for People

In early 2001, officials at the U.S. Fish and Wildlife Service denied Robin Hoover's application to place a water station in the Cabeza Prieta National Wildlife Refuge and Wilderness Area. Hoover's group, Humane Borders, wanted a water station in the refuge so illegal aliens smuggling themselves across the U.S.-Mexico border would not suffer from dehydration. The application wasn't denied because the group would be helping people break the law, but due to concerns that the water station would hurt the Sonoran Pronghorn antelope. Approximately two weeks after the denial of Hoover's application, the dehydrated remains of 14 illegal aliens were found in the refuge.

According to Border Patrol statistics, the 14 people who died of dehydration on May 23, 2001 were just a few of the hundreds of illegal aliens who have succumbed to the heat of Arizona's Sonoran Desert. "This is the deadliest migrant trail in the United States," says Hoover. During their journey, it is suspected the doomed aliens experienced temperatures of over 110 degrees. It was two months prior to that when Hoover first asked refuge officials to allow his group to place a water station along a path traditionally used by illegal aliens. He was refused, and told that the delivery vehicles that would be needed to refill the water coolers would disturb the endangered Pronghorn.

The Sonoran Pronghorn is protected by the Endangered Species Act as endangered. A 1999 survey by the U.S. Air Force estimated there were 140 of the species in the United States, all in southern Arizona. Although the Pronghorn has been listed as endangered for 40 years, population numbers remained stable, causing scientists to fear extinction is very possible. Explaining the rejection of Hoover's request to maintain a water station in the Pronghorn's habitat, refuge manager Donald Tiller wrote that such an oasis "has been determined to be non-compatible with the goals, objectives and purposes of the refuge." "On May 24, [the day after the bodies were discovered] we reapplied," notes Hoover. "And subsequently they had marked seven [of the government's] existing wildlife water stations with our flags and poles we had provided to them." Thirsty illegal aliens didn't know where those existing water stations — which are 10,000-gallon troughs — were because they weren't intended for humans. Instead, the refuge maintains them for the benefit of the Pronghorn.

The families of eleven of the 14 people who perished have sued the U.S. Department of the Interior, which runs the Cabeza Prieta National Wildlife Refuge and Wilderness Area, claiming the government was to blame in the deaths. The more than \$41 million wrongful-death lawsuit filed in U.S. District Court for the District of Arizona in Tucson, Arizona sought about \$3.75 million in damages for each of the families. James Metcalf, one of the attorneys representing the families, told the *Arizona Daily Star* that the refuge protects "all kinds of critters. They also seem to have some human beings running around out there... and they're aware of that." He explained that the flagging of the Pronghorn water stations after the deaths and the installation of emergency call boxes in the desert is an acknowledgement of the DOI's negligence and indicates culpability on its part. One guide — Jose Lopez-Ramos — who worked for a smuggling ring that helped lead the aliens out of Mexico has already received a 16 year sentence for his role in the deaths. The Pima County Board of Supervisors has since awarded Humane Borders a \$25,000 contract to maintain water stations in the southern Arizona desert.

*Sources: Arizona Daily Star (2001-2004 coverage), The Tucson Citizen (June 13, 2002), The Washington Times (May 11, 2002; May 17, 2004), Associated Press (July 1, 1999; May 22, 2004)*



*Upper Sonoran Desert vegetation along the Apache Trail in central Arizona*



*Piping Plover*

*When permanent, temporary, seasonal and critical Piping Plover habitat area closures are combined, human beach access is reduced from over 38 miles to less than 16 miles.*

## Beach Closed — Bird Warning

Lora Brozovic and her husband traveled from Canton, Ohio to Hatteras Island, North Carolina to celebrate the 2004 Memorial Day weekend and engage in their hobby of surf-fishing on the island's southern tip. But when the couple arrived on the beach, they were approached by a National Parks Service (NPS) employee who told them to leave immediately.

No sharks had been spotted in nearby waters, nor was a tropical storm heading for the North Carolina coast. No, four Piping Plover eggs were ready to hatch in a nearby nest.

Brozovic described the NPS response to people venturing into this "bird nesting area" as being "like it was some kind of emergency."

The Piping Plover is threatened under the federal Endangered Species Act (ESA), and the nesting of the Piping Plover in 2004 prompted the closure of a half-mile stretch of Hatteras Island beach popular with visitors and locals. The NPS said the beach would remain closed for up to five weeks until the chicks were able to fly. This posed an unwelcome change of plans to unaware picnickers, off-road vehicle enthusiasts and fishermen such as the Brozovics, who vacation on the southern tip of Hatteras Island on a typical Memorial Day weekend and patronize local businesses that depend on their support. During the first busy weeks of the summer of 2004, the beach where plovers nested was off limits to all boat, pedestrian and four-wheel-drive traffic. "It's a great spot to go fishing," laments Lora Brozovic. "We're down to ten percent [of the beach] now for fishing, and the birds have 90 percent."

The affected beach is part of the Cape Hatteras National Seashore, a federal park stretching approximately 73 miles down North Carolina's Outer Banks. The ESA requires that both the nesting habitat and the wintering habitat of the species be protected. Between six and 20 Piping Plovers require a wintering habitat that stretches along 3,600 acres of beachfront. When permanent, temporary, seasonal and Piping Plover critical habitat area closures are combined, human beach access is reduced from over 38 miles to less than 16 miles. At one point, all 73 miles of beach had unrestricted access.

Bob Eakes, owner of the Red Drum Tackle Shop in nearby Buxton, has two observations about the beach closure: "One, it's an excessive amount of closure. Two, the biologists, they have no couth at all, running people off the beach like they were a pack of criminals." Eakes asserts that, if beaches continue to be closed to vehicle and foot traffic, Hatteras Island will "no longer be a shining star in the state of North Carolina." An economic survey conducted in 2002 and 2003 indicates that tourism and spending by visitors would drop by 28 percent if beach access was banned or severely curtailed. "That would put all of us out here on welfare," explains David Goodwin of the Outer Banks Preservation Association, whose group commissioned the study. The survey also concluded that, if all the economic and human damages of every hurricane to hit the area over the last 100 years were totaled, the figure would even not come close to the negative local economic effect of further beach restrictions.

The Cape Hatteras Access Preservation Alliance, a subsidiary of the Outer Banks Preservation Association, joined by a coalition of other nearby affected groups, won a lawsuit filed in February 2003 to remove the Piping Plover critical habitat areas. In November 2004, a federal judge for the U.S. District Court for the District of Columbia lifted the U.S. Fish and Wildlife Service's critical habitat designation for the bird on more



than 3,600 acres of the Outer Banks (but not elsewhere). The judge ruled that the FWS did not adequately account for the designation's economic effects and misapplied habitat protection law. "The [U.S. Fish and Wildlife] Service may not statutorily cast a net over tracts of land with the mere hope that they will develop [the physical or biological features essential to the species' conservation] and be subject to designation," Judge Royce C. Lamberth wrote. In face of the ruling, the FWS dropped its appeal on the case in March 2005.

*Sources: The Virginian-Pilot (May 27, 2004; November 5, 2004; April 1, 2005), OBPA.org (June 3, 2004), The Lower Outer Banks of North Carolina: Results of a Survey of Residents, Nonresident Property Owners, and Visitors – SDR Consulting, David Goodwin, Cape Hatteras Preservation Alliance v. U.S. Department of the Interior (U.S. District Court for the District of Columbia)*

## Eliminating the Blairs

Howard Blair's family first arrived in the arid Mojave region of southern California in the late 1880s. Howard has spent all of his nearly 80 years on the family's Blair7IL Ranch. But the future of the ranch is now in jeopardy, because environmental groups want a court to oust the family in order to safeguard the Desert Tortoise, which is listed as federally-threatened under the Endangered Species Act. As of now, Howard Blair and his family are the last remaining ranchers in the once-thriving cattle community of Whiskey Basin.

On the 1,000-acre Blair7IL ranch, approximately 400 cows, 25 bulls and 300 calves are the only cattle still grazing within the boundaries of the Mojave National Preserve, which was created in 1994 by the California Desert Protection Act. Due to the regulations related to the protection of the Desert Tortoise, all of the other ranchers who once worked in the area have left during the past few years. Many of the properties have been purchased by environmental and non-profit groups. While Blair still holds grazing rights on the land, all property within the MNP is technically owned by the Bureau of Land Management.

A 2001 court ruling dramatically reduced the ability of ranchers to graze on the federal land adjacent to the MNP. The Center for Biological Diversity, the Sierra Club and Public Employers for Environmental Responsibility filed the lawsuit bringing about the ruling, and these same groups are now seeking to file another lawsuit against the BLM to challenge grazing inside the Preserve. This would eliminate grazing by Blair's cattle. Environmental groups, biologists and desert experts claim the tortoise's habitat is endangered by animals stomping on them and that grazing also eliminates native plant species. The Blairs contend that tortoises are not harmed by their activities because cattle avoid the tortoises because of their potent smell.

While former neighbors have received between \$3 and \$4 million for their ranches, Rob Blair — Howard's son — contends, "This is our home and nobody wants to leave." Fortunately for the Blairs, they have a political ally in Senator Dianne Feinstein (D-CA). Although a sponsor of the CDPA, Feinstein visited the Blair7IL ranch in 1993 and says she plans to fight to protect the Blairs for "as long as I am breathing."

*Sources: Property Rights Research, Los Angeles Times (February 9, 2003), Desert USA, Howard Gantman (press secretary for Senator Dianne Feinstein), Riverside Press-Enterprise (July 3, 2005), Rob Blair*



*Desert Tortoise*

*"This is our home and nobody wants to leave."*

*— Rob Blair*

## Judge Rebuffs “Irrelevant” Farmers with Buffers for Salmon

A U.S. District Court judge punished farmers in California, Oregon and Washington state for what he says is the failure of the U.S. Environmental Protection Agency to assess the impact pesticides may have on salmon protected by the Endangered Species Act. Judge John Coughenour of the U.S. District Court for the Western District of Washington banned the use of 38 pesticides in so-called “salmon buffer zones” or simply “buffers” — strips of land adjacent to waterways populated by salmon. He also ordered retailers who sell some of the chemicals to display signs reading “Salmon Hazard.” The new rules could cost the local economy well over half-a-billion dollars.

The Washington Toxics Coalition sued the EPA in January of 2001, contending the EPA violated the ESA by failing to consult with the National Oceanic and Atmospheric Administration on chemicals the Coalition maintains could harm salmon. In January 2004, Judge Coughenour ruled that, until the EPA consults with NOAA on the 38 pesticides in question, the application of all of them is banned along salmon waterways. The salmon buffers extend 300 feet away from rivers and streams if the pesticides are dropped from the air and 60 feet away if the pesticides are sprayed from the ground. It would take years for NOAA tests to conclude whether each of the pesticides affects salmon. Judge Coughenour also ordered that, in West Coast cities of 50,000 or more, retailers who sell seven of what environmental groups claim are the most harmful chemicals must post signs reading “Salmon Hazard” in large letters along with a warning about dangers to salmon streams.

Proposed salmon buffers will significantly affect farmers in all three states of the court’s jurisdiction, especially fruit and vegetable growers who rely on the now-banned pesticides to keep their vulnerable crops free of weed and insect infestation. A U.S. Department of Agriculture study submitted to the court predicted the buffers could result in losses of \$500 million a year in Washington and Oregon alone because farmers may have to rip out entire fruit crops located near streams. Alan Schreiber, executive director of the Washington Asparagus Commission, says the buffers “are taking away his [farmers’] ability to farm.” He says that even when pesticides aren’t applied to only a certain portion of a field, it could mean disaster for the whole crop because aphids and other pests move quickly.

A coalition of farmers, timberland owners and pesticide makers appealed to the U.S. Court of Appeals for the Ninth Circuit in an effort to repeal the buffers while the EPA and NOAA conduct their scientific analysis. However, the appellate court simply handed the appeal back to the U.S. District Court with a deadline for it to review the coalition’s emergency appeal and rule again. In May 2004, Judge Coughenour did not reverse his previous ruling, and further wrote that the economic hardship the buffers would place on farmers is “not relevant” to the case.

“Unfortunately, this case has never been about science,” states Washington Farm Bureau President Steve Appel. He notes that “there was no scientific evidence presented in this case that even suggests there has been any harm to those fish.” However, critics of the buffer zones are hopeful that many of the zones will be shrunk or eliminated because of new streamlined regulations that permit the EPA to conduct its own science review for pesticide risk to fish and wildlife.

*Sources: The Tri-City Herald (August 15, 2003), Washington State Farm Bureau, The Seattle Times (January 23, 2004; July 30, 2004), The Register Guard (May 6, 2004; May 20, 2004)*

*“There was no scientific evidence presented in this case that even suggests there has been any harm to those fish.”*

— Steve Appel  
Washington Farm Bureau

## Clean Energy a “No Go” Thanks to Environmental Concerns

While communities in West Virginia, Pennsylvania and New York are trying to take advantage of wind power as a clean source of alternative energy, the U.S. Fish and Wildlife Service is hindering their efforts.

Why? Concerns that windmills might harm endangered birds and bats.

It's a controversy pitting environmentalists against environmentalists with local residents the ultimate losers, thanks due to delays based on mere assumptions.

A study conducted by Fish and Wildlife Service biologists found that at least 400 bats died during their 2003 fall migration after collisions with the blades of 44 existing wind turbines on Backbone Mountain, West Virginia. Although the bat carcasses recovered were of mostly common species such as Red Bats, Eastern Pipstrelles and Hoary bats, FWS officials and environmental activists fear bat species protected by the Endangered Species Act — especially the endangered Indiana Bat — risk a similar fate. FWS biologist Albert Manville told *Windpower Monthly*, “What's scary is that we may be finding only a small percentage of what's been killed.”

FWS officials are now demanding pre-construction wildlife studies for all future wind energy projects. The participation of energy companies in such studies remains voluntary in cases where the FWS can't prove endangered species may be at risk, but future wind projects are nonetheless affected because FWS biologists insist the studies must be conducted over a two-year period.

This means many planned wind energy projects in the region are significantly delayed.

The developers of wind projects already under construction or even recently completed — such as FPL Energy, which built a 20-turbine project in Meyersdale, Pennsylvania — are also threatened with lawsuits because of claims that the previously conducted pre-construction studies were not thorough enough.

Environmental groups contend the Meyersdale project's placement in the Indiana Bat's “migratory flight path” is enough to justify further study while industry experts dispute the claims. Michael R. Gannon, a bat biologist hired by FPL Energy to assess the environmental groups' complaints, concluded that, while the majority of industry biologists do not believe the turbines pose a risk, the burden of proof still lies with the developers.

“Unless and until these data [resulting from a two-year study] are available,” Gannon wrote, “it should be assumed that this site is a flight path of the Indiana Bats and that Indiana Bats will be killed.”

This is not an isolated case. Similar concerns are stalling the construction of wind turbines in New York. There, it's the prospect of birds, not bats, colliding with windmills that bog down wind energy developments.

After New York state officials announced \$100 million in private investment in wind power in 2002, ten towers in Wethersfield constructed in 2000 remain the only operational turbines in the western part of the state. As in West Virginia, the FWS is calling for a two-year study before a 34-turbine wind project spearheaded by Jasper Energy can proceed. The birds at issue in New York are threatened Bald Eagles and other birds of prey, which, environmental groups claim, use turbine airspace when migrating. Jasper Energy maintains the potential harm to birds is “biologically insignificant,” pointing to a study it previously commissioned that placed the mortality risk for birds passing through the area occupied by the wind turbines at one in 10,000.

Sources: *Windpower Monthly* (February 2, 2001), *The Buffalo News* (July 8, 2004), *Albert Manville*



*Indiana Bat*

*“What's scary is that we may be finding only a small percentage of what's been killed.”*

*— Albert Manville  
U.S. Fish & Wildlife Service*



*“My granddaddy worked to give us this [settlement]... and I’m busting my behind so my grandkids can have it too.”*

— Jimmy Goss

## Financially-Vulnerable Ranchers Get Hurt First Under Environmentalist Group’s Legal Strategy

Jimmy Goss and his wife, Frances, may be forced to close their century-old cattle ranching operation because of a lawsuit filed by environmentalists. In June of 2002, a federal judge determined that the Gosses’ cattle had chewed a significant amount of the vegetation in parts of the Sacramento Mountains, allegedly threatening the habitat of the Mexican Spotted Owl, a violation of the Endangered Species Act.

As a result, the Gosses were forced to decrease their cattle herd from 553 to 330 and to move their herd to a neighbor’s field at substantial cost. The elderly couple from Weed, New Mexico, is now paying about \$2,000 more per month to graze their cattle.

The Forest Guardians, a group based out of Santa Fe, New Mexico that claims America’s public lands have been ‘grazed to the bone’ by livestock, filed the complaint against the Gosses. The Guardians are represented by the Earthjustice Legal Defense Fund (formerly the Sierra Club Legal Defense Fund), which regularly files lawsuits opposing the use of federal lands for ranching. Earthjustice lawsuits often claim that ‘excessive’ grazing damages plant and animal habitats. When Earthjustice and the Guardians triumph in court, it means that ranchers who raise cattle on federal land can be forced to reduce the number of cattle they raise or move their business elsewhere.

A 2002 article by Jim Carlton in the *Wall Street Journal* described the Guardians’ legal strategy this way:

Hardline environmentalists, the Guardians are leaders of the zero-grazing movement, which aims to clear every head of cattle off the 265 million acres of wildlands the U.S. government owns in 11 Western states.

The Guardians use an unusual legal approach. First, they track down ranchers who have permits to feed their livestock on federal land for just pennies a head. The next step is to sue under the U.S. Endangered Species Act or other laws, accusing the government of mismanaging the land where the ranchers’ cows graze.

If the Guardians win in court, or if the government settles, the number of cows a rancher is allowed to graze with his permit is cut. That hands the Guardians a double victory: Not only does the land get a breather, but the rancher has to pay much more to feed his displaced cows on private land. Indeed, the Guardians’ most controversial tactic is to single out the financially vulnerable — ranchers who have used their permits as collateral for bank loans, a common form of financing for small ranching operations.

“We want to put the squeeze on ranchers to get off the land,” says John Horning, the coordinator of the Guardians’ antigrazing campaign. “If some ranchers go out of business along the way, so be it.”

Facing Forest Guardian pressure, Jimmy Goss is worried about the future of his ranching business. Over a century ago, his grandfather came to the Lincoln National

Forest and began the cattle-grazing operation, which became a family legacy. “My granddaddy worked to give us this [settlement],” he explains, “and I’m busting my behind so my grandkids can have it too.” The prospect of losing the family business is a real concern. The amount of beef the Gosses sold in 2002 was 100,000 pounds less than in the previous year.

The harm to family businesses is apparently not a concern of the Forest Guardians. The group proudly claims to have cleared 5,000 head of cattle from two million acres of federal land. The Guardians have won 18 lawsuits so far concerning federal grazing permits and have many other suits pending.

*Sources: Wall Street Journal (November 1, 2002), Mountain Monthly (May 2000), Albuquerque Journal (November 22, 2002), Jimmy and Frances Goss*

## Government Loses Case After Denying Handicapped Woman Access to Home

It took 84-year-old Virginia resident John Taylor four years to reach an agreement with the U.S. Fish and Wildlife Service to allow him to build a handicapped-accessible home in the Washington, D.C. suburb of Mount Vernon.

As reported in The National Center for Public Policy Research’s 2000 edition of this book, Taylor was barred from building a small modular home on a lot he had purchased to accommodate his wheelchair-bound wife unless he met strict criteria set forth by the FWS. Asserting that construction would harm a nest of the federally threatened Bald Eagle located 90 feet away, FWS officials said in 1998 that Taylor could only construct the home if he agreed to several burdensome requirements, such as contributing money to a salmon restoration plan, building two eagle platforms and contributing money to a Bald Eagle exhibit at the U.S. Army Woodbridge Research Facility. Furthermore, Taylor would not be permitted to mow the yard or allow children to play on his lot between November and July.

After President Clinton proposed removing the Bald Eagle from the list of threatened and endangered species in July 1999, FWS officials still prohibited Taylor from building unless he followed through with the arduous conditions that had previously been set forth. With the help of the public-interest legal foundation Defenders of Property Rights, Taylor sued the FWS and Bruce Babbitt — then the U.S. Secretary of Interior — in U.S. federal claims court seeking just compensation for the loss of his property under provisions of the U.S. Constitution’s Fifth Amendment.

FWS officials negotiated a settlement with Taylor and Defenders in May of 2002 that allowed Taylor to finally build his home. The settlement also paid him compensation for the time during which he could not use his land. “I am elated that it is finally over, but am still disheartened that it took four years and a lawsuit to get the government to obey the Constitution,” said Nancie Marzulla, president of Defenders of Property Rights.

*Source: Defenders of Property Rights*



*Bald Eagle*



*Mexican Wolf*

## Man Harassed for Protecting Wife, Children from Wolf

A secret government operation. An innocent victim. A cover-up and conspiracy. It may sound like the plot of a suspense novel, but it's a real-life tragedy that plagues Richard Humphrey to this day.

In March of 1998, the U.S. Fish and Wildlife Service began releasing endangered Mexican Wolves that were bred in captivity into designated areas of Arizona and New Mexico. Their intent was to restore natural ecosystems to public lands. Citing the dangers wolves pose to cattle, livestock and humans, the New Mexico Cattle Growers Association and other livestock organizations sued the FWS, hoping to stop the release.

Environmental groups, however, threatened to sue if the wolves were not released. This prompted the Department of the Interior to release the wolves in secret, allegedly to avoid criticism for giving in to environmentalists' demands while the livestock organizations' lawsuit was pending.

Because the wolf release program was a clandestine operation, Richard Humphrey and his family didn't know that the wolves were released in the Gila National Forest in southwestern New Mexico. Had they known, they would not have been camping there on April 28, 1998.

A knowledgeable camper and outdoorsman, Humphrey emerged from his tent to find several wolves with radio collars mauling his dog, Buck. Humphrey began shouting in an attempt to scare the wolves away without harming them. One of the wolves became frightened and ran off, but another charged toward his wife and two daughters. Fearing for the lives of his family, Humphrey shot and killed the wolf. Though Buck needed immediate medical attention, Humphrey still followed all of the mandated procedures after harming an endangered species: he quickly alerted the proper authorities and recounted his story to both state and federal wildlife agents.

Over the next six weeks, Humphrey was repeatedly questioned and interrogated, both over the telephone and in person. Finding nothing illegal about the situation, FWS officials did not charge Humphrey with any crime. This decision prompted a firestorm of harassment directed at Humphrey by environmental groups and the media. Bobbie Holaday of Preserve America's Wolves demanded in the *Arizona Republic*, "We've got to make an example of this guy." The Wildlife Damage Group printed and distributed bumper stickers that read, "Real men don't kill wolves." Before any of the facts of the case were made public, the Center for Biological Diversity put intense pressure on DOI officials to indict Humphrey. Inflammatory remarks were repeatedly quoted and reported as fact by the *Tucson Citizen*, a prominent area newspaper. While Humphrey was never indicted or prosecuted for defending his family, his name still appears on environmental web sites as an enemy of their cause.

With wolves threatening both humans and cattle, communities in New Mexico and Arizona have lobbied the federal government to end the wolf release program to no avail. Environmental groups are continuously threatening litigation, while DOI officials have not stopped the release program. Wolf attacks on livestock, pets and humans have become increasingly common since the release program began in 1995.

*Sources: WorldNetDaily (February 11, 2000), Range Magazine (Fall 1998), Arizona Republic (April 30, 1998)*

## Scientist Follows Rules; Government Ends His Career

James Michael Kovach is nothing like the fictional “orchid thief” John Laroche in the Oscar-winning film “Adaptation.” Kovach is a by-the-book orchid expert who had the distinction of discovering a new species of orchid in May of 2002. Four months after the discovery, however, Kovach’s reputation was shattered and his career essentially ruined after the government alleged he broke the law in bringing the newfound orchid to the United States — despite the fact that he was following the instructions of both American and Peruvian officials.

While on a visit to Peru in May of 2002, Kovach stumbled upon a beautiful orchid unlike any he had ever seen. He purchased the plant and planned to bring one back to the United States so that he could properly document it.

Because the international transport of plants, flowers and other species is strictly regulated, Kovach very carefully planned his return to the U.S. with the exotic plants he had acquired. He contacted Peruvian officials to find out if he needed a Convention on International Trade in Endangered Species (CITES) permit to take the orchids from Peru. This permit requires both the exporting and importing nations to conclude that transporting an individual specimen will not be detrimental to the survival of the entire species, that it was acquired legally and that it received a treatment for insects and fungi and the chemicals that were used for that treatment are documented.

Peruvian officials told him that, because he was transporting relatively few plants, a CITES permit was not needed and that a traveler’s exemption — another permit used when transporting plants internationally — would be sufficient. Therefore, Kovach returned to the United States using his traveler’s exemption. Upon his arrival in Miami, Kovach declared the plants at agricultural inspection and insisted that his bags be inspected, but U.S. officials refused to look at the live plants he carried.

Eager to document his discovery, Kovach took his newfound orchid to the Marie Selby Botanical Gardens in Sarasota, Florida to have it studied. Within ten days, the findings were published and the orchid was determined to be a new species that would bear its founder’s name: *Phragmipedium kovachii*. After the plant was identified and he had been given credit for the discovery, Kovach returned it to the Peruvian government at its request. The specimen can now be found in a Peruvian museum.

Despite following instructions given to him by both Peruvian officials while leaving the country and American customs officials upon re-entering the United States, Kovach was surprised less than four months after his return when U.S. Fish and Wildlife Service (FWS) officials came to his home and confiscated receipts, photographs and phone records pertaining to the orchid’s discovery. They were investigating the claim that Kovach brought the *Phragmipedium kovachii* into the United States illegally. The claim stated that he did, in fact, need a CITES permit.

On November 1, 2004, Kovach was sentenced to two years’ probation and fined \$1,000 for not acquiring a CITES permit. Selby Gardens pleaded guilty to violating an international treaty that governs endangered species and was put on three years’ probation and fined \$5,000. Selby orchid expert, Wesley Higgins, was fined \$2,000 and sentenced to two years’ probation with six months of it spent on house arrest.



James Michael Kovach

Kovach's career has essentially been ruined. The court proceedings have effectively undermined his credibility among botanists. Organizations no longer ask him to speak at conferences and other collectors have stopped purchasing his orchids. Kovach says the government's accusations have effectively ended his career, and he and his wife must now rely solely on her income as a photographer to survive.

*Sources: James Michael Kovach, Washington Post (December 29, 2002), New York Times (August 13, 2002), Miami Herald (August 10, 2002), Sarasota Herald-Tribune (November 2, 2004)*



*Bald Eagle*

## **Bald Eagle Egg Destroyed Because Game Farm Lacked Federal Permit to Raise Eaglets**

When a captive Bald Eagle laid an egg at a Kentucky state game farm in April, 2003 — a rare occurrence — it should have been a celebratory moment. Instead, Federal regulatory issues created such fear and concern that a biologist employed by the Kentucky Department of Fish and Wildlife Resources intentionally destroyed the egg. She said the state game farm did not have the federal permit required for the raising of eaglets.

Post-mortem, state officials argued that the game farm is only permitted to show and exhibit birds, and cannot raise eaglets.

Roughly 100 miles away — in Pigeon Forge, Tennessee — is a properly certified and equipped facility to which the egg could have been transferred. This facility, the home of the non-profit American Eagle Foundation at singer Dolly Parton's Dollywood theme park, has the proper federal permits to incubate eagle eggs and to hatch and rear eaglets in captivity. Kentucky game officials claimed this transfer option was also far too costly.

Craig Rucker, executive director of Committee for a Constructive Tomorrow, commented, "It's disappointing that some people would take the approach of destroying the eagle egg instead of doing the appropriate thing, like transferring it."

*Sources: Kentucky Courier-Journal (June 2, 2003), WorldNetDaily (June 3, 2003), National Wilderness Institute, Committee for a Constructive Tomorrow*

## **Banning Public Golf Course in Palm Springs May Preserve Endangered Bighorn Sheep — for Mountain Lions to Enjoy**

For over a decade, residents of Palm Springs, California, an area with a booming golf industry, have been trying to bring a public championship-level golf course to the city. The Sierra Club may have made this dream impossible.

Fred Grand, president of the Preserve Golf Company, first proposed building Mountain Falls Golf Preserve, an 18-hole course designed by golf legend Arnold Palmer, in Palm Springs in 1990. He signed a 55-year lease with the city and the Riverside County Flood Control District to acquire approximately 700 acres of land at the mouth of Tachevah Canyon.

Grand's plans for Mountain Falls were approved by the Palm Springs City Council in 1994, but a lawsuit filed by the Sierra Club halted construction. The Sierra Club argued that the course would disrupt the habitat of the Peninsular Bighorn Sheep, a federally-protected endangered species. There are approximately 280 Bighorn Sheep in Southern California, a number that has dwindled from 1,200 in 1971. While the sharp decline is alarming, efforts to recover the sheep have been complicated by California State Proposition 117, enacted in 1990, which prohibits the killing of any Mountain Lion that is not directly threatening a person or animal. The spread of disease from domestic sheep also has harmed Bighorn Sheep populations in California.

Despite the previous public hearings and city approval, Grand submitted the proposed plans for the course to an environmental review after the lawsuit was filed. Changes were subsequently made to the construction plan. Although the new plans lowered the elevation of the golf course from 980 to 780 feet, benefiting the sheep because it moved the course further from the animals' habitat, Riverside County Superior Court Judge Gloria Conner Trask rejected the more environmentally-friendly plan and ordered still more revisions that were subject to additional public scrutiny.

Complying with multiple court orders and lawsuits has been difficult, if not impossible, for Grand. "It's been scaled back five different times to bring [the golf course] down lower on the mountain," he said. "We've tried to bring it down out of the sensitive areas and still have a championship golf course." In May of 2002, after nearly a decade of being bogged down by red tape, Grand withdrew the application for Mountain Falls. Local citizens who want to play on a championship-level course will simply have to join an expensive club to do so.

*Source: The Desert Sun (May 16, 2000)*



## Tree Farm May be Sold to Developer to Protect Nonexistent Salmon

Endangered species restrictions ostensibly to protect salmon are keeping tree farmers Greg and Sue Pattillo from being able to use so much of their land that they are considering selling it to developers, a move that will harm all of the plant and animal species that thrive on their property.

As for salmon: They've never lived on the property and never will, government regulations notwithstanding.

There are two designated creeks on the Pattillos' 700-acre tree farm in Raymond, Washington. Although considered creeks, they are little more than strips of mud that are devoid of fish of any kind. Because they are designated "creek," however, under the Forest and Fish Law of 1999, the Pattillos are prohibited from harvesting timber up to 200 feet from them.

Government officials, environmental activists, timber industry representatives and Indian tribal leaders negotiated these restrictions under Washington State's Forest and Fish Law in an attempt to protect salmon populations. While the agreement places buffer zones around streams based on factors such as width, slope and flow, it does not take the actual presence and viability of salmon — or lack of same — into consideration.

In 2003, the Pattillos estimated that the buffer zones had effectively locked-up 40 percent of their tree farm. An accurate assessment of their losses requires a professional (and expensive) survey conducted by a forester, a financial impossibility for them at this point.

The Pattillos run what they consider to be an environmentally-sensitive tree farm on private land. They cut down less than two percent of their timber each year and claim to have more trees on their land today now than they did in 1988. Their land is home to many bears, cougars, elk, deer and birds. But this may change, as the Pattillos' business has been hurt to the degree that they may sell their land to developers. "We know the environment's important, but this is going to have the wrong effect," says Greg. "The sad part is that people are getting discouraged and want to sell their land."

In an effort to save their tree farm, in April 2005 the Pattillos agreed to a new "alternative plan" to the Forest and Fish Law. The plan exempts small timberland owners who harvest less than two million board feet of timber per year. Under the plan, the Pattillos are allowed commercial thinning of trees closer to streams than otherwise would be permitted under the Forest and Fish Law agreement. However, further harvesting on the exempted land is curtailed after thinning down to 100 trees per acre.

The exemption increased the land available for Pattillos' harvesting business, but Pattillo does not see it as advantageous for his business in the long term. Because the couple will not be allowed full management on much of their own property, the Pattillos say the alternative plan will not necessarily save their tree farm. It may only provide a "stay of execution."

*Sources: Alliance for America, Greg Pattillo, Sue Pattillo, Tidepool.org news service (September 2, 2003)*

*"We know the environment's important,  
but this is going to have the wrong effect,"  
— Greg Pattillo*

## Toads Halt Home Building

Housing prospects may soon become more scarce and more expensive in San Diego, California. Federal regulators rejected a developer's plans to build a 280-home development because construction may have threatened an endangered toad.

The decision inevitably will make it harder for lower-income families to find suitable housing, as a decrease in the amount of available housing tends to increase the price of homes.

Rancho Viejo LLC, the developer, had planned to build 280 homes on 202 unincorporated acres in San Diego. Not only would the development provide a rapidly-growing community with additional needed housing, but it would increase San Diego's property tax base.

The U.S. Fish and Wildlife Service (FWS) and the Army Corps of Engineers concluded that there was a possibility that building on parts of the proposed site could harm breeding areas used by the protected Arroyo Southwestern Toad, which has been classified as an endangered species since 1994. FWS officials sent a letter in May 2000 to Rancho Viejo informing it that a fence the company had built "has resulted in the illegal take [endangerment] and will result in the future illegal take of federally endangered" Arroyo Toads.

The FWS offered an alternative — and much more expensive — plan. The project would have been allowed to continue if soil was taken from a remote location. This alternative would have dramatically increased the construction costs and, therefore, would have likely made it impossible for the homes to be priced at standard market rates. Rancho Viejo rejected the alternative and filed a complaint against Secretary of Interior Gale Norton in U.S. District Court for the District of Columbia.

The case was dismissed on the grounds that regulating the site under the Endangered Species Act is constitutional, and that the development of the site would threaten the toad. The Federal Appeals Court upheld the ruling in April of 2003 and also denied Rancho Viejo's petition for a rehearing.

*Sources: San Diego Union Tribune (July 23, 2003), United States Court of Appeals for the District of Columbia Circuit decision (01-5373; April 1, 2003), Steven Imboof—attorney for Rancho Viejo*





*5th Battalion, 10th Marine Regiment  
Fort Bragg (North Carolina)*

*Every tree that potentially could be home to a Red Cockaded Woodpecker requires a 200-foot “buffer area” in which soldiers must be careful not to “upset” or “harass” the birds.*

## U.S. Special Forces Must Evade Woodpecker to Train

While commandos of the U.S. Army are the best-trained soldiers in the world, they are losing a battle on their own training grounds to an unexpected enemy lurking in the trees: The RCW, also known as the Red-Cockaded Woodpecker, which is federally-protected as endangered under the Endangered Species Act.

Fort Bragg, located near Fayetteville, North Carolina, is the U.S. Army’s largest base and, with nearby Pope Air Force Base, is one of the largest military complexes in the world. All American airborne divisions trained there during World War II. It currently is the home of approximately 46,000 soldiers. It is the home of the XVIII Airborne Corps, the 82nd Airborne, and the elite commandos of the Green Berets and Delta Force.

Longleaf pine trees, the preferred habitat of the endangered RCW, cover 70,000 of Fort Bragg’s 160,789 acres. Because many of Fort Bragg’s training fields have become RCW habitat, Endangered Species Act restrictions limit the ability of soldiers to train.

In 1996, the Army began a partnership with The Nature Conservancy, as well as state and federal agencies, to begin the “Fort Bragg Private Lands Initiative.” Under the partnering, parcels of land surrounding Ft. Bragg are purchased and conservation easements on the land are established. Every tree that could potentially be home to a RCW requires a 200-foot “buffer area” in which soldiers must be careful not to “upset” or “harass” the birds. The 2003 fiscal year National Defense Authorization Act codified the initiative agreements “to limit encroachments and other constraints on military training, testing, and operations.”

To comply with these regulations, soldiers are prohibited from camping, constructing shelters, digging foxholes, causing loud noises, conducting live-fire drills or utilizing vehicles or flares on much of the base. A soldier who breaks these rules is essentially disobeying the orders of a commanding officer and can be prosecuted by military authorities under the Uniform Code of Military Justice. He also may be charged in federal district court. Federal penalties can include fines of up to \$50,000 a day and imprisonment for up to two years.

Army Vice Chief of Staff General John M. Keane testified before the U.S. Senate Committee on Armed Services about the necessity of keeping military training areas available and useable. Using the example of Operation Anaconda in Afghanistan, in which many special forces units took part, he explained that training “made the difference” in the 12-day-long campaign launched to oust Al-Qaeda and Taliban terrorists from the treacherous and unforgiving terrain of the Afghan mountains. “Maneuver land and live-fire ranges are essential elements in the training process. Without them, our soldiers cannot develop the confidence and skill demonstrated during Operation Anaconda,” he testified.

Since General Keane’s appearance, the 82nd Airborne has been a key player in both the liberation of Iraq and Operation Warrior Sweep in Afghanistan. Other special forces units that train at Fort Bragg have been similarly engaged on a regular basis.

Addressing the partnership’s effect on military training and readiness, the Army Environmental Center released a fact sheet, updated in March 2005, saying “Since the implementation of PLI at Fort Bragg, the Army has found the same approach applicable to encroachment problems at installations across the nation.”

The 2004 National Defense Authorization Act amended language to the Endangered Species Act for designations of critical species habitats to consider the impact on national security. Addressing this provision, an April 2005 report by the Army Environmental Center points out that “the [Fish and Wildlife Service] or [National Marine Fisheries

Service] may preclude designation of critical habitat on a military reservation if they conclude... that such a designation would have a significant impact on national security.” The report also notes that no critical habitat designations on Army installations were excluded in fiscal year 2004 based on national security considerations.

*Sources: The Charlotte Observer (April 14, 2001; February 7, 2003; November 19, 2005; June 8, 2006), National Defense Magazine (April 2001; August 2003), Fort Bragg Web site, U.S. Army Environmental Center*

## Pronghorn Taking Priority Over Military Training

Regulations to protect a population estimated at 58 individual isolated subspecies of the Pronghorn (antelope) that are found in abundance elsewhere is pitting the military against nature at the Barry M. Goldwater Air Force Range in Arizona.

There are an estimated one million Pronghorns in North America, consisting of five subspecies. Two of the subspecies — the Peninsular and Sonoran — are listed by the government as endangered under the Endangered Species Act. The Sonoran Pronghorn population is restricted to the Sonoran Desert of southwest Arizona and northwest Mexico, with most of the population in Mexico.

In 1999, Defenders of Wildlife sued the Air Force, alleging it was putting the Sonoran subspecies at risk by not enforcing Endangered Species Act restrictions on the Goldwater Range. Two years later, although it did not rule explicitly against the Air Force, the U.S. District Court for the District of Columbia stated that the U.S. Department of the Interior must analyze the Sonoran Pronghorns’ need for protection and regulate accordingly the use of the land on which these antelopes live.

Luke Air Force Base in Arizona, the facility responsible for conservation efforts at the Goldwater Range, already spends nearly \$500,000 annually on personnel and other projects related to Sonoran Pronghorns. The base employs four full-time biologists and one part-time biologist who track the animals’ movements and notify the military of their location. If any are spotted within five kilometers of a training mission’s target area within two hours of a mission’s launch, the mission is either moved or called off. This has led up to 40 percent of all live ammunition drop exercises at the range to be moved or cancelled since the restrictions were put in place.

Senator John McCain (R-AZ) has criticized this, saying, “You can’t run a military efficiently... by canceling 40 percent of the training that’s being conducted... I want to preserve the Sonoran Pronghorn as much as other living Americans... But I’m also interested in winning conflicts and not sacrificing needlessly young Americans’ lives.”

The Sonoran subspecies may not even be endangered. Scientists at the U.S. Fish and Wildlife Service’s National Fish and Wildlife Forensics Laboratory analyzed the Sonoran Pronghorn’s DNA and found there are only tiny genetic differences between it and the Mexican Pronghorn. The only major distinction may be their habitat; the Sonoran subspecies is restricted to the Sonoran Desert of southwest Arizona and New Mexico, while the Mexican subspecies occurs in northeast Mexico.

Many questions abound as to the integrity, relationships and distinctiveness of the five different subspecies or populations, especially since substantial restocking took place in the 20th century following massive over-hunting in the 1800s and early 1900s. Nevertheless, the Sonoran subspecies is being used to curtail vital military activities.

*Sources: Defenders of Wildlife, National Wildlife Federation, National Journal (April 26, 2003), Government Executive Magazine (October 1, 2002), Luke Air Force Base*



*A maintenance worker at Luke Air Force Base (Arizona)*



*New Benicia-Martinez Bridge (1999)*

## Forty Dead Fish Cost Taxpayers \$200 Million

Motorists who commute across the Carquinez Straight near Benicia, California experience some of the most aggravating traffic in San Francisco's East Bay area. To ease congestion, the Metropolitan Transportation Committee (MTC) and the California Department of Transportation (CALTRANS) planned to build a new bridge that would nearly double the number of highway lanes. Unfortunately, bureaucratic and environmental problems have held up the project for years and added more than \$600 million to the original cost. In one case, approximately 40 dead fish cost taxpayers more than \$200 million.

Construction of the bridge requires that 8 1/2 feet wide steel tubes be driven deep into the ground with a large hydraulic hammer — a technique referred to as pile driving. The tubes, called pilings, are then drilled out and filled with concrete and steel to create the base of the bridge. Soon after pile driving began in November of 2002, construction officials noticed approximately 40 dead fish near the work site. CALTRANS officials immediately halted bridge construction while they consulted with National Marine Fisheries Service officials. It was determined that the process of pile driving sent sound waves through the water that burst the bladders of nearby fish.

The dead fish were a common species, Striped Bass, which was introduced to the San Francisco Bay from the mid-Atlantic as a sport fish in the late 1800s. No endangered species were harmed. Regardless, NMFS officials ordered the pile driving halted because they feared the project could possibly harm two fish, the Delta Smelt and Sacramento Splittail, both of which are listed as federally-protected threatened species. The splittail has subsequently been delisted by order of the U.S. District Court for the Eastern District of California. For three months, construction was stalled. Rod McMillan, a senior engineer for the project, estimated that delays cost between \$100,000 and \$200,000 per day. MTC submitted a plan that was approved by NMFS officials in February of 2003. The plan would allow pile driving to continue during slack tide and would use a method in which air bubbles are continuously pumped around the piling to absorb much of the sound waves. CALTRANS officials have said the process could add \$200 million or more to the cost of the bridge.

The project was first estimated to cost \$286 million and be completed in 2000. Current estimates put the cost at \$1.057 billion, with an estimated completion date of October 2007. The 40 dead fish found at the construction site cost taxpayers \$5 million per each dead fish.

A license allowing someone to catch two Striped Bass in the San Francisco area costs \$3.70.

*Sources: Benicia News (January 14, 2003; February 10, 2003), Contra Costa Times (September 17, 2002; January 9, 2003), California Department of Transportation*

## Snake Halts Construction; Costs Taxpayers a Million Plus

The construction of an 8.7-mile extension of a Bay Area Rapid Transit (BART) commuter line in San Francisco was finally completed in June 2003 at a cost of approximately \$1.5 billion. One of the costliest delays — totaling nearly \$1.07 million in taxpayer funds — came when a BART official discovered a dead garter snake.

The San Francisco Garter Snake, an endangered species, resides in the marshy swamp areas where the construction of a rail extension took place. Snake trappers were deployed to suspected habitats prior to any construction, and special fences were erected to keep garter snakes from entering construction areas. \$1.5 million tax funds were budgeted for snake protection at the start of the project.

While the traps caught over 75 of the endangered snakes, the discovery of a dead garter snake in the spring of 2000 caused a work stoppage. The California Department of Fish and Game wanted to determine if the contractors and construction workers were doing everything in their power to protect the snakes.

Efforts to determine the snake's cause of death also brought all work on the new rail extension to a virtual standstill. Workers were put through a special snake-training course. This emergency drill was conducted with the goal of improving the recognition and awareness of the endangered garter snakes. Nearly three weeks later, after \$1.07 million in expenses was added to the project due to the snake-related delays, work finally resumed on the project.

As a result of the new training regime, a five mile-per-hour speed limit was imposed on traffic in construction areas. Workers were also under orders from state officials to check under parked vehicles every five minutes to ensure no endangered garter snakes had moved into harm's way. These measures proved successful for nearly two years. Following the discovery of a second dead garter snake in May of 2002, state wildlife officials once again halted the construction to investigate the cause of death. In this case, no additional training was required.

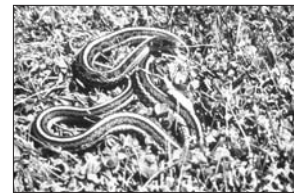
*Sources: Newsmax.com (May 13, 2002; May 15, 2002), San Francisco Chronicle (May 11, 2002), San Francisco Gate (October 26, 2001), Contra Costa Times (June 15, 2003)*

## Endangered Fly Lives for Two Days, But Curbs Development for Over a Decade

San Bernardino County and Riverside County in southern California are experiencing a dramatic surge in population. Known as the "Inland Empire," the region — which had a population of 3.3 million in 2000 — is expected to boast around five million residents in 2020. But a tiny insect is making life miserable for city planners and developers struggling to accommodate the anticipated growth. The Delhi Sands Flower-Loving Fly, which is protected by the federal Endangered Species Act, has stalled or altogether blocked dozens of projects that would have brought jobs, revenue and much-needed residential development to the region.

The U. S. Fish and Wildlife Service listed the Delhi Sands Fly as an endangered species in 1993. Just how many of the flies exist is impossible to know or even estimate because they only emerge from their underground burrows once a year to mate, sip nectar and then quickly die. The entire life-span of a Delhi Sands Fly is only two days. The fly's habitat — the sand dunes of the Inland Empire — is fragmented over approximately 40 square miles. The actual usable habitat may be as small as 1,200 acres.

Ramifications of the regulations protecting the habitat of the endangered fly are especially dire for the California cities of Fontana, Colton and Rialto. In Fontana, the fly has slowed development of a project known as the Empire Center — a 522-acre commercial, retail and residential development. Planned since 1991, development came to an abrupt halt in 2003 when several endangered flies were found at the base of a



*San Francisco Garter Snake*

*Efforts to determine the snake's cause of death brought all work on the new rail extension to a virtual standstill.*



*Delhi Sands Flower-Loving Fly*

# Endangered Species — Public Works

eucalyptus tree. Although the city had already sold bonds to raise \$46 million for roads and public utilities related to the project, development was unable to resume until a conservation plan for the fly was enacted. Every month of delay caused bondholders to lose \$100,000 of revenue. Only in December 2004 did the city secure land zoning that will allow residential development at the Empire Center. Since 26 acres will also be set aside for the fly's habitat under the plan, there is not any current litigation against further construction at the site.

But elsewhere, Mayor Deirdre H. Bennet of Colton told the *New York Times* that she thinks her city has been even harder hit by fly-related restrictions. For example, an estimated 200 jobs were lost when a paper recycling plant couldn't buy property in Colton because the site the company selected was determined to be fly habitat. The total estimated job losses in Colton attributed to the fly's protections hover around 1,000. City officials say the fly also cost the city over \$300 million in lost investments. Taxpayers are further footing the bill for other fly-related expenses. This includes \$1.2 million spent in 2002 to find an alternate location for a planned baseball stadium because someone thought he saw a swarm of flies on the original stadium site.

Fly protection has similarly strained county government budgets. As reported in a previous edition of this publication, San Bernardino County was forced to relocate its Arrowhead Regional Medical Center 250 feet — at a cost of \$3 million to taxpayers — in an effort to avoid disrupting alleged fly habitat.

*Sources: New York Times (December 12, 2002), LibertyMatters.org, Press-Enterprise (September 21, 2002), Inland Valley Daily Bulletin (December 17, 2004), Public Policy Institute of California*



*Least Bell's Vireo*

## California Agency Says a More Secure Border is for the Birds

As part of the "Illegal Immigration and Immigrant Responsibility Act of 1996," Congress mandated better fortifications along a 14-mile stretch of the U.S.-Mexico border south of San Diego. Construction was completed on nine miles of the new triple-fence border, but the remainder of the project has been blocked by the California Coastal Commission, a state agency that manages conservation and development along the coast. It issued a report in February of 2004 stating that a series of more secure border fences would threaten an "environmentally sensitive habitat" of two endangered birds: the Least Bell's Vireo, Southwestern Willow Flycatcher and the threatened Coastal California Gnatcatcher.

The Bureau of Customs and Border Protection (CBP), now a division of the Department of Homeland Security, was charged by Congress with constructing the second and third line of fences in an effort to curb the stream of illegal aliens crossing into the U.S. south of San Diego. The San Diego border sector stretches from the Pacific Ocean to the base of the San Ysidro Mountains. The project, called "Operation Gatekeeper," is also meant to safeguard area military facilities — especially the San Diego Naval Station — from terrorists. Lights, sensors and surveillance technology have been installed, and a 130-foot wide patrol road between two of the fences ensures that border agents can safely make U-turns at high speeds. Mike Nicley, chief patrol agent for the San Diego sector, told the *Washington Times* that the San Diego border sector has



historically been violated by illegal aliens more than any other border area. Since Operation Gatekeeper was enacted, border arrests are “down to a trickle.”

Completion of the project, however, is being stalled by the California Coastal Commission. In justifying its February 2004 rejection of the final portion of the CBP’s fence construction, the Commission concluded it “does not properly balance border patrol and resource protection needs.” A biological study claims the project would harm one pair of Least Bell’s Vireos and another pair of Southwestern Willow Flycatchers by removing 2.57 acres of brush they feed and nest in from their overall habitat. Three Coastal California Gnatcatchers would also be harmed by the removal of nearly 45 acres of coastal sage scrub in its habitat. The Commission also objects to the use of fill in the “Smuggler’s Gulch” area to construct a safe patrol road. Three Border Patrol agents have been killed in accidents along the area’s steep terrain in recent years.

“From our office’s perspective, we think homeland security is a top concern,” said Gary Winuk, deputy director of the California Office of Homeland Security. But the California Coastal Commission argues that border protection “must be balanced against habitat protection.”

*Sources: The Washington Times (February 20, 2004), San Diego City Beat (April 28, 2004), California Coastal Commission, Library of Congress*

## Environmental Lawsuits Delay Construction of Vital Road

Since 1959, residents of the San Diego area and their elected representatives have known that a new highway extension would be necessary to handle the region’s burgeoning residential and business needs. Plans for that highway, State Route 125, were first unveiled in 1984. Actual construction was delayed until 2001, but environmentalists have tried to use the Endangered Species Act to stop the road from being built altogether.

A coalition of environmental groups, including the Sierra Club and the San Diego Audubon Society, filed a lawsuit in federal court in October 2001 claiming the project violated the ESA by threatening the survival of at least ten plants and small animals listed under the Act.

To begin construction, state highway officials acquired all of the necessary environmental permits. After a decade of public debate, planners expected construction to commence in 2001. Then the environmentalists filed their lawsuit.

There is no doubt that the new highway is needed. Chula Vista, a city bordering San Diego, is expected to see an estimated 63 percent increase in population by 2020. In 2001, former mayor Shirley Horton spoke of her community’s particular needs for SR 125. “We are looking forward to the groundbreaking of this vital link in our transportation plan. Without it, there is no doubt that future congestion in the South Bay Area would become unmanageable. It would result in long traffic delays, and translate into wasted time and dollars,” she said.

In March, 2003, Judge Jeffrey Miller of the U.S. District Court for the Southern District of California ruled against the environmentalists. California Transportation Ventures (CTV), the developer of SR 125, reached a settlement with the environmentalists in May 2003, which nullified any future appeal efforts.

# Endangered Species — Public Works

In accordance with the settlement, CTV agreed to provide \$3.07 million out of its own pocket for environmental preservation projects throughout San Diego. The funds will be used to protect endangered species in California and to buy environmentally-fragile lands.

Construction of the road extension, recently named the South Bay Expressway, is scheduled to be completed in 2007.

*Sources: San Diego Union-Tribune (May 14, 2003; July 28, 2005), www.sr125.com, SouthBayExpressway.com, City Managers Office, Chula Vista, CA*



*Bog Turtle*

*Without a complete "turtle analysis," school administrators cannot build the school as originally planned.*

## School Board Pays \$400,000 to Protect Area that May or May Not Contain Endangered Species

With each new school year more students are brought into the already overcrowded West Chester Area School District in West Chester, Pennsylvania. Administrators hoped that building Bayard Rustin High School would reduce class sizes, shorten commutes and create a better learning environment for West Chester students. But government officials were forced to add \$400,000 to the construction costs of the proposed school to protect a federally threatened turtle that might not even be in the area.

Heavy rains in the spring of 2003 expanded existing wetlands near the proposed school, engulfing new terrain that included the proposed location of some of the school's sewage pipes. While regulators from the Pennsylvania Department of Environmental Protection did not complain about the intrusion of the pipes onto the wetlands, they did have a problem with how the pipes may affect the habitat of the threatened Bog Turtle. Yet no one knew if the turtle was actually there.

To determine if Bog Turtles lived in the wetlands abutting the school's property, the school district first conducted tests that concluded that the area was conducive to the turtles' habitat. Another experiment was necessary actually to find out if the reptiles are there. This test, however, can only be conducted in May when it has not rained for 48 hours and the soil and water temperatures are both above 55 degrees. To the dismay of school officials, no day in May 2003 met these stringent requirements.

Without a complete "turtle analysis," school administrators cannot build the school as originally planned.

Officials had two options: either wait until May 2004 (hoping weather conditions allow the test to be conducted) or re-route the sewage lines around the potential turtle habitat.

Re-routing would cost approximately \$400,000. Delaying construction any further would be even more expensive, and the modifications had already pushed back the opening of the school from 2005 to 2006. Because the other two high schools in the area cannot accommodate more students, additional delays were infeasible. So the decision was made to spend the \$400,000, so the school could open in 2006.

Some of the \$400,000 will come from contingency funds for the new high school, but these reserve monies cannot accommodate the entire expense. Instead, money is being diverted from other places — perhaps from the budget for books or computers — to protect turtles that may never be proven to exist.

*Sources: Associated Press (July 11, 2003), West Chester Internet Service, West Chester Area School District*



## Self-Defense No Defense in Kentucky Bear-Shooting Case

A Kentucky man was forced to pay a \$250.50 for killing a 270-pound American Black Bear he believed was about to attack him.

Terry Brock of Mayking, Kentucky, stepped out of his home one morning in 2004 to see why his dogs and horse were making a ruckus. He came face-to-face with a bear.

Running inside his home, Brock told his wife to call the Kentucky Department of Fish and Wildlife Resources, while Brock made noise in an effort to scare the bear away. The American Black Bear is protected as a “species of special concern” in Kentucky.

“The bear was taking swipes at our dogs,” Brock told the Associated Press afterward. “I thought our horse might break a leg trying to get out of his stall. The kids were going to pieces.”

When scaring the bear didn't work, Brock grabbed an heirloom rifle and went outside. The bear stood erect.

“I had always heard that they were ready to attack when they did that,” Brock said. “So I shot it.”

The Kentucky Department of Fish and Wildlife Resources then filed charges against Brock, which could have resulted in the 36-year-old father of three receiving 30 days to a year in jail and a fine of up to \$1,000. The Department refused pleas to reconsider the charge, despite Brock's contention that he acted in self-defense.

Believing he'd done nothing wrong, Brock refused the county prosecutor's guarantee of no jail time in exchange for a guilty plea, saying he wanted a jury to hear his case.

At trial, the jury deliberated for two hours before announcing it was hopelessly deadlocked. An agreement then was reached with the prosecutors. Brock offered an “Alford” plea, in which he maintained his innocence but agreed that sufficient evidence existed to demonstrate guilt. He agreed to pay a \$250.50 fine, received no jail time, and was permitted to keep his hunting license and his heirloom rifle.

*Sources: Associated Press (February 26, 2005), Cincinow.com (September 20, 2004), FoxNews.com (August 20, 2004), Kentucky Department of Fish and Wildlife Resources*

## Man Saves Child from Snake; Rewarded with Fines and Legal Fees

Jim Galloway risked his life to protect a three-year-old child from an aggressive and venomous snake, but his heroism earned him a year of grief and legal battles and a \$200 fine.

On August 9, 2002 Galloway took two of his sons and one of their friends to Pickeral Lake in Michigan for a nature outing. When Galloway saw a small child walking down a path towards an Eastern Massasauga, a species of rattlesnake, he rushed over and used a tree branch to pin down the snake so the boy would not be bitten and possibly killed. Galloway picked up the snake with a shovel in an attempt to release it safely into the woods. Instead of retreating into the woods, however, the snake slithered toward Galloway. Perceiving the snake as a threat to himself, the children and other hikers, Galloway used his shovel to decapitate the snake.

# Endangered Species — State & Local

*“This is a monstrous miscarriage of justice.”*

— Donnelly Hadden  
attorney for Jim Galloway



*Max Mayfield*

Galloway was later charged with killing a protected snake without a state permit. The Eastern Massasauga is a “species of special concern” under the Michigan Endangered Species Act and is a candidate species for listing on the federal Endangered Species Act. At his trial, the prosecution portrayed Galloway as the aggressor. University of Michigan snake expert Scott Fox testified that Massasaugas are typically demure, although three witnesses for the defense contradicted the claim by noting that they had all encountered aggressive Massasaugas that had struck at them.

“It was an aggressive snake... and I felt very thankful,” said Clayton Cowan, whose small son was at risk from the poisonous snake until Galloway intervened.

But Cowan’s thanks did not prevent Galloway’s conviction in Washetaw County District Court. On August 7, 2003, the father of five was found guilty and fined \$100. He was also ordered to pay an additional \$100 in restitution to the state. Worse, Galloway has accumulated over \$10,000 in legal fees.

Donnelly Hadden, Galloway’s attorney, was shocked by the verdict. “This is a monstrous miscarriage of justice,” he said. “I wish all the money that went into the prosecution of this case was used to fix potholes.”

*Sources: Ann Arbor News (August 8, 2003), The Galloway Family*

## Say Cheeze! Photos of Prize Fish Spur Federal Investigation

Max Mayfield’s vacation in the Florida Keys was meant to celebrate the end of his 34-year career — seven as director — at the National Hurricane Center. But what was supposed to be a recreational fishing expedition is now under federal investigation.

On January 4, 2007, one day after his retirement, Mayfield caught a Goliath Grouper weighing an estimated 200 pounds. “That Goliath Grouper is the biggest fish I’ve ever caught in my lifetime,” says Mayfield, a longtime fisherman. To commemorate the catch, Mayfield posed for pictures with the giant fish. The fish then was released through a tuna door in the boat. “We took a few hooks out of [the fish] and let him go in better shape than when we found him,” explained Richard Stanczyk, the boat’s captain.

But after a newspaper published the photos, the National Marine Fisheries Service (NMFS) followed up on a complaint and placed Mayfield under investigation for possible fishing law violations. Ironically, the NMFS, like the National Hurricane Center Mayfield had so recently directed, is a department of the National Oceanic and Atmospheric Administration.

Both federal and state regulations protect Goliath Grouper. The fish was recently removed as a “species of special concern” under the federal Endangered Species Act in March of 2006. However, commercial or recreational harvesting in U.S. territorial waters is prohibited. The State of Florida has banned catching the fish since 1990.

Though Mayfield caught the fish and quickly released it back to the sea, he could face a civil fine or a written reprimand. The investigation is ongoing, but Mayfield’s planned two-to-three month fishing vacation “hasn’t panned out” since he came under scrutiny.

*Sources: St. Petersburg Times (February 27, 2007), NBC6 (January 14, 2007), National Oceanic and Atmospheric Administration*

## Mountain Lion Almost Kills Hunter

Russell Souza considers himself extremely lucky on two counts. First, he was attacked by a Mountain Lion and lived to tell about it. Second, he wasn't prosecuted.

In November of 2002, while hiking in the Diablo Range foothills of Stanislaus County, California, Souza was attacked by a Mountain Lion. During the attack, Souza suffered a claw wound to his left elbow and scratches to his chest and shoulder, but he eventually was able to throw off the enraged predator and shoot it dead. Souza's defensive action did, however, put him at risk of being charged with poaching under California state law. Therefore, upon his return to civilization, one of the first things Souza did was rush to an office of the California Department of Fish and Game (DFG) to plead his case. In the end, a DFG investigation sided with Souza, clearing him of any potential wrongdoing.

Following a statewide moratorium on Mountain Lion hunting passed in 1972, the Mountain Lion population in California increased from approximately 4,000 to approximately 6,000 in 1988. In 1990, California voters passed Proposition 117 to designate the Mountain Lion as a "specially protected" animal. According to the DFG, Mountain Lion population in California is currently between an estimated 4,000 and 6,000.

As a result of this unique designation, Mountain Lions receive a degree of protection tantamount to that of federally-listed threatened and endangered species. This has created unintended consequences. Following the proposition's enactment, the DFG has become incapable of controlling the Mountain Lion population.

Lynn Sadler, president and CEO of the California-based Mountain Lion Foundation, believes this is essential to the Mountain Lions' survival. Sadler argues the predators are "the keystone of the ecosystem. Mountain Lions do a good job of regulating their own population levels." Holman King, a wildlife biologist, disagrees. He believes the rules have allowed the Mountain Lion population to grow out of control, threatening other animals. King says, "The Mountain Lion [population] can no longer be managed. All we can do is abide by the proposition, which is completely reactionary. We cannot take preventative measures when it comes to Mountain Lions."

The Mountain Lion population in California is expected to continue to grow. Unlike California, many western states, including Montana, Nevada and Colorado, still allow their respective fish and game departments to regulate the hunting of Mountain Lions. Craig Hueter, a Modesto, California hunting outfitter, believes Californians also will need to address Mountain Lion overpopulation. He said: "The problem is that in California their habitat is slowly disappearing. The number of lions is going up while their acres are going down. Something has to be done to protect them and us."

*Sources: Knoxnews (December 23, 2002), The Sacramento Bee (December 18, 2002), Mountain Lion Foundation, Death-valley.us (December 18, 2002)*



*Nature trail in Lamoille Canyon,  
Humboldt-Toiyabe National Forest*

## Grazing Rights Challenged After 125 Years

Cliff Gardner's family has run its Dawley Creek Ranch in Elko County, Nevada for more than 125 years, but recent disputes with the U.S. Forest Service over grazing restrictions have nearly destroyed the extensive ranching heritage that Cliff and Bertha Gardner cherish and rely upon.

In 1988, the Forest Service issued a ten-year grazing permit to Gardner, which allowed his cattle to graze on allotments in the Humboldt-Toiyabe National Forest. Problems began in spring of 1991, however, when the Gardners received two letters from Forest Service officials informing them their grazing permit would be altered without the Gardners' input to comply with Forest Land and Resource Management Plan standards.

This signaled a change in the relationship between ranchers and the government, turning a partnership into a strict regulatory regime. This new relationship turned sour in August of 1992, when a fire burned well over 2,000 acres of the Mica C&H and Mica Creek allotments within the Humboldt-Toiyabe National Forest — land located next to the Gardners' property.

The Forest Service reseeded the burned area in October 1992 and forbade grazing on the land for two years to help the vegetation grow. This restriction reduced the Gardners' available grazing land yet again and created conditions that put their home within the reach of the easily-ignited and ungrazed forage.

The Gardners willingly complied with the Forest Service plan for all of 1993. In May of 1994, their cattle had to graze on the restricted land out of necessity. Not only had uncontrolled growth in the area interfered with the flow of water to other grazing land, but it also increased the risk of fire at a time when the region was very arid. In court testimony, Bertha claimed, "We did it for health, safety and to protect our property and family from wildfire... to lose our use of our allotment is to destroy us financially." Cliff added, "We are extremely vulnerable to wildfire and the destruction of all our property... so much livestock has been removed from the lands in Nevada, making it vulnerable to wildfire."

The Forest Service filed a complaint against the Gardners in May 1995. The USFS ultimately revoked the Gardners' grazing rights altogether and sought penalties and payments for their use of the land. Gardner contends the USFS has no jurisdiction to regulate the use of the land.

Since 1996, Gardner has fought continual legal battles with the Forest Service over his grazing rights. He claims, "Western wildfires have increased in proportion to the decrease in ranching in the west." A ruling in the U.S. District Court for the District of Nevada in Reno by Judge Howard McKibben in December 2001 required Gardner to pay a \$5,000 fine and submit to one-year probation. Pleading his defense, Gardner claimed, "All I have done is to stand up for my rights."

*Sources: Reno-Gazette Journal (March 11, 2002), Free-Republic.com, The Nevada Rancher (January 2002), Electric Nevada (July 7, 1996), The Sierra Times (December 7, 2001; March 4, 2002)*

## Forest Service Wants to Take Land But Refuses to Prove It Holds Title

Jerry Fennell is a 65-year-old gold miner and prospector who has been living and working in the Jicarilla Mountains of New Mexico for nearly 40 years.

If the United States Forest Service has its way, Fennell will be kicked off his land, even though the Forest Service cannot prove it owns the land or even verify it has the authority to regulate Fennell's property.

Jicarilla is a small town in south-central New Mexico. It has nearly become a ghost town since its early 1930s heyday as a small but thriving mining community of 300 residents. Located within the Lincoln National Forest, what's left of the town today consists of only three buildings — a church, a log schoolhouse and the former general store Fennell has owned and lived in since 1997.

Mining operations require a reliable supply of water. When the Forest Service cut off the town's water supply in 1987, most of the miners left in search of more promising mining opportunities elsewhere. Fennell, however, chose to stay and work around the water cut-off by hauling the water he needed into town from a nearby well. His production was cut by 90 percent.

In October 2002, the Forest Service told Fennell he would be charged with trespassing on federal land unless he submitted a variety of administrative forms describing his mining claim. Specifically, he was required to file a "plan of operation" explaining the extent of his operation, the equipment he uses and other details regarding his mining business. Applicants have found that, after submitting the forms, the Forest Service usually produces more demanding requirements. This process has made it difficult for small-time miners to survive.

Fennell is the quintessential small-time miner. His tools include a pickaxe, shovel and wheelbarrow. He does not use chemicals. He subsists by raising chickens for their eggs, pigs for meat and a goat for milk. Knowing that the Forest Service's application requirements have forced other small miners out of business, Fennell has refused to fill out the paperwork. USFS officials increased the pressure on Fennell, demanding that he leave his property by January 15, 2003 or be charged with trespassing. He still refused to fill out the paperwork or leave. Since then, Forest Service officials extended the deadline, next demanding he leave the land by March 1, 2003. Again, Fennell refused.

In early 2004, after fighting for a year and a half, Lincoln County passed Resolution No. 2003-16, which recognized that the town of Jicarilla is protected land and cannot be destroyed by the Forest Service. However, the Forest Service has filed trespass charges against Fennell and he is now engaged in a court battle with it.

Fennell remains committed to protecting his rights but comments that, "It is sad that here in the United States of America we must fight our government to protect our own rights, but fight I will."

Despite being able to remain on his land for the time being, Fennell has been forced to defend himself against unjust prosecution. Throughout the whole ordeal, Fennell has continually asked for the Forest Service to prove it has a right to his land, yet the government has been unable or unwilling to produce any evidence of ownership or that it has the right to seize his property under the government power of eminent domain. "I've told them [USFS], you show me proof of ownership, and it's over. I'm gone," Fennell said.

*"It is sad that here in the United States of America we must fight our government to protect our own rights, but fight I will."  
— Jerry Fennell*

*Sources: World Net Daily (January 16, 2003), Jerry Fennell*



*American Black Bear*

*"No matter what happens, if you shoot a bear, you're in trouble."*

— Patrick Flynn, Jr.

## Protecting Bears Before Family?

Patrick Flynn, Jr. of West Milford, New Jersey had no idea that protecting his family from a American Black Bear would result in criminal charges and fines of up to \$800.

When a growling 400-pound male bear approached the Flynn home in June, 2003, Patrick shot it to protect his wife and their two-year old daughter. It has been speculated that the bear approached the Flynn residence either because of the smell of cooking food or the scent of a female bear sighted outside the home earlier that day (it was mating season at the time). Two instances of aggressive bear behavior had occurred in the West Milford area in the two weeks prior to the Flynn incident. A dog and its owner had been mauled and a two-year old boy had sustained serious injuries as a result of violent bear attacks in West Milford.

The day after the shooting, officials of the New Jersey Department of Environmental Protection's Division of Fish and Wildlife (DEP) found the severely-wounded bear in the woods near the Flynn's home. A decision was made to euthanize the bear.

Despite the recent aggressive bear activity, DEP officials did not consider Flynn's action as self-defense.

Flynn recalls that he shot the bear from a distance between ten and 15 feet, but DEP officials insist the necropsy shows the shot was fired from approximately 15 yards (45 feet) away. Kristine Flynn, Patrick's wife, disputes the DEP claim based on the size of their property, noting: "the bear wouldn't have even been on my property anymore [if it was 15 yards away]. At that range, he would have been down a cliff."

Under New Jersey law, residents may shoot at a bear only if it comes within ten feet of them and then only if it fails to retreat after loud noises are made to scare it off.

Officials say Flynn unlawfully injured the bear, an offense which carries a fine of between \$100 and \$300. DEP commissioner Bradley Campbell argued, "Communities need to understand that shooting bears is unlawful. While there may be circumstances in which an immediate threat to safety would excuse a killing, that justification was not presented by the facts in this case."

Summing up her frustrations with the charges, Kristine Flynn charged, "Evidently, next time we have to wait 'till it's [the bear] in our living room [to act]." Patrick Flynn was also cited by West Milford Township Police for firing a shotgun in a residential neighborhood. This disorderly conduct charge carried a fine of \$500. An agreement was reached to drop the disorderly conduct charge, but West Milford Municipal Court Judge George Cluff fined Flynn the minimum \$100 fee for shooting the bear. Flynn accepted the fine. Flynn said, "I'm tired of it. It's been dragged out long enough... No matter what happens, if you shoot a bear, you're in trouble."

*Sources: Associated Press (June 13, 2003; July 12, 2003),  
New Jersey Department of Environmental Protection*



## The EPA's "Negligent Conduct"

Suddenly and without warning, 21 heavily-armed federal U.S. Environmental Protection Agency agents stormed a small Massachusetts manufacturing company that for 20 years has produced plastic-coated steel wire mesh used for lobster traps and erosion control.

During the November 7, 1997 EPA raid, frightened employees were harassed, photographed and videotaped. Later that night, some were interrogated in their homes. James M. Knott, Sr., the company's owner, was indicted on felony charges and threatened with six years in prison and \$1.5 million in fines.

Knott's crime? A harmless violation of an obscure technical provision in an EPA Clean Water Act regulation.

After a grueling two-year legal battle that cost Knott and his company hundreds of thousands of dollars, the charges were dropped after it was discovered that the EPA agents had altered critical evidence. U.S. District Court Judge Nathaniel Gorton characterized the EPA agents in the raid on Knott's company as a "virtual SWAT team" that harassed the employees, "causing [them] great distress and discomfort."

Judge Gorton also noted that Knott, a Harvard alumnus who is a recipient of the Massachusetts Governor's Award for developing pollution control technology, had suffered "humiliation" from EPA's "clearly vexatious" prosecution.

Knott sued the EPA in federal court under the Hyde Amendment, which gives defendants the right to file for a recovery of legal costs. The U.S. District Court for the District of Massachusetts awarded Knott a reimbursement for his legal fees of \$68,726 — far less than the total amount he spent. The U.S. Court of Appeals overturned the decision after the federal government appealed. Knott appealed the case to the U.S. Supreme Court, which declined to hear his case in February 2002.

Undeterred, Knott continued the court battle by filing a suit against the EPA and individual investigators, saying that the Federal Tort Claims Act protects him against malicious prosecution and violations of his constitutional rights. "We are just one of many companies who are finding we must defend ourselves against overzealous bureaucrats who act without merit to create enormous difficulties and unnecessary financial losses for our businesses and families," says Knott.

In November of 2004, Judge Gorton ruled against Knott. Curiously, despite rejecting Knott's malicious prosecution claim, Judge Gorton sharply criticized the EPA's conduct. "The government is reprovved for its sloppy recording of pH values in Inspector [Daniel] Granz's logbook and subsequent heavy-handed treatment of [Knott's Riverdale Mills Corp.], including the conduct of an unconsented and therefore unconstitutional search of the plant. That negligent conduct caused the Plaintiffs, a law enforcement agency and, ultimately, the taxpayers unnecessary expense," Judge Gorton wrote in the opinion.

On appeal, the U.S. Court of Appeals for the First Circuit ruled against Knott in December of 2004, finding no Fourth Amendment violation for unreasonable searches and granted "qualified immunity" to the individual EPA agents because "Knott and Riverdale have no reasonable expectation of privacy... under the circumstances shown in the record."

Although Knott did not appeal to the U.S. Supreme Court, he is currently seeking facts to show that the evidence the EPA agents collected was done maliciously. New evidence could move Knott to reopen the case. In total, Knott says he has spent \$1.2 million out of pocket over eight years on legal fees and other associated costs in the case.

Sources: James Knott, Washington Legal Foundation, Shattered Dreams: One Hundred Stories of Government Abuse (Fourth Edition)



James M. Knott, Sr.

*"We are just one of many companies who are finding we must defend ourselves against overzealous bureaucrats who act without merit to create enormous difficulties and unnecessary financial losses for our businesses and families."*

— James Knott





*American Alligator*

## Hero Fined for Lassoing Alligator Headed for Small Children

While driving home from work in June of 2003, Michael McCormick saw a five-foot American Alligator cross a road, heading straight for a woman with two small children at her side and two infants in her arms. Remembering that a ten-foot alligator had killed a 12-year-old boy nearby just a week earlier, McCormick decided that he wasn't going to allow a fatal alligator attack to happen again. He used some rope to lasso and restrain the alligator.

After lassoing the alligator, McCormick pulled it off the road and penned it against a chain-link fence. He then had a friend call the police. The police had McCormick cut the rope and let the alligator go. The police then called Florida Fish and Wildlife Conservation Commission Officer Monty Hinkle, who took statements from police and McCormick. Instead of showering him with praise for his heroic action that may well have saved the lives of innocent children, Hinkle issued McCormick a \$180 citation for possession of a gator. A Fish and Wildlife Commission spokeswoman claimed McCormick should have focused his efforts on moving the woman and children rather than on moving the alligator.

McCormick has no qualms about what he did, and said he would do it again if confronted with a similar situation. He still disagrees with the state's suggested course of action. McCormick says that's the policy that was followed in the incident in which the 12-year-old was killed.

Following public scorn and offers to pay the \$180 citation, state officials rescinded the fine but issued McCormick an official warning.

*Sources: Orlando Sentinel (June 22, 2003), WFTV.com (June 23, 2003),  
Chattanooga Times Free Press (July 7, 2003), Enter Stage Right*

## Ship Sinks, Thanks to Manatee Speed Limit

To protect the West Indian Manatee and to comply with the Manatee Sanctuary Act of 1978, officials from the Florida Fish and Wildlife Conservation Commission have placed heavy restrictions, including very low speed limits, on boats operated in manatee-protection zones. Certain people and companies are granted speed exemption permits. Rick Rescott rescues and tows sinking ships for a living, and was therefore granted such a permit.

On April 20, 2002, Rescott was called to save a sinking \$25,000 vessel. While he was en route, three U.S. Fish and Wildlife Service officers stopped him for speeding. Despite his having shown the officers his speed-exemption variance and explaining that he was on his way to save a sinking ship, Rescott was issued a \$100 citation for speeding in a manatee-protection zone. Although the purpose of the exemption is to allow speeding in these zones, Rescott still could have faced up to a \$25,000 fine and six months in prison.

Due to the half-hour delay, the boat Rescott was trying to save sunk. Rescott, who described the fine as “ludicrous,” refused to pay the citation, and tried to contest it in U.S. District Court for the Middle District of Florida. There he was convicted of “unlawful waterborne activity,” and the fine was raised to \$400. Rescott’s appeal to the U.S. Court of Appeals for the Eleventh Circuit was dismissed voluntarily in October of 2003.

Federal prosecutors refused to discuss specifics of the case, although Steve Cole, spokesman for the U.S. District Attorney’s Office, said, “All I can say is that our goal is to get people to slow down for manatees.”

*Source: Associated Press (May 3, 2003)*



*West Indian Manatee*

*In 2007, government officials issued 25 citations in two days for boat operators speeding in a manatee protection zone of the Chokoloskee Bay in the Florida Everglades*

*— National Park Service*

## Family Business Not Allowed to Advertise on Private Land

Sarah Kothe's dream of transforming her late father-in-law's home into a bed and breakfast, which honored his memory and helped her family pay the bills, was dealt a crippling blow when state regulators denied her the ability to advertise it in the most effective way possible.

Sarah's husband, Gary, and his father, Oswald (known as Os), had farmed approximately 900 acres together near Salisbury, Missouri. After Os' death in 1997, the Kothes inherited his house in the center of their farm. As she had always wanted to open a bed and breakfast, Sarah thought Os' home was an ideal location. Os loved being with people and having good conversations, and the Kothes believed the bed and breakfast would be a fitting tribute to his memory.

Sarah, who had recently retired from a job with the federal government and was recovering from a bout with breast cancer, immersed herself in the creation of the House of Os. The location was picture-perfect, with the bed and breakfast located in the center of the Kothe farmland.

Because of Gary's worsening arthritis, Sarah's business became even more important to the Kothe family. "I had long dreamed of operating a bed and breakfast, so retirement didn't necessarily mean quit working. Instead, I was able to have the best of both worlds: run my bed and breakfast, and be home with Gary," Sarah said in her testimony before the U.S. House Committee on Small Business in 2003.

The Kothes' farm is not directly adjacent to a highway and cannot be found easily by passersby. To make the business successful, Sarah thought that using an outdoor sign to advertise their location would be the most efficient and affordable means to increase business. The Kothes installed a two-foot by four-foot metal sign on private land near their farm which provided directions to the bed and breakfast. Sarah was told by Missouri Department of Transportation (MoDOT) officials that a permit to install a sign was not needed as long as the sign didn't interfere with highway snow-removal equipment.

After the Kothes had installed the sign and were enjoying a burgeoning business, Kaye Stacy, a MoDOT Advertising Permit Specialist, notified the Kothes that they had 30 days to remove the sign because the Kothes did not have a permit. Sarah asked for a permit application, but was told she could not even apply for one because the sign was not within 600 feet of a commercial business and therefore was illegal.

As a result of the sign being removed — at the Kothes' labor and expense — business, in Sarah's words, "suffered drastically." Her neighbors even questioned if she were still in business.

In the name of preserving "open spaces," environmentalists have lobbied for restrictions on outdoor advertising, such as billboards. Small entrepreneurs like Sarah Kothe rely heavily on advertising of this sort to promote their business. Environmentalists' campaigns, however, are succeeding and this advertising medium is being restricted with greater frequency. A 2001 study by the Outdoor Advertising Association of America found that 82.2 percent of small businesses that currently use billboards would lose business if they did not have access to such advertising. The average loss per business is estimated at over 18 percent.

*Sources: Sarah Kothe, Missouri Department of Transportation, Washington Post (May 27, 2003), Scenic Missouri (Summer 2003), testimony before the House Small Business Subcommittee on Rural Enterprises, Agriculture and Technology (May 15, 2003)*

## Redmond Law Tries to Prevent Commercial Speech

Blazing Bagels bakery in Redmond, Washington is located on Redmond Way, tucked away from an intersection that gets a great deal of traffic. Owner Dennis Ballen frequently sent his employees to that corner (Redmond Way and Northeast 70<sup>th</sup> Street) with portable signs to let people know about his store's fresh bagels and other fare. The signs have been highly successful in attracting many new customers to the store.

This innovative form of advertising that helped Ballen came to an unfortunate and immediate halt in June of 2003 when a Redmond Code Compliance Officer presented Ballen with a memo informing him that he was prohibited from using signs held or worn by an individual if the signs contained prohibited types of commercial content. Ballen's signs were considered a violation of the rule, and he was told continued violations would put him at risk of fines of up to \$5,000 or a year in jail.

City officials say the ban is essential to preserve the aesthetic beauty of Redmond. However, at the intersection where Ballen's employees regularly stood, the "aesthetic beauty" consists not of an historical monument or park but of a gas station, a mobile home community and a high volume of traffic. As a result of being forced to stop his sidewalk advertising, Ballen's store struggled to remain in business.

While Ballen was told he could not promote his business with human billboards, other "portable signs" such as those advertising information on politics, real estate, events or celebrations are permitted by the city. By granting some entities the ability to advertise while denying it to others, the City of Redmond is effectively regulating content. With this in mind, Ballen filed a lawsuit against the city in the U.S. District Court for the Western District of Washington in Seattle.

Ruling that the city's ban was more extensive than necessary, Judge Thomas S. Zilly issued a preliminary injunction in favor of Ballen in January 2004. This injunction allows Ballen to communicate with prospective customers using a 3.5-by-2.5 foot sign that reads "Fresh Bagels, Now Open" in large red letters. After both sides sought summary judgment, instead of an actual trial, Judge Marsh Pechman of the U.S. District Court for the Western District of Washington granted summary judgment in favor of Ballen, ruling "the ordinance at issue is unconstitutional." The City of Redmond has appealed this ruling to the U.S. Court of Appeals for the Ninth Circuit.

While awaiting an appeals ruling, the city passed two temporary commercial sign ordinances. Redmond's businesses, including real-estate brokers, may display one portable sign no larger than six square feet, provided it is away from sidewalks, center medians, roads or bikeways. However, the new measures prohibit 'animated signs' that are rotated, waved or put in motion, and they may only be displayed between the hours of 8 am and 5 pm.

Ballen says the restrictions are "a joke" because, as he explains, "If I jiggle my sign, I'm considered illegal." Ballen has not ruled out filing suit, especially if the city decides to make the new laws permanent.

*Sources: Institute for Justice, The Seattle Times (January 22, 2004; March 17, 2005; March 24, 2005)*



*Dennis Ballen*



*John DeRaspe*

*"To me, it's freedom of speech, period."  
— John DeRaspe*

## City Says Real Estate, Political Signs are OK; Signs About Futons, Not

David Bolles, Monica DeRaspe Bolles and John DeRaspe — owners of the Futon Factory in Lynnwood, Washington — sought to stimulate their business' sales by expanding their advertising efforts and reaching out to a broader spectrum of clientele.

Since 2003, the furniture store owners have employed the services of a sign-holder who wears a sandwich board advertisement on a busy street near their store. The signs, which publicize discounts or sales at the store, are meant to attract new customers.

The advertising strategy worked. John DeRaspe says the advertising has had a profound impact on the business, saying, "It [has] definitely created additional business for the store. There's a lot more traffic passing by on 44<sup>th</sup> [Avenue] than 48<sup>th</sup> [where the store is located]. We wanted people to become more aware of where our store was located, and it definitely worked. Customers would come into the store and tell us they found our place by noticing that sign."

Unfortunately, the signs were not popular with a Lynnwood code compliance officer, and the resulting legal fight leaves the future of the signs in limbo.

In February 2004, the Futon Factory's owners were issued a citation by a city official, claiming that their sign-holder violated the city's sign ordinances. In particular, they were cited for publicizing their store's products more than eight feet from their property. The sign-holder was usually four blocks (approximately 250 yards) from their business. Following the initial incident, repeat offenses carry a fine of \$100 per day through the fourth day, when they increase to \$500 per day. The owners first appealed the citation to a city hearing examiner in March 2004, but the case was dismissed because the hearing examiner said the constitutional issue of free speech was purported to be beyond his authority.

This prompted the owners to challenge the citation in the Snohomish County Superior Court in June 2004 on the grounds that the sign regulations violated the U.S. Constitution as well as Washington's Constitution. The owners pointed out that portable signs promoting real estate sales and political ads are permitted nearly everywhere in the city.

John DeRaspe said, "Ours is on a person. At least it comes in every night... The city is defending real-estate signs and political signs, and contrasting them with us. To me, it's freedom of speech, period."

Jeanette Peterson, a staff attorney for the Institute of Justice, points out: "Government regulation of speech through the enactment of laws, such as Lynnwood's sign ordinance, must accordingly comply with constitutional free speech guarantees. Lynnwood's sign ordinance violates the Washington Constitution because it improperly discriminates against commercial speech based solely on the content of the speech."

Stewart Jay, a professor of constitutional law at the University of Washington, lent further support to the Futon Factory's cause, arguing that cities can strongly regulate speech, but the rules must be "uniform and consistent... The problem with these ordinances is that cities like to pick and choose among the kinds of commercial speech they'll allow."

In January 2005, the City of Lynnwood sought to dismiss Futon Factory's lawsuit, citing that it had decided to stop enforcing the sign ordinances. However, in an apparent legal victory for Futon Factory, Snohomish County Superior Court Judge Linda Krese refused to dismiss the case because the City's cessation did not bind it to a change of behavior. William Maurer, executive director of the Institute for Justice's Washington

Chapter commented: “It was clear that the City wanted to preserve as much flexibility as possible to keep its unconstitutional law on the books... absent a repeal of the ordinances or some other binding action — the City’s actions did little to give the Futon Factory any assurance that the store could exercise its free speech rights free from City censorship.”

The ruling allows Futon Factory to continue its lawsuit in Snohomish’s Superior Court, and the parties are currently in discovery. Precedent is on the Futon Factory’s owners’ side, as in *Ballen v. City of Redmond* and *Salib v. City of Mesa* (cases related to other stories featured in this book), extensive sign ordinances have been ruled as unconstitutional burdens on free speech.

Sources: *Institute for Justice*, *John DeRaspe*, *The Seattle Times* (June 30, 2004),  
*The Lynnwood Herald* (June 26, 2004)

## “Clean Elections Act” Washes Out Candidates Who Raise Own Funds

When he was campaigning for governor of Arizona in 2002, Matt Salmon needed some quick financial support. He was in desperate need of funds after a tough primary, and he faced a double-digit deficit in the polls. Salmon called on the services of President George W. Bush, who hosted a fundraiser for him that grossed nearly \$750,000. The cost of holding the event hovered around \$250,000, giving Salmon’s campaign a net profit of approximately \$500,000.

Yet Salmon’s campaign was not the only campaign to benefit from his fundraiser. Thanks to an Arizona law, Salmon’s two opponents’ campaigns netted more from Salmon’s fundraiser than Salmon’s campaign did.

Salmon’s two opponents, in fact, each received checks of around \$750,000 — without having lifted a finger or spending a dime.

How could this happen? The Clean Elections Act. Enacted by a slim majority of Arizonans in a 1998 referendum, the CEA was promoted as a means of eliminating the influence of money in state elections. Few anticipated the inherent unfairness that would arise when the CEA was put into practice.

Under the CEA, taxpayers subsidize the primary and general election campaigns of participating candidates. The only requirement for participation in the program is that a candidate must obtain a set number of signatures and \$5 contributions, with the amount depending upon the elective office sought. After this goal is reached, CEA candidates receive a base amount of public funding that can rise equivalent to the amount of money raised by rivals not participating in the program. In the general election, participating candidates can receive state payments matching the fundraising efforts of non-participating rivals totaling up to three times the base amount. The base amount for current Arizona Governor Janet Napolitano, who ran against Salmon, was \$615,000 (the base amount varies with respect to the office being sought). While the CEA removes the fundraising burden for participating candidates by giving them money out of the public coffers, it burdens non-participating candidates by imposing a \$720 limit on individual donations during both the primary and general elections. Critics of the CEA complain restrictions like these are unconstitutional violations of freedom of speech.

Another shortcoming of the CEA is its role in contributing to the state’s escalating deficit, which stood around \$1 billion when Napolitano took office. To encourage people



*Matt Salmon*



to opt into the CEA public fund, which operates much like the federal presidential campaign fund found on federal tax forms, Arizona gives people a \$5 rebate for allowing an equal amount of their tax payment to be used to operate the CEA.

In the 2002 contest between Salmon and Napolitano, Salmon — who chose not to receive CEA funding — experienced the inherent unfairness in the program's financing. Salmon said he chose a privately-funded campaign because, "I have advocated all my life personal responsibility and less government... It would be hypocritical for me to take taxpayer money for my campaign." By accepting the duty of raising his own campaign funds, he severely disadvantaged himself, because the CEA financing rules effectively limited his own political speech and the speech of donors who supported him. While a post-primary Salmon was left searching for new campaign donors, Napolitano netted a \$615,000 check from the state the day after her primary victory. This jump-started her general election campaign, allowing her to inundate the airwaves with advertisements. When the Arizona Republican Party contributed \$200,000 to Salmon's campaign, Napolitano was matched dollar-for-dollar. However, when the state Democratic Party dedicated nearly \$700,000 toward negative expenditures against Salmon on Napolitano's behalf, Salmon received no matching funds nor was the expenditure counted against Napolitano's matching funds tally.

Since taxpayer dollars fund CEA candidates, paradoxically, an individual can make a private donation to one candidate while their tax dollars are used to fund their candidate's opponent.

The CEA does not distinguish between credible and non-credible candidates. In the 2002 gubernatorial campaign, independent candidate Richard Mahoney — a CEA participant — collected and spent \$1.7 million in taxpayer dollars on his campaign while garnering only seven percent of the vote.

Salmon, three other non-participating and defeated candidates and the Association of American Physicians and Surgeons filed a lawsuit in federal court in January of 2004 claiming that two components of the CEA — matching funds and independent expenditures — are unconstitutional. The U.S. District Court for the District of Arizona dismissed the lawsuit in March of 2005.

"Paying matching funds to government-funded candidates clearly drowns out... the voice of groups seeking to make independent expenditures," declared Tim Keller of the Institute for Justice Arizona Chapter. "We remain confident that the courts will ultimately put a halt to the repeated trampling of free speech." The U.S. Supreme Court has noted that involuntary limits on campaign expenditures, including those that level the financial resources of candidates, are infringements on the First Amendment.

*Sources: The Institute for Justice, The Clean Elections Institute, The Goldwater Institute, The Weekly Standard (December 2, 2002)*



## “Got Milk?” You’d Better

Many dairy farmers consider the “got milk?” advertising campaign, under the federal government’s Dairy Promotion Program (DPP), to be a blessing. But “traditional” dairy farmers like Joseph and Brenda Cochran of Tioga County, Pennsylvania, consider them an unwelcome financial burden.

The Cochrans don’t produce the same kind of products as mainstream dairies, but money to produce and place the advertisements comes from all dairy producers under the terms of the DPP. The Cochrans contend that requiring them to pay for ads they don’t want effectively inhibits their freedom of speech.

As traditional dairy producers, the Cochrans believe they produce a superior product to their mass-producing counterparts. The Cochrans provide greater grazing room for their cows than do most dairy farmers and they do not use bovine growth hormones. The Cochrans believe their product is different from those of other producers, and they seek to differentiate it in the marketplace. They believe provisions in the Dairy Act, which created the DPP, make this a nearly impossible task.

Under the terms of the DPP, the Cochrans are assessed 15 cents for every 100 pounds of milk they sell, which comes to roughly \$4,000 a year.

The Cochrans challenged the constitutionality of the DPP, arguing that it made them pay for the promotion of products they did not support. The U.S. District Court for the Middle District of Pennsylvania ruled against them on March 4, 2003, with the court contending that the DPP was constitutional, and that its regulatory authority can compel individuals to finance advertising.

The Cochrans appealed the decision to the U.S. Court of Appeals for the Third Circuit. On February 24, 2004, a unanimous decision declared the DPP unconstitutional and ruled that funding could not be forced. However, in *Johanns v. Livestock Marketing Association*, the U.S. Supreme Court had recently upheld fees on a similar advertisement program for the beef industry. (The advertising program funds the government’s “Beef: It’s What’s for Dinner” promotional campaign.)

In September 2005, the U.S. Court of Appeals for the Third Circuit affirmed the original district court decision of March 4, 2003 — the decision that had gone against the Cochrans. Although the Third Circuit had ruled for the Cochrans the first time, it ruled that the U.S. Supreme Court’s ruling in *Johanns v. Livestock Marketing Association* beef marketing case had created a new precedent.

The case thus ended with a ruling that the Cochran dairy farm must support advertising with which it does not agree.

“These cases illustrate the pernicious effects of government control over economic and property rights,” said Steve Simpson of the Institute for Justice, who represented the Cochrans in the case. “If government can control the vital operations of your business, ultimately it will control what you say about that business as well. The only antidote to these laws is to champion liberty across the board.”

Sources: Institute for Justice’s *Liberty & Law* (October 2003), Washington Post (May 24, 2005), U.S. Department of Agriculture



Joseph and Brenda Cochran



Edward Salib

## Donut Shop Banned from Changing Signs Advertising Specials

Edward Salib has been forced to endure intense stress and anxiety as a result of a stringent sign ordinance imposed on his family business by city officials in Mesa, Arizona.

Salib and his wife, Nouha, own and operate a Winchell's Donut franchise. Egyptian immigrants, the Salibs came to America seeking greater political and economic freedoms.

Beginning in 1999, Mesa city officials expanded a re-development area that covered their business. The designation subjected all affected businesses to special regulations. One of the new rules prevented businesses from hanging window signs covering more than 30 percent of any windowsill or casement area. Because Winchell's Donut existed before the expansion of the re-developed area, the business was for a time considered a "grandfathered" variance from the regulations.

To remain competitive, the Salibs constantly promote new deals. The Winchell's Donut corporate office facilitates the advertisement of specials by regularly sending signs to franchises that advertise new promotions. From the ordinance's enactment in 1999 until July of 2002, the Salibs kept customers aware of their latest specials by replacing old signs with new ones of the same size.

The replacement of these signs was halted on July 30, 2002, when a Mesa code compliance officer issued the Salibs a notice of a sign violation. According to the officer, the Salibs violated the Mesa ordinance because they had changed the signs in their store windows. The notice reiterated that only 30 percent of windows could be covered, despite the Salibs "grandfather" variance.

The following day, the same city official returned and ordered Nouha to remove all of the signs from the store. She was given only the weekend to comply with the order. Returning to the store on August 5, 2002, the city official watched the Salibs remove all of the signs from their store windows, drastically reducing their ability to communicate with prospective customers traveling near the store.

Mesa officials initially contended the removal of signs was justified for safety reasons, claiming that police officers need unobstructed views into businesses. The Salibs point out business owners are not required to have windows at all, and, if they do, they can be completely covered by curtains.

City officials responded by changing their argument, claiming the sign ordinance was also for aesthetic purposes.

The Salibs filed a lawsuit against the city of Mesa in the Maricopa County Superior Court on January 8, 2003, claiming that such stringent sign ordinances are an unconstitutional violation of free speech. In April of 2003, the court refused to eliminate Mesa's sign ordinances. An appeal was planned but had to be dropped after Edward Salib suffered two severe heart attacks.

Sources: *Institute for Justice*, *The Arizona Republic* (February 25, 2004; April 9, 2005), *The East Valley Tribune* (July 22, 2004)

*One of the new rules prevented businesses from hanging window signs covering more than 30 percent of any windowsill or casement area.*

## County Fires Woman for Not Learning Spanish in Thirty Days

Zita Wilensky worked for Florida's Miami-Dade County for sixteen years. She was a receptionist in several departments and then was assigned to receiving and filing victim complaints in the county's Domestic Violence Unit.

Wilensky's personnel file was filled with letters of praise and commendation, but that changed in October 2001 when she was fired because of "poor job performance and her repeated failure to comply with court administrative policies." Wilensky says the real reason she was fired is because she had been given 60 days to learn Spanish, but had not learned it by the 30<sup>th</sup> day.

In September 2001, Wilensky's supervisor told her she would have to start speaking Spanish in the office because the two co-workers who knew Spanish and normally fielded Spanish-speaking callers would be taking maternity leave. The Domestic Violence Unit sometimes receives calls from people who only speak Spanish. Wilensky was told she had 60 days to learn Spanish, and she agreed to take a series of language classes, paying for them out of her own pocket. Only 30 days and four Spanish classes later, however, Wilensky was fired because, according to County documents, she transferred a Spanish-speaking caller to someone in the office who was more fluent. The caller turned out to be her boss, who was disguising her voice.

A foster mother to children with learning disabilities, Wilensky liked her job with the Domestic Violence Unit because she enjoys helping people. She says her sudden firing for not having mastered Spanish was the culmination of a larger pattern of abuse at work. She was the only "Anglo" in the office, and said her Hispanic co-workers referred to her as "the gringa" and "the Americana." Wilensky told Miami's WSVN-TV that, at times, it was polite joking, "but then it was like every single day, and you know what? I have a name." Wilensky reported that her co-workers constantly played tricks on her because she was the odd one out. One day, during the height of the anthrax mail scare, her boss presented her with an envelope and allegedly told her to "come here; could you smell this? This just came in the mail." Wilensky felt ridiculed because the treatment made her "look like an idiot" in front of her whole department.

Howard Finkelstein, a legal expert for Miami's WSVN-TV News, notes that English is enshrined in the Florida Constitution as the official language of government. "So you can't fire someone simply because they don't speak Spanish, and you can't fire them simply because they are Anglo," said Finkelstein. "That's discrimination. That's illegal." He also objects to the ridicule and intimidation Wilensky encountered with racial slurs like "gringo." "That's called a hostile work environment, and that's illegal."

Jim Boulet, Jr., executive director of English First, an organization that has come to the aid of Wilensky, says it is county policy that Spanish-speakers who receive a call from a person who speaks "only, say, Haitian Creole" should transfer the call to a Creole-speaking consultant in another department, but "English-speaking workers are fired for doing precisely the same thing" when they transfer callers who speak a language they don't know.

*Sources: National Review Online (May 10, 2002), The Miami Herald, WSVN-TV (May 1, 2002), Jim Boulet Jr., Interview of Zita Wilensky and her attorney Randy Rosenblum on "The O'Reilly Factor" — Fox News Channel (May 13, 2002)*

*"You can't fire someone simply because they don't speak Spanish, and you can't fire them simply because they are Anglo," said Finkelstein. "That's discrimination. That's illegal."*

— Howard Finkelstein  
WSVN-TV

## Taxpayer-Funded Department Requires Translators to Speak Fictional Language

A government order required an Oregon hospital to hire a “Klingon” language interpreter in case Klingon is spoken by one of their human patients.

Klingons are an alien warrior species inhabiting the universe of “Star Trek” movies and television shows. Although there is no actual Klingon home world, and no actual Klingons have ever existed, a Klingon “language” has been developed: In the 1980s, Paramount Pictures hired language expert Marc Okrand to create a Klingon language for Star Trek movies.

In May of 2003, officials in Multnomah County, Oregon issued a “Request for Programmatic Qualifications” for translators needed in its mental health services. Klingon was listed among the over 50 languages deemed necessary. Multnomah Department of Human Services procurement specialist Jerry Jelusich said, “We have to provide information in all the languages our [estimated 60,000] clients speak.” County purchasing administrator Franna Hathaway told the Associated Press the county “had mental patients where this was all they would speak.” County officials later said this was not true, although they would still pay for a Klingon translator if one were needed. After the request became the target of national ridicule, Multnomah County Chairman Diane Linn officially removed Klingon from the list of required languages, saying, “It was a mistake, and a result of an overzealous attempt to ensure that our safety net systems can respond to all customers and clients.”

While this story was largely treated as a joke in the news media, the actions of Multnomah County officials were rooted in genuine concern. Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” signed by President Bill Clinton in August, 2000, requires recipients of federal aid to provide translation into any requested language or dialect. According to attorney Barnaby Zall, who has argued language cases before the U.S. Supreme Court: “The Oregon hospital is required to hold up ‘I speak’ cards to enable clients to indicate their language preference. The person points to Klingon. Do you have to investigate further or just accept it? Given that any delay in providing services is also considered a violation of E.O. 13166 and thus can trigger the loss by the entire institution of all federal funds, providers are not likely to risk arguing with people.”

According to the Star Trek timeline, however, this should all be a moot subject, since humans do not encounter the Klingons until 2218, when a Klingon starship crash-lands in Oklahoma.

*Sources: Associated Press (May 10, 2003; May 13, 2003),  
English First, The Star Trek Annotated Timeline*

## Cease Fire Or Else, Environmentalists Tell Army

Soldiers train because a failure in battle could mean the difference between life and death. Yet at the U.S. Army's Fort Richardson near Anchorage, Alaska, environmentalists have used lawsuits based on federal hazardous waste regulations to halt artillery training on the post's Eagle River Flats.

According to Department of Defense deputy general counsel Ben Cohen, "If successful, the Fort Richardson litigation could set a precedent fundamentally affecting military training and testing at virtually every test and training range."

In the early 1980s, scientists working for the U.S. Army tied the high death rate among ducks and other waterfowl found in the area of the Eagle River Flats artillery range to the white phosphorus found in smoke flares used during training. Waterfowl would find the white phosphorus residue in shallow ponds and mistake it for food. In 1994, the EPA placed Fort Richardson on its "National Priorities List" covered by the Resource Conservation and Recovery Act (RCRA) because Eagle River Flats required significant clean-up of white phosphorous and other hazardous materials related to munitions training.

DOD officials claim further limitations on training facilities would prevent soldiers from remaining accurate and proficient. For nearly 40 years, the U.S. Army has used Fort Richardson for live-fire mortar and artillery range training. The Alaskan-based 172<sup>nd</sup> Infantry Brigade and Task Force 1-501, which saw action fighting terrorists in Afghanistan, use Fort Richardson for maneuver and live-fire exercises.

To allow soldiers to keep up with training requirements while still following EPA guidelines, munitions practice was moved to two adjacent sites on the post. Training at the Eagle River Flats, however, resumed during winter months when the ground was frozen. This angered environmentalists, who wanted training on the site halted completely. Although the Army had ceased using flares with white phosphorus and began removing the substance from the site in 1998, environmentalists wanted the Army to address cleaning not just phosphorus but all hazardous materials resulting from munitions training.

Pam Miller, director of the Alaska Community Action on Toxics, argued the munitions residue "is not only a safety hazard but a toxicological risk since chemicals from the munitions can leech into the groundwater." Miller also contended that people using the areas surrounding the training grounds for recreation or hunting did not have adequate enough warning of the health and safety dangers possibly present in the ground and water. Fort Richardson deputy spokesman Clark Canterbury disagreed, noting, "frozen, live-fire training can take place on the flats, which scientific and regulatory findings have shown to be benign to the environment and local residents."

Claiming the Army has not adhered to federal regulations of RCRA, the Clean Water Act, the Comprehensive Environmental Response, Compensation and Liability Act (Superfund law), eight parties including the Military Toxics Project and Alaska Community Action on Toxics filed suit in April 2002 in the U.S. District Court for the District of Alaska in Anchorage seeking a halt to Army artillery training on the Eagle River Flats, adoption of an appropriate clean-up plan and a declaration that unexploded ordnance on land or water constitutes a "hazardous substance or contaminant."



*1st Brigade, 9th Engineer Battalion  
Ft. Richardson (Alaska)*

*Department of Defense officials claim further limitations on training facilities would prevent soldiers from remaining accurate and proficient.*

In October 2004, a settlement to the lawsuit was reached in which military training would be allowed to continue at Eagle River Flats. As part of the settlement, the U.S. Army agreed to monitor Beluga Whale presence near the range to ensure they are not harmed by munitions firing activities, to halt firing during cleanup of munitions activity, spring and fall waterfowl migration and if wildlife is present on the range. However, the Army is permitted to delay or forego compliance with the agreement's obligations to ensure national security if the Senior Mission Commander of the U.S. Army, Alaska determines it necessary.

*Sources: Environment & Energy Publishing, LLC (2002-2003 coverage), Department of Defense, Military Toxics Project, Alaska Community Action on Toxics*



*Humpback Whale*

## North Korean Military and NRDC Agree: Sonar Shouldn't Be Used to Detect Submarines

In the same week that North Korean officials announced they had developed nuclear weapons and implied that they weren't afraid to use them, a federal judge in California issued a ruling that would restrict the U.S. military's use of the high-intensity sonar system necessary to detect the types of submarines used by the North Korean military. In so doing, the judge essentially agreed with the view of environmentalists that the threat to human life posed by a hostile nuclear power should take a back seat to fears that a sonar system could cause discomfort to whales and other sea life.

Quiet diesel submarines used by aggressive nations such as North Korea, China and Iran cannot be detected using conventional sonar and radar. A high-intensity sonar (commonly referred to as LFA) is necessary to detect and locate quiet diesel submarines before they can close within striking distance of U.S. forces or territory.

Citing alleged violations of the Marine Mammal Protection Act, the Natural Resources Defense Council (NRDC) sued the National Marine Fisheries Service in 2002, claiming the sonar harms marine mammals. The NRDC argued that the sonar interferes with the hearing of mammals that depend on their audio sensory organs to gather food. Judge Elizabeth Laporte of the U.S. District Court for the Northern District of California agreed, halting the global deployment of the LFA system until officials from environmental groups and the Navy reached a compromise on when and where the sonar could be used.

There is no absolute evidence that LFA has inflicted harm on marine mammals. The Navy spent \$10 million studying the effects of the sonar on sea animals before it began the global deployment of the system, and has budgeted millions more on additional study. Those studies concluded that the sonar system would have little impact on marine mammals.

In April of 2003, Dr. Darlene Ketten, a senior scientist at the Woods Hole Oceanographic Institute and a leading expert in sensory adaptation of marine mammals, testified before the U.S. Senate Committee on Armed Services that "to date, there is not evidence of physical harm to [marine mammals] from LFA."

A compromise between the NRDC and Navy officials was reached in October of 2003. Under it, the Navy can only use the sonar for training in specific areas along Asia's



eastern seaboard. NRDC officials have not explained how sailors will properly use this equipment during war if their training is severely limited.

Moreover, in 2003, President Bush signed into law the FY04 National Defense Authorization Act, which included modifications to the Marine Mammal Protection Act. The legislation exempts the military from the MMPA, if the Secretary of Defense deems it necessary for national defense purposes and has conferred with the Secretaries of Commerce and Interior.

In June of 2006, the Navy obtained a six-month permit to use mid-frequency active sonar from the National Oceanic and Atmospheric Administration (NOAA), an agency of the Department of Commerce. The agreement says the Navy must reduce the sonar's power when marine mammals are detected within 1,094 yards of a ship and suspend sonar if they are detected within 219 yards. Though the NOAA determined that the sonar would not cause significant environmental impact, a federal judge in California put a temporary halt on a major Navy sonar exercise in the Pacific. Judge Florence-Marie Cooper of the U.S. District Court for the Central District of California ruled that the Navy failed to provide a required environmental impact statement on the use of sonar, a violation of the National Environmental Policy Act.

It is not presently known how much discomfort whales would suffer if a North Korean submarine penetrated American defense systems and launched a nuclear attack on the United States — particularly a port city like San Francisco.

Retired cancer biologist Ira Pilgrim puts it well, writing “I am continually amazed at the apparent lack of a sense of proportion on the part of the people who are concerned about the state of the planet. They worry about global warming, preserving the coastline and the destruction of forests... while a nuclear arsenal exists that can decimate the entire earth and all of the people on it in an instant.”

Not to mention all of the whales, too.

*Sources: U.S. Senate Committee on Environment and Public Works, U.S. House of Representatives Armed Services Committee, Washington Post (August 27, 2003), Greenwire (September 2, 2003), Ira Pilgrim's Home Page, Virginian Pilot (December 10, 2004), MSNBC.com (July 3, 2006)*



*Humpback Whale*

*“I am continually amazed at the apparent lack of a sense of proportion on the part of the people who are concerned about the state of the planet.”*

*— Ira Pilgrim*





*Marshmallows*

## Clerical Error Leaves Vacationer in Leg Irons

When Hope Clarke of Rivertown, Wyoming left marshmallows and hot chocolate out in the open at Yellowstone National Park in 2003, she broke park regulations.

Clark admitted her wrongdoing and immediately paid the \$50 fine imposed for improper food storage. Clark believed paying the fine ended the matter. It didn't.

While returning to the United States from a cruise to Cozumel, Mexico in June, 2004, Clark was awakened at 6:30am by U.S. Customs and Border Protection agents. The agency, part of the U.S. Department of Homeland Security, runs checks for outstanding warrants on all cruise ship passengers arriving from foreign ports. Clarke's name showed up on its list because of her Yellowstone infraction. Clark was placed in handcuffs and leg shackles because the federal law enforcement database erroneously claimed she had not paid the \$50 fine.

Clarke remained in handcuffs and leg shackles for nine hours until she appeared before U.S. Magistrate Judge John O'Sullivan, who was given a copy of Clarke's citation. It indicated the fine was paid. Zach Mann, spokesman for U.S. Immigration and Customs Enforcement, explained that the arrest "was an unfortunate set of circumstances. We were acting on what we believed was accurate information." Judge O'Sullivan also personally apologized to Clarke. Assistant U.S. Attorney Peter Outerbridge was not as quick to concede any wrongdoing, but admitted there were some discrepancies. He suggested that Clarke be made to reappear in a Wyoming court to clear up the warrant, but the request was not granted. Clarke was ultimately released.

*Sources: Associated Press (June 18, 2004), Foxreno.com (June 19, 2004), YahooNews (June 21, 2004), St. Petersburg Times (June 19, 2004), AZCentral.com (June 21, 2004), CasperStarTribune.com (June 18, 2004)*

## Stealing a National Park from the People

When a storm caused substantial damage to Yosemite National Park in December 1996, National Park Service officials attempted to use the tragedy as a catalyst to remake the park in a manner that suited their preservationist desires.

As a result, the \$180 million congressional appropriation to repair park damage was put on hold in favor of the Yosemite Valley Plan, which proposed the removal of over 1,000 parking spaces as a means to force park patrons to rely on the Yosemite Area Regional Transportation System to access and travel within the park. Other consequences included a 50 percent reduction in rental cabins and campsites in the park — to be replaced by pricey motels outside the park — as well as restrictions on the use of trails and campfires. To comply with the plan, more than 500 buses, which run on diesel fuel,

would be needed to service the park and its visitors during peak tourism months. This would result in increased air and noise pollution levels.

Jay Watson, the California/Nevada regional director for the Wilderness Society, argued in favor of the plan, claiming it would “reclaim priceless natural beauty, a more natural Yosemite, where hydrological and other natural processes would operate freely, a Yosemite with less asphalt, fewer automobiles, less development and less congestion.”

Chuck Cushman, executive director of the American Land Rights Association, disagreed, saying, “What they’re doing is nothing less than stealing a national park from the people... they’re taking out 60 percent of the car-accessible, drive-in family campsites. They’re reducing the parking by 75 percent, and with no parking people will be forced to use the buses, which will be especially hard for the handicapped, elderly and the young families.” Joyce Eden, president of Friends of Yosemite Valley, agrees: “The [plan] doesn’t protect the natural resources or the visitor’s experience at Yosemite. It actually degrades them both.”

Representative George Radanovich (R-CA), who represents a central California district where parts of the park are located, is the former chairman of the National Parks Subcommittee of the House of Representatives Resources Committee, and an outspoken opponent of the plan. He said: “As long as I represent the [Yosemite National Park] and this beautiful valley, I will not allow it to become an exclusive retreat available only by tour bus, nor a natural preserve you can only get to by foot.” Allen Abshez, an environmental attorney, echoes Radanovich’s belief, noting, “A major deficiency of the plan is that it fails to restore sufficient visitor accommodation.”

In the summer of 2000, Friends of Yosemite Valley challenged the motives of the plan’s backers. Eden argued that, “The [Yosemite Valley Plan] turned into a \$441 million development plan of the NPS, not a restoration project as originally intended.” The legal dispute was resolved in April 2004, when the U.S. Court of Appeals for the Ninth Circuit halted the plan, arguing that the plan was invalid and insufficient because it did not properly account for visitor capacities. Thus, remaining plan provisions would not be enforced. Commenting on the completed portions of the plan before the ruling, Eden said, “Some [plan] work had been started, including a reduction in parking for park attendees to only about 500 spaces. While major damage to the park occurred, none of the work already completed... will be removed.”

As a result of the ruling, in July 2005 the National Park Service adopted alternative guidelines to restore the Yosemite National Park in accordance with the National Environmental Policy Act, which required decisions on user capacity to be integrated into the entire renovation and restoration plan. These efforts will maximize and restore the public’s opportunity to visit one of our most treasured national parks.

*Sources: National Park Service, Yosemite National Park, Friends of Yosemite Valley, WorldNetDaily (May 12, 2003; May 13, 2003), American Land Rights Association, CNSNews.com (April 23, 2003), Joyce Eden*



*Yosemite National Park*

*“What they’re doing is nothing less than stealing a national park from the people.”*

*— Chuck Cushman  
American Land Rights Association*



Carol Thomas

## State of New Jersey Goes to Court Against Car; State Wins

In 1999, Carol Thomas's son was arrested for selling marijuana to an undercover police officer in New Jersey. Because he was using Carol's car at the time, the police, using the authority given to them by the state's civil asset forfeiture law, seized Carol's car. She was forced to pay \$1,500 to get the car back, but the police kept the title.

Between 1998 and 2000, police and prosecutors in New Jersey collected almost \$32 million in cash and property with the assistance of the statute's civil asset forfeiture provision. That money was used to pay for office rent, purchase new office furniture and computers, build a gym and even finance a golf outing. According to court records, approximately 30 percent of police departments' discretionary funding in New Jersey came from seized money and merchandise.

Thomas, who, coincidentally, was a New Jersey police officer at the time of her son's arrest, fought back. Her story was detailed in the previous edition of this publication. Since then, her case — *State of New Jersey v. One 1990 Ford Thunderbird* — brought down the state's civil asset forfeiture law. After first winning back her \$1,500 in the Superior Court of Cumberland County in 2001, she sued to overturn the law itself on the grounds that it is unconstitutional. This happened in late 2002, when the Superior Court found the law violated the Due Process Clauses of both the United States and New Jersey Constitutions.

On appeal, a three-judge panel of the New Jersey Appellate Court reversed the ruling on July 21, 2004. Thomas then appealed to the New Jersey Supreme Court, which declined to hear her appeal.

Sources: *Shattered Dreams: 100 Stories of Government Abuse (2003 Edition)*,  
*Institute for Justice, New Jersey ACLU*



A Washington, D.C. traffic sign

## Government Shakedown of City Drivers Puts \$129 Million in City Coffers

While Washington, D.C. is not the only locality in the nation to use photo-enforced cameras to fine red-light runners and speeders, it may have some of the most egregious examples of faulty enforcement. The District of Columbia has raked in millions of dollars in fines from unsuspecting, safety-conscious motorists, many of whom have done nothing wrong.

Red light tickets are issued when a sensor with a mounted camera photographs a vehicle's license plate after the vehicle has allegedly gone through an intersection illegally. Speed cameras are either mobile or permanent units that photograph vehicles as they drive by a speed trap. The cameras typically are owned and run by a private corporation, which earns revenue on a commission basis. The more tickets that are issued, the more revenue for the company.

In 2005, the *New York Times* reported that a former employee of one such contractor testified in a court proceeding that the contractor, when installing cameras, targeted

intersections based on traffic volume, not locations that were most accident-prone.

Since its inception in August 1999, the District of Columbia's automated red light ticketing program has generated \$34 million in revenue for the D.C. government while the speed camera program started in August 2001 has added more than \$95 million to the D.C. government's general coffers.

For nearly two years, police officers did not review tickets that were processed and mailed by the private contractor. Without oversight, nearly all tickets were issued without anyone factoring in special circumstances. Such circumstances included funeral processions that were legally in intersections yet still fined for "running" a red light. A television news cameraman reported receiving a ticket despite the appearance in the photograph of an orange-vested workman in the picture on the ticket waving him through the intersection. And police officers responding to official calls also were ticketed — in 2007, the D.C. Fraternal Order of Police reported that it was still happening 10-15 times a day.

At one time, a red light camera was installed at a D.C. intersection with a blinking yellow light that did not have a normal red-yellow-green cycle. D.C. officials collected \$1.5 million from the light before AAA Mid-Atlantic blew the whistle. The camera was removed and relocated, but the D.C. government never admitted wrongdoing and refused to refund the money to citizens who had already paid the \$75 fine.

MacArthur Boulevard in Northwest Washington is a four-lane road used by many commuters driving from D.C. into Virginia. Although the posted speed limit is 25 miles per hour, motorists must travel at least 30 miles per hour, if not more, to keep up with traffic in the mornings. D.C. resident Elizabeth Feeley was issued \$150 in tickets over a two-week period for traveling an average of 37 miles per hour — and keeping up with traffic — on three separate occasions. She has been driving the route for months, and has never seen an accident on the road. While she admits to traveling above the posted speed limit, she was also adhering to recommendations of the U.S. Department of Transportation which says motorists should "keep up with the traffic flow" in its "Safety Tips to Live By." Despite following this advice, Feeley was still forced to contribute to the District's general fund.

Then-Mayor Anthony Williams conceded in October 2002 that generating revenue was a factor in the city's use of the cameras. AAA Mid-Atlantic, which supports automated ticket enforcement, withdrew its support for the program in D.C. after this concession.

The camera programs are successful on one level: Raising money. With over \$129 million collected, in this regard, the use of cameras in the District of Columbia has been a huge success.

*Sources: AAA Mid-Atlantic, Elizabeth Feeley, Washington, D.C. Metro Police Department, U.S. Department of Transportation, New York Times (January 6, 2005), Washington Times (August 25-27, 2003; February 24, 2007)*



*A Washington, D.C. traffic camera*

*Since its inception in August 1999, the District of Columbia's automated red light ticketing program has generated \$34 million in revenue for the D.C. government.*



*Wine*

## Wine with Dinner Landed D.C. Woman in Jail

Debra Bolton, like millions of Americans, enjoys a glass of wine with her dinner. Unfortunately, that proved to be a criminal offense in the District of Columbia. In May of 2005, Bolton was arrested for driving under the influence after she recorded a 0.03 blood alcohol content.

While a blood alcohol content of 0.03 is comfortably below the legal level in every state in the union, Washington, D.C. has a “zero tolerance” policy on drinking and driving. Officers have discretion to make a drunk driving arrest when the driver records as little as a 0.01 blood alcohol content. Drivers can be arrested for driving after just one drink — even if that drink had been consumed an hour before driving.

The officer who arrested her, Dennis Fair, wrote in his report that Bolton had failed 10 sobriety tests. But as Indiana University toxicologist James E. Klaunig argues, “There’s no way possible she failed a test from impairment with a .03.”

Bolton spent much of the night in jail, and the next few months fighting the DC prosecutor’s office, as well as the DMV. Several months and over \$2,000 later, the DMV decided not to suspend Bolton’s driving privileges. The DMV instead issued Bolton a warning.

Bolton claimed that she was unaware of the District’s law, and her arresting officer admits that many are not aware of the policy. Police inspector and former traffic division head Patrick Burke acknowledged, “We’d [the city] be killing ourselves if we were saying you can’t go out and have a glass of wine with dinner.”

*Source: Washington Post (October 12, 2005)*

## California Coastal Commission Claims Picnic Tables Will Deter Visitors to a Public Beach

For the past 30 years, George and Sharlee McNamee have enjoyed a magnificent view from their Ocean Boulevard home in Corona del Mar, California. Their oceanfront property abuts the public Corona del Mar State Beach.

Two concrete picnic tables, a storage locker, an outdoor shower and a barbecue are located on their property. Although of these amenities were constructed before the McNamees purchased the property in 1977, the state is now fighting to force the McNamees to remove them.

George, now in his mid-70s, suffers from a weak heart valve and has a history of melanoma. Doctors advise him to not exert himself and to remain out of direct sun. The picnic tables and other beach fixtures on their property save the McNamees from the unnecessary burden of carrying chairs and other cumbersome items up and down a long staircase between their home and the beach. The McNamees' comfort, however, is not a concern for officials from the California Coastal Commission. The state agency, created by the legislature in 1976, wants all of the McNamees' beach amenities removed to "maximize public access" to the California beaches and maintain the entire coastline for the public's enjoyment. To ensure this happens, the Coastal Commission is threatening legal action against the elderly couple if they don't comply.

The McNamees and regular local beachgoers are quick to explain that the outdoor fixtures are for anyone — and everyone's — use. One regular, Helen Turner, says, "People who have never met [the McNamees] think it's public property, so they just sit down. And George never complains or tells them to leave." Turner notes that she often sees mothers with babies using the canopy to avoid the sun. Sherman Stacey, the McNamees' attorney adds: "It's a great location and the public loves it. The McNamees have never minded people using it. They're perfectly happy to share."

The Coastal Commission also asserts that the "developments" on the McNamees' property discourage the public's use of the beach because they create a perception of privatization that possibly could deter the public from visiting the Corona del Mar State Beach. In an article in the *San Jose Mercury News*, however, beachgoers who were interviewed disagreed, saying their access to the public beach was in no way impaired by the items on the McNamees' property.

The McNamees also point out the fixtures were on the property long before they moved in the house — and well before the Coastal Commission was established. Therefore, they argue, the structures should be grandfathered into compliance. The Coastal Commission disagrees, citing aerial photography from the 1980s that Stacey criticizes as neither clear nor definitive. Supporting the McNamees' assertion is the previous owner of the home, Dorothy S. Dedman. She submitted a letter to the Coastal Commission declaring that the fixtures existed prior to the McNamees' purchase of the property and the creation of the Coastal Commission. Dedman's letter states: "Sometime in April of 1973, my deceased husband and I purchased the house at 3329 Ocean Blvd... At the base of the staircase down to the beach... was a small storage shed... a simple outdoor shower... and a barbecue."



*View of beachgoers from the McNamees' balcony*

*"The premise upon which the CCC bases its opposition to our right to use our property denies us the basic freedom guaranteed by our Constitution."*

*— Sharlee McNamee*



# Property Rights



*The McNamees' property  
(third from left)*

Nevertheless, the Coastal Commission issued the McNamees a cease and desist order in May 2004, giving them 60 days to apply for a permit that might allow them to keep some of the beach amenities on their property. Mike Reilly, the chairman of the Coastal Commission, justified the issuance by claiming: "Our responsibility is to make sure all development is consistent with the coastal act. We don't normally have to resort to a cease and desist order because normally, our staff is able to work with people to resolve the issues." The McNamees filed for the permit under the threat of \$6,000 daily fines had they not applied.

Following the Coastal Commission's recommendation, the McNamees applied for a retroactive permit. But the Coastal Commission rejected their application in July 2005 and ordered the McNamees to remove the amenities from their property. The McNamees have asked the Orange County Superior Court to delay enforcement of the CCC's ruling while a lawsuit the couple has filed to keep their amenities is heard.

Commenting on the ongoing legal battle, George McNamee said, "There is nothing right about this. The public will be no better off if we pull everything out." Sharlee McNamee agrees, and added: "I'm disappointed and disgusted at the [commission's hearing] process. It was so indicative of bureaucracy in action." She adds, "The premise upon which the CCC bases its opposition to our right to use our property denies us the basic freedom guaranteed by our Constitution. The concept of private property in the state of California is effectively dead. History has shown us that no other rights afforded by the Constitution can be effectively defended when there is no right to the use of property to which a citizen has the legal right of ownership."

*Sources: North County Times (May 14, 2004), Sherman Stacey, OCRegister.com (August 18, 2005), Calcoast.org, Sharlee McNamee, San Jose Mercury News (May 14, 2004)*

## Plant Police on the Beat

Many residents of East Hampton, New York can no longer trim trees, mow lawns or even rake leaves in much of their own yards, thanks to “vegetation protection legislation” banning “clearing” on private property. The town board, which adopted the legislation unanimously, defines “clearing” as the removal of certain plants and ground cover, including “leaf litter and other organic detritus.”

Reginald Cornelia, an East Hampton resident, echoed the sentiments of concerned residents at a town board hearing when he said, “You don’t have to read much English and American history to know that the right to use your own property is where all of our rights stem from.”

The “vegetation protection legislation” is aimed at saving “native remnants” — patches of woodland on privately-owned house lots. The town board’s justification for the law is that undisturbed woodland is important for “groundwater recharge” and helps maintain the rural character of the town. It specifies how much of their land private property owners can clear and landscape and how much must be left alone. A sliding scale was developed, based on a lot’s size, to determine how much land can be legally cleared. For example, 75 percent of the area can be cleared on a half-acre lot. On an acre lot, half the area can be cleared. The remaining land must remain uncleared, untrimmed and unraked to retain its “natural state.” Site-plan approval and a special permit are required for the clearing of more than four acres, which is only allowed on lots over seven acres. Clearing done before the law was passed is allowed to remain.

The town board is paying for aerial surveillance to enforce the law, and costly surveys showing what clearing has been done will be required before new property owners can receive a certificate of occupancy from the East Hampton Building Department. Preconstruction surveys are also required before residents can obtain a building permit to improve their property with structures such as a shed. Those who refuse to comply with the clearing law face penalties of up to six months in jail and administrative fines.

While some East Hampton residents agree that groundwater recharge is a laudable goal, they also contend such a sweeping change in the rights of property owners should be decided by a referendum rather than the vote of a five-member town board. At a hearing on the new rules, Sherry Wolfe of the East Hampton Business Alliance noted, “The government is in effect reclaiming all land except for a small area around a house.” Still others see the law as an attempt to legislate aesthetics. East Hampton farmer Bill Gardiner contends, “It’s very similar to passing a law that says everybody’s house has to be green because we like green better than blue.”

*Sources: East Hampton Star (May 27, 2004; June 10, 2004), Tom Knobel*

*“You don’t have to read much English and American history to know that the right to use your own property is where all of our rights stem from.”*

*— Reginald Cornelia*



Leonard Peikoff

*"I'm 68 and a heart patient and could not accept the prospect of being further weakened physically by the stress, and perhaps even bankrupted, in a fight against what is now, it seems, a virtually omnipotent government."*

— Leonard Peikoff

## Donate — or Else, Says Library of Congress

If you tell someone you'll give them a gift of \$100 and then only give them \$98, did you steal two dollars from that person? The Library of Congress and Department of Justice (DOJ) used that line of thinking to harass Leonard Peikoff for four years.

Library officials asked objectivist author Ayn Rand to donate the manuscripts of her novels to the Library upon her death. At first, Rand replied that she would be happy to do so. She later expressed doubts about the gift and did not complete the forms sent by the Library that would legally bind her to donate the papers. Instead, she willed them to Peikoff — a lifelong friend — and told him to "do with them whatever you want." Because of Rand's expressed reservations, Peikoff initially had similar reservations about making the donation after her death.

After being hospitalized with a heart attack in July 1991, Peikoff decided he needed to make a decision. He had an assistant ship all of Rand's manuscripts in 11 large cartons to the Library. Before sending them, Peikoff removed the first and last pages of *The Fountainhead* — one of Rand's most famous works — to keep as a memento. He did that because that work had the greatest personal meaning to him. To ensure the Library had a complete copy of the manuscript, however, he enclosed photocopies of the missing pages. An appraiser who was hired by Rand's estate at the time notified the Library of the copied pages. No one at the Library mentioned there would be any problem with the substitution. Peikoff also received an official statement from the Library informing him that all of the material he sent was in order and complete.

Peikoff framed the original Rand papers on a wall in his house. Library officials subsequently informed Peikoff that they considered the pages to be U.S. Government property. Peikoff refused to comply with the Library's demand that he give them the pages.

The DOJ later threatened to sue Peikoff for \$1.1 million. Peikoff's lawyer told him he would "probably" win the case, but his success was not guaranteed. Under a theory called "promissory estoppel," courts tend to enforce a "promise" of a donation if a charity shows it was relying on a gift and didn't receive it. It was argued that delivering two photocopies instead of the original pages made Peikoff's donation incomplete, and the Library therefore contended it had never really received the gift. Neither Rand nor Peikoff, however, had any legal obligation to donate anything to the Library.

Peikoff was advised that litigation would be prolonged and expensive. Since it is representing the U.S. Government and draws taxpayer funding, the DOJ had essentially unlimited funds to pursue the case. Realizing he did not have the same resources, he decided to allow the Library to take the pages. Peikoff said, "I'm 68 and a heart patient and could not accept the prospect of being further weakened physically by the stress, and perhaps even bankrupted, in a fight against what is now, it seems, a virtually omnipotent government."

On January 15, 2002, a Library of Congress official went to Peikoff's California home to confiscate the pages Peikoff never intended to donate to the Library.

*Sources: Los Angeles Times (August 16, 1998; March 5, 2002), Ayn Rand Institute, Peikoff.com*

## “Smart Growth” Policies Can Turn Wealthy Neighborhoods into Homeless Areas

Although Chiquita Slaughter and Tonnie Badie have a combined income of approximately \$44,000 a year, they and their four children have no home of their own, and are living in temporary housing arranged by a charity. Despite earning at a level that puts them above the federal government’s poverty line, Chiquita and Tonnie have been priced out of affordable housing in part by “smart growth” regulations that restrict new home construction.

Families like this do not fit the common conception of Fairfax County, Virginia. One of the wealthiest areas in the nation, Fairfax County nonetheless has a high number of homeless residents. A 2005 “Homeless Enumeration” study by the Metropolitan Washington Council of Governments showed that of the nearly 5,100 people living in homeless shelters in the Washington D.C. metropolitan area, 1,111 reside in Fairfax County. Prices for renting or buying homes are skyrocketing while salaries are not keeping pace. This forces many working families to struggle to find an affordable place to call home.

Smart growth regulations, which can limit the number of houses that can be built per acre, contribute to the unaffordable housing problem by reducing the housing market’s ability to keep pace when the demand for housing grows.

During the 1990s, the number of jobs in Fairfax County increased three times faster than the supply of homes.

*Sources: Washington Post (April 15, 2003), Metropolitan Washington Council of Governments*



FedEx Field  
Landover, Maryland

*"This is about money."  
— John Paul Szymkowicz*

## Ban on Walking Squeezes Football Fans

While private homes can be found just a few yards from FedEx Field — the home of the Washington Redskins football team — for a time, the people who live there, along with everyone else, were required to drive to football games. This is because a “coordinating group” composed of Prince George’s County, Maryland officials, county police, citizen and Redskins representatives had prohibited pedestrian access onto the stadium grounds. Although the ban has recently been lifted, it was a move that aggravated fans and appeared to financially benefit Redskins owner Dan Snyder.

As part of the deal to move the Redskins to the suburbs, Maryland taxpayers financed over \$70 million in road construction related to “stadium infrastructure.” The roads are on public land governed by the county. But the public use of the roads has been limited. Citing safety concerns, the county banned pedestrian traffic into the stadium. This meant that, in order to see a game, fans were required to purchase a stadium parking pass, pay \$25 to use a nearby satellite lot or take a shuttle bus from a Metro train station.

No public hearings were held prior to pedestrian traffic being outlawed. The ban was enacted by the FedEx Field Coordinating Group, a public/private partnership made up of county officials and Redskins staff charged with overseeing the administration of the stadium. Redskins fan John Paul Szymkowicz discovered the pedestrian ban in 2001 when he tried walking to a game after parking at a nearby former shopping mall. County police stopped him, telling him he couldn’t use the sidewalks leading onto the FedEx Field grounds. Szymkowicz says he figures why the ban was instituted. “This is about money,” he told the *Washington City Paper*.

County officials justified the ban as necessary for public safety, citing two pedestrian deaths following FedEx Field events. Szymkowicz countered that the deaths occurred after the pedestrian ban was enacted. He believes the impetus of the ban was a 2000 Maryland-National Capital Park and Planning Commission traffic survey showing that many fans were parking at lots other than those approved by Redskins management. The survey found “approximately 1,560 patrons” were parking at a free lot at a former shopping mall and walking to the stadium. Soon after, county officials made walking into the stadium area illegal.

Szymkowicz is an attorney, and became the lead plaintiffs’ counsel in a lawsuit against the Redskins (Pro-Football Inc.) and WFI Stadium Inc., the owner of FedEx Field, over the pedestrian ban. In 2003, Szymkowicz won an injunction lifting the ban. He argued that its enactment violated state open-meeting laws because no public hearings on the matter were held. In June of 2004, the county reinstated the ban after holding a public hearing. But in October 2004, a Prince George’s County, Maryland administrative appeals panel lifted the pedestrian access ban, ruling that the Maryland Department of Public Works and Transportation did not have the authority to impose the road closures. Since the ruling, Redskins fans have once again been allowed to walk to the stadium.

*Sources: Washington City Paper (July 10, 2000; July 2, 2004), The Washington Post (December 18, 2003; December 23, 2003; July 12, 2004; August 5, 2004; October 28, 2004)*

## Police Have One Rule for Selves; Another for Disabled Woman

Although the public transportation system serving the Washington, D.C. area operates under the slogan “Metro Opens Doors,” transit officials in the nation’s capital tried to close its doors on a disabled passenger who was experiencing newfound mobility — thanks to a new Segway human transporter.

Anne Kinkella has spina bifida. As a result, she has been forced to use canes and wheelchairs to get around. Then the new Segway human transporter came into her life. Debuted in 2002, it is an innovative scooter device that can travel up to 13 miles per hour. Thanks to her Segway, Kinkella says, “For the first time in my life I was able to enjoy the outdoors, walk my dog, run errands and use an umbrella.”

After Kinkella had a minor accident, however, she was not allowed to bring her Segway into the taxpayer-subsidized Metro commuter-rail stations. For weeks, Metro Transit Police Officers threatened to arrest her for using Metro stations during her commute to work. Motorized vehicles like motorcycles and mopeds are banned from the Metro, and officials contend that this same law also covers Segways, although the law pre-dates the Segway’s introduction.

Undaunted, Kinkella continued to use the Metro, saying, “Where would this country be if a little woman in the 1950s didn’t refuse to give up her seat on the bus?” Metro officials finally backed off, and now allow Kinkella to use her Segway. In July 2005, Metro officials approved Segways for use during off-peak hours on trains. Segways are not allowed on Metrobuses nor on escalators (although elevators are acceptable) and must be carried throughout the system. Disabled riders are able to receive a special exemption, provided a doctor and Metro certify them.

Ironically, while Metro officials were determining if Segways were safe for customers to use, they were planning to use the devices themselves. While it was prohibiting Segways for customers’ use, Metro ordered two Segways for its own Transit Police to use.

In September of 2005, the U.S. Department of Transportation adopted a regulation on the use of Segways on transportation vehicles such as rail and bus. The regulation essentially treats Segways in the same manner as a wheelchair in use by the disabled. The regulation states that when a Segway “is being used as a mobility device by a person with a mobility-related disability, then the transportation provider must permit the person and his or her device onto the vehicle.”

*Sources: Washington Post (May 10, 2003), Disability Rights Council, Washington Examiner (July 25, 2005), Segway.com, U.S. Department of Transportation, Disability Rights Advocates For Technology, Anne Kinkella*



*Anne Kinkella*

*“Where would this country be if a little woman in the 1950s didn’t refuse to give up her seat on the bus?”*

*— Anne Kinkella*



## Bigfoot — a Protected Species?

An elusive “endangered species” and wetlands problem has kept Jim Baum from selling his land. That’s not unusual. What is odd is not only has one of the “endangered species” never been seen on his property, but its very existence remains in question.

That’s because local government officials listed the Baum property as a critical habitat for Bigfoot.

Bigfoot is not protected by the federal Endangered Species Act, but the 1990 King County, Washington Wetlands Inventory Species List included “*Bipedus giganticus* — Sasquatch” as a protected species.

In 1988, Jim Baum bought 17 acres of property in King County, Washington to supplement his income as a home-remodeling contractor. He intended to fence off half of the land for boarding horses and plant hay on the remaining half. Baum notes that county officials had no qualms about his stated plans for the property at the time he purchased it. Ultimately, though, Baum never developed the property, and sought to sell it in 1991 so that he could buy a hay farm in eastern Washington. At that time, Baum was presented with a paper indicating that King County had designated 13 of his 17 acres as wetlands under the King County Sensitive Areas Ordinance (SAO). Baum’s land was also identified as home to 350 species of endangered plants and animals. One of those species, “scientifically” classified as *Bipedus giganticus*, is otherwise known as Bigfoot.

Baum said the SAO was passed by the King County Council approximately one year after he bought the property. He said it “means that its restrictions were being developed at the same time I got assurances from the county that I could work my property.” He said the reclassification substantially drove down the value of his 1988 investment. “I lost \$165,000 in equity in 1991,” lamented Baum. Since his once-promising farm became a Bigfoot preserve, Baum filed for bankruptcy. He said his financial situation was so dire one winter that he “lived on Minute Rice and used one log of firewood a night for an energy source.”

When CBS News interviewed King County officials about the inclusion of Bigfoot as a protected species on the Baum property, one county official speculated the listing could have been a joke. Baum retorts that he had repeatedly notified King County officials about the Bigfoot listing, but they would not change it. In 1996, another county official declared that *Bipedus giganticus* would remain on the King County Wetlands Inventory Species List because “it would cost too much to change” the listing.

Baum, who is now a construction site inspector, still fumes over the way King County officials treated him — and cheated him, he says — a decade ago. He is bitter that the myriad of restrictions related to the designation of his property as a wetland has literally locked up his land. “I can’t trim trees on my own land,” says Baum. “If my dogs run out there, it’s illegal.”

Sources: Eastside Week (January 31, 1996), Jim Baum, King County DNR

“I can’t trim trees on my own land.”  
— Jim Baum

## Two Vacant Lots in a Residential Neighborhood Regulated as a Waterway

Sam McQueen has owned two vacant, unconnected lots located along the man-made saltwater canals of North Myrtle Beach, South Carolina since the early 1960s. During that time, bulkheads (retaining walls) were constructed on surrounding lots, and houses were built on them.

In 1991, McQueen decided to develop his properties, but the South Carolina Office of Ocean and Coastal Resource Management (OCRM) put his plans to a halt.

The OCRM denied McQueen's request to build the necessary bulkheads, saying bulkheads and backfill would permanently destroy what the agency has determined are wetlands.

OCRM officials denied McQueen's permits in 1993 on the ground that McQueen's lots had reverted to tidal areas, or "critical area wetlands," during the thirty years he'd owned them. While the lots surrounding McQueen's could similarly be considered wetlands, the agency considered the bulkheads and backfill to be legal there, because the work had been done prior to the state's imposition of wetlands regulations.

McQueen filed a lawsuit in state court seeking compensation for the regulatory taking of the value of his two lots. He noted the denials stripped his land of all economically beneficial use. His case rested on the Fifth Amendment of the U.S. Constitution, which mandates that the government must compensate private property owners if their land is taken for public use. A master-in-equity court (used for civil, non-jury matters) agreed with McQueen, awarding him \$50,000 for each lot. The OCRM appealed the decision to the Supreme Court of South Carolina, where the award was reversed on the grounds that McQueen had "no reasonable investment-backed expectations because of pre-existing wetlands regulations."

McQueen appealed his case to the U.S. Supreme Court, which nullified the state supreme court's decision, sending it back for further consideration in light of a 2001 U.S. Supreme Court ruling, *Palazzolo v. Rhode Island*, which held that an owner does not lose his constitutional right to compensation merely by acquiring property after a restrictive development regulation goes into effect. McQueen was thought to hold a strong legal hand, because he acquired the property fifteen years before the wetlands regulation at issue was enacted.

Nonetheless, in *McQueen v. South Carolina Department of Health and Environmental Control*, the South Carolina Supreme Court again ruled against McQueen, basing its ruling on a legal concept called the "public trust doctrine."

The public trust doctrine allows the government to regulate private property along tidal lands and navigable waterways — essentially considering these lands to be "public" even if a private landowner is paying taxes on them — without compensating property owners for losses. In recent years, environmental organizations have promoted the use of the public trust doctrine as a way to increase government control over private land.

McQueen argued that the application of the public trust doctrine made no sense in his case because his property amounted to two vacant residential lots in the middle of a fully-developed neighborhood. McQueen appealed the South Carolina Supreme Court's second ruling to the U.S. Supreme Court, but, this time, the U.S. Supreme Court declined to hear the case. McQueen's lots remain undeveloped and essentially valueless, and he received no compensation.

*Sources: Washington Legal Foundation, American Farm Bureau Federation, South Carolina Environmental Law Project, Jonathan H. Adler on Commonsblog.org (November 11, 2004)*



*A wetland along the Beaufort River  
Beaufort, South Carolina*

*In recent years, environmental organizations have promoted the use of the public trust doctrine as a way to increase government control over tidal lands and navigable waterways.*

*"If that isn't our system gone crazy, I don't know what is. I am not going to do it."*

— Judge Lawrence P. Zatkoff

## Move Sand, Risk Prison

On April 13, 1998, Judge Lawrence P. Zatkoff of the U.S. District Court for the Eastern District of Michigan was asked to put John Rapanos behind bars for 63 months for the crime of moving sand on his 175-acre property in Midland, Michigan. As he had been asked earlier that day to incarcerate an illegal alien convicted of dealing drugs for only ten months, Zatkoff protested, saying, "Here we have a person who comes to the United States and commits crimes of selling dope and the government asks me to put him in prison for ten months. And then we have an American citizen, who buys land, pays for it with his own money, and he moves some sand from one end to the other and [the] government wants me to give him 63 months in prison. Now, if that isn't our system gone crazy, I don't know what is. I am not going to do it."

Rapanos received no jail time from Zatkoff that day, but the judge later was overruled. An ensuing legal battle has cost Rapanos more than \$1 million on attorneys, consultants and fines and taken him to five trials related to complaints from the Michigan Department of Natural Resources (DNR) and federal Environmental Protection Agency that he illegally destroyed wetlands located on his property.

Rapanos' problems began in the late 1980s, after he ordered the removal of trees and brush on his property to prepare it for development. In 1989, a DNR agent issued Rapanos a cease-and-desist order, telling him he needed a permit to work his land because the site had been designated as a wetlands area. Rapanos' land contains drainage ditches that had been dug by the county in the early 1900s to make the land suitable for agriculture. The drainage ditches lead to a non-navigable creek, which, 20 miles away, joins the Kawkawlin River.

Charles Dodgers, a former DNR analyst, claims Rapanos arrogantly rebuffed the DNR demand, saying, "[Rapanos] told us he didn't need a permit from us... and he was going to go ahead and manipulate that site by any means possible."

Rapanos disagrees: "When we got the cease-and-desist notices we asked them to come and show us where the wetland was. They wouldn't do it." The DNR enlisted the EPA in the fight against Rapanos. EPA officials further contended that Rapanos had deposited over 300,000 cubic yards of fill on his property to prepare it for construction, an allegation which is strongly disputed.

The EPA then filed a civil suit charging Rapanos with wetlands destruction. After an initial mistrial, Rapanos was tried again and found guilty. After refusing to put Rapanos in jail, Judge Zatkoff fined Rapanos \$185,000, which Rapanos paid immediately. A three-judge appeals panel later overturned the fine in favor of a prison sentence. But this ruling was thrown into question in 2001 after the U.S. Supreme Court's ruling in the case of *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*. The Court in that case determined that isolated wetlands — those not directly adjacent to a navigable waterway — do not fall under the federal authority of the Clean Water Act. The ruling forced the lower court to revisit Rapanos' case.

Presiding over Rapanos' fourth trial, Judge Zatkoff used the Supreme Court's rationale to dismiss the case because the alleged wetlands on Rapanos' property are not adjacent to navigable waters. Since Rapanos' property is up to 20 miles from the nearest navigable water — the Kawkawlin River — his land could be regarded as an isolated wetland and be free from federal regulation.

The EPA nonetheless appealed Zatkoff's latest ruling, and a judgment by the U.S. Court of Appeals for the Sixth Circuit overturned the ruling. In 2004, the U. S. Supreme Court declined to revisit Rapanos' criminal case, but in a separate ruling, the Court invalidated the mandatory U.S. sentencing guidelines that would have placed Rapanos in prison for a maximum of 16 months. As a result, Judge Zatkoff was free to sentence Rapanos in March 2005 to probation time served.

Rapanos' ordeal is not over, however. In February 2006, the U.S. Supreme Court agreed to consider what qualifies as a jurisdictional wetland under the federal Clean Water Act.

On June 19, 2006, a plurality of four justices of a divided Supreme Court ruled that the Clean Water Act's protection of waters is limited to "relatively permanent, standing or flowing bodies of water." In a separate, concurring opinion, a fifth justice wrote that "significant nexus" to a traditionally navigable waterway would be sufficient to apply the Clean Water Act. This decision sends Rapanos' case back to the 6<sup>th</sup> Circuit Court of Appeals to consider whether the Supreme Court's new standard applies to Rapanos' property.

*Sources: Pacific Legal Foundation, New York Times (May 18, 2004), Mackinac Center for Public Policy, Associated Press (June 20, 2006), Detroit News, Legal Information Institute, Washington Post (October 12, 2005), Environment News Service (October 12, 2005), Wall Street Journal (August 23, 2004)*

## Land of Opportunity? Not Schenectady

Amritesh and Sunita Singh, immigrants from India, planned to build a house where they could raise their children and eventually grow old together. This story would be the quintessential "American dream" — had it not been for county officials in Schenectady, New York.

County officials sold the Singhs the housing equivalent of a lemon and are refusing to fix their mistake. The Singhs have not yet achieved their dream of home ownership, and have instead been thrown into a legal mess over the right to build on the land they purchased.

The story unfolds this way: At a Schenectady County tax auction, the Singhs paid \$7,000 for a vacant plot on Mohawk Trail in Niskayuna, New York. Before the auction, Niskayuna Town Hall officials assured the Singhs that the property did not contain wetlands that might prevent them from building a home. "The building inspector said the land was suitable [for construction], and he even gave me maps showing that there were no wetlands. Based on this information, I bought the property. But [now] we can't use it," said Mr. Singh.

After purchasing the plot, U.S. Army Corps of Engineers officials reported that the Singhs' land in fact did contain wetlands. The Singhs were worried that building on the site, while deemed legal by local authorities, would violate federal regulations that could incur astonishingly harsh penalties.

*The Singhs have not yet achieved their dream of homeownership, and have instead been thrown into a legal mess over the right to build on the land they purchased.*

Feeling cheated by the contradictory statements of government officials, the Singhs filed a lawsuit in the Schenectady County Supreme Court seeking unspecified damages against the town of Niskayuna. “As far as I know now, the town and the county both knew it was a wetland... If they knew it was a wetland, it shouldn’t even have been at auction,” said Singh. Nor should the officials have sold the land, he said, if they knew it wasn’t possible to build a home at the site.

Niskayuna Town Attorney Eric Dickson rejected the notion that the town is responsible for the Singhs’ misfortune. “The town building department doesn’t speak for the Army Corp engineers [sic] and the Department of Conservation,” said Dickson. “The town can only tell them what under town laws is buildable [sic].” Dickson also claimed that the Singhs should have been more cautious. The lot sold for \$7,000 in an area where the average home is assessed at \$135,000. “You can’t get buildable land for that much,” he said.

In the meantime, the Singhs and their two children are waiting for the court to decide if they can build their “dream home” on the plot of land they purchased for that purpose.

*Sources: Albany Times Union (April 3, 2003), Property Rights Foundation of America, United States Army Corps of Engineers — Albany Field Office*

## Government Rules Delay Response to Fatal Fire

Stephen Shacklett, Jr. lost his father in San Diego County, California's 2003 Cedar Fire.

The elder Shacklett was living on a ten-acre estate that overlooked the San Vicente Reservoir and Wildcat Canyon, an area regarded for its idyllic scenery. He and his four Irish wolfhounds perished on October 26, 2003 while trying to escape the burgeoning flames of the Cedar Fire. The fire killed 15 people, destroyed over 3,200 structures and burned over 270,000 acres.

According to Dave Weldon, the San Diego County Sheriff's Department's helicopter pilot who first reported the patch of flames that became the Cedar Fire, the fire's rapid spread — which was a significant contributor to the death toll — was preventable.

After spotting the flames and determining they were likely to spread, Weldon called for help to secure and extinguish the growing fire. His request was not granted. Under California Department of Forestry (CDF) safety regulations, no air tanker flights can depart in waning daylight. That Saturday, October 25, the subjective cut-off time was 5:36 pm. The sun actually set nearly 30 minutes later that day, at 6:05 pm, yet efforts to combat the encompassing fire were halted to comply with the regulations. In fact, another helicopter that was already in the air and carrying a full 120-gallon water dump bucket was turned around while on approach to the blazing forest because of the CDF-imposed daylight safety guidelines. The stipulations required that the helicopter be grounded because it took off after 5:36 pm.

CDF chief deputy director Roy Snadgross argues the safety guidelines are intended to protect the pilots. Had the regulation been disregarded in this instance, CDF Captain Rob Serabia contends, even one more flight to drop 3,200 gallons of chemical retardant may have suppressed the fire. Serabia laments that the scuttled flight "would have been able to suppress the fire, or at least hold it in check."

The state's stringent fire-fighting regulations have resulted in hardships for many Californians. Says Shacklett: "The hugest fire in California history, and they had a chance to put it out."

*Sources: Los Angeles Times (October 28, 2003), San Diego Union-Tribune (November 8, 2003; January 18, 2004; March 13, 2005), California Department of Forestry, San Francisco Chronicle (October 29, 2003), Associated Press (October 30, 2003; October 31, 2003), Testimony on the Cedar Fire: The Blue Ribbon Fire Commission (January 21, 2004)*



*The Cedar Fire*

## Fish Survive, Firemen Perish

Four young firefighters may have unnecessarily lost their lives fighting 2001's Thirty Mile Fire in the Okanogan National Forest in Winthrop, Washington. Rescue efforts were delayed by a bureaucratic battle over whether using water from the nearby Chewuch River would harm federally-protected endangered Chinook Salmon and Steelhead and threatened Bull Trout.

The firefighters, who unexpectedly were trapped by a growing inferno, reportedly made the first request for a helicopter water crew to help control the blaze as early as 5:30 am. Although a helicopter was ready for deployment by 10:30 am, the dispatchers needed clearance from a park official to use the water from the Chewuch River. Two hours later, District Ranger John Newcom authorized the mission. At 2:38 pm — over



*Bull Trout*



*“The ensuing confusion caused the delay in the helicopter’s deployment and, some believe, the firefighters’ subsequent death.”*

nine hours after the initial request — the firecrew finally began scooping water from the Chewuch.

By that time, however, the fire had grown to such ferocity that the emergency helicopter team was unable to douse the fire and rescue the firemen. In an effort to save themselves, the trapped firemen set up protective shelters. This was not enough. The fire overran their shelters, and the firefighters died from inhaling superheated air.

A disturbing postscript to this case is that the firefighters did not technically require the approval of environmental officials to scoop water when they were facing this urgent situation. For decisions of this nature, Elton Thomas, a fire-management official for the Okanogan and Wenatchee National Forests, responded, “We don’t want it to work that way. We want to make sure folks aren’t taking unnecessary time.”

While the dispatchers cannot be blamed in this case, it is clear they had lingering doubts about the legality of using river water in an endangered species habitat and wanted to comply with what they thought were environmental handicaps. The ensuing confusion caused the delay in the helicopter’s deployment and, some believe, the firefighters’ subsequent death.

“If we’d had the water when we’d asked for it, none of this would have happened,” said firefighter Ellreese Daniels.

The four firefighters who died were Tom L. Craven, 30, Karen L. Fitzpatrick, 18, Devin A. Weaver, 21 and Jessica L. Johnson, 19.

*Sources: Americans for Tax Reform, Office of Congressman Richard Pombo, Dubuque Telegraph Herald (April 6, 2003)*



*Curve and Williams Fire*

## Fire, Then Feds, Drive Out Cabin Owners

In 2002, the Curve and Williams Fire ravaged over 60,000 acres of southern California’s Angeles National Forest. 110 privately-owned cabins were destroyed in the federally-managed forest.

Years after the fire, those property owners are still awaiting word on when and if they can rebuild. The plan currently being considered by the U.S. Forest Service (USFS) will only allow 14 of the 110 victims to rebuild their cabins, and these lucky few may not even be allowed to rebuild on the sites their cabins once occupied.

USFS officials devised a drawing after concluding that only ten lots in the forest remained suitable for rebuilding after the fire.

These officials claim the previous lots are no longer developable because they are in riparian (river or creek) areas or flood plains. While four cabin owners were given immediate permission to build on their original lots, the remaining 106 owners must throw their names into a hat for a less than ten percent chance if they wish to rebuild.

Almost half of the destroyed cabin owners were so shocked by the news of the lottery system that they have refused to participate.

Reiner Kruger, who lost his cabin in the San Dimas Canyon, told *The Pasadena Star News* that he does not believe the lottery is fair: “If you had a lot you should be able to get it back.”

Dennis Rose, one of the four cabin owners already given permission to rebuild, says he might not do it if others aren’t allowed. Rose explained, “Why would I want to rebuild if only four can? It makes no sense. It yanks the heart right out of the community.”

*Sources: Pasadena Star News (July 3, 2004), DailyBulletin.com (July 5, 2004), U.S. Forest Service*

## Acknowledgements

Special thanks to Robert J. Smith, David Hogberg, Anne White and Nancy Almasi, who assisted in the editing of *Shattered Dreams: 100 Stories of Government Abuse*. Special thanks also to David W. Almasi for designing the book's layout and to Peyton Knight, Lauren Giddings and Stephen Saunders for helping to create the index.

Thanks to the following organizations and individuals who provided valuable information or assistance.

American Towers Corporation, Maria Aposporos, Jim Baum, Amy Bayer, John Begert, Rob Blair, Herman Blankenship, Anne Jordan Blanton, Jim Boulet, Jr., Greg Broderick, George and Kim Bryant, John DeRaspe, Joyce Eden, Jerry Fennell, Galloway Family, Howard Gantman, Jimmy and Frances Goss, Jeff Grimm, Emily Hardman, John V. Hays, Home School Legal Defense Association, Stephen Imhoof, The Institute for Justice, JPI Development Co., Jerry Kerr, Anne Kinkella, Tom Knobel, James M. Knott, Sr., Sarah Kothe, Dimitri Krassensky, Amy and Steve LeSatz, Mark Levin, Liberty Matters, Lipsman Family, Terry Lodge, Fane Lozman, Jane Marx, George and Sharlee McNamee, The Honorable Edwin Meese, III, Deroy Murdock, John O'Sullivan, Pacific Legal Foundation, Greg and Sue Pattillo, Congressman Ron Paul, Dr. Leonard Peikoff, Jeanette Petersen, Lanny Rose, Craig Rucker, Donald N. Schoenholt, Richard Sementa, Dan Simpson, Norman Singleton, U.S. Fish and Wildlife Service, Warrenton Baptist Church, Washington Legal Foundation, Josh Waxman, Mary and Scott Welch, Josh Wexler, Dr. Walter E. Williams, Ian Wood, Jenniffer Woodson and Gene Zweben

## Photo Credits

Page 5	James E. Brown
Page 7	FOX News Channel
Page 9	Center for Disease Control
Page 10	Gillies Coffee
Page 11	www.cottageofsweets.com
Page 13	Ryan Balis
Page 14	David Almasi
Page 15	Phil Mosier, The Story Central DeKalb
Page 16	Ryan Balis
Page 17 (1st photo)	Peyton Knight
Page 17 (2nd photo)	saveourtrees.com
Page 19	© Photo courtesy of the Institute for Justice
Page 20	Judi Botoni for the Institute for Justice
Page 21	© Photo courtesy of the Institute for Justice
Page 22	© Photo courtesy of the Institute for Justice
Page 23	Ryan Balis
Page 24	National Park Service
Page 25 (1st photo)	Ryan Balis
Page 25 (2nd photo)	National Aeronautics and Space Administration
Page 26	Photo by Judy Bottoni for the Institute for Justice
Page 27 (1st photo)	Photo by Tom Story
Page 27 (2nd photo)	Cycles Maximus, Bath, U.K.
Page 28	Ryan Balis
Page 34	Photos by Isaac Reese, 2004 © Institute for Justice
Page 36	Photos by Wyatt Gallery for the Institute for Justice
Page 39	© Photo courtesy of the Institute for Justice
Page 40	© iStockphoto.com-Kuzma
Page 42	U.S. Natural Resources Conservation Service
Page 43 (1st photo)	Smithsonian Institution-www.si.edu
Page 43 (2nd photo)	U.S. Fish and Wildlife Service photo/Ryan Hagerty
Page 43 (3rd photo)	U.S. Fish and Wildlife Service/Glen Smart
Page 44	U.S. Fish and Wildlife Service photo
Page 47	National Environmental Satellite Data and Information Service
Page 48	Gene Nieminen for U.S. Fish and Wildlife Service
Page 49	U.S. Fish and Wildlife Service photo/Beth Jackson
Page 51	U.S. Fish and Wildlife Service
Page 53	U.S. Fish and Wildlife Service photo/Mike Lockart
Page 54	Jim Clark for U.S. Fish and Wildlife Service
Page 55	James Kovach
Page 56	U.S. Fish and Wildlife Service photo/Dave Menke
Page 60	Lance Cpl. Jennifer L. Weber, U.S. Department of Defense
Page 61	Tech. Sgt. Angela Clemens, U.S. Department of Defense
Page 62	California Department of Transportation
Page 63 (1st photo)	U.S. Fish and Wildlife Service photo
Page 63 (2nd photo)	U.S. Fish and Wildlife Service photo/B. "Moose" Peterson

Page 64	U.S. Fish and Wildlife Service
Page 66	U.S. Fish and Wildlife Service photo/R.G. Tucker, Jr.
Page 68	National Oceanic and Atmospheric Administration
Page 70	Rita Ayers
Page 72	Photo by U.S. Fish and Wildlife Service/Mike Bender
Page 73	James Knott
Page 74	U.S. Fish and Wildlife Service photo/Gary M. Stolz
Page 75	U.S. Fish and Wildlife Service photo/Jim P. Reid
Page 77	Photo by Ron Wurzer for the Institute for Justice
Page 78	© Photo courtesy of the Institute for Justice
Page 79	Collection of U.S. House of Representatives
Page 81	Institute for Justice
Page 82	Photo by the Institute for Justice, © 2003
Page 85	U.S. Army
Page 86	U.S. Fish and Wildlife Service/Gary M. Stolz
Page 87	U.S. Fish and Wildlife Service/Gary M. Stolz
Page 88	Ryan Balis
Page 89	National Park Service
Page 90 (1st photo)	© Photo courtesy of the Institute for Justice
Page 90 (2nd photo)	Ryan Balis
Page 91	Ryan Balis
Page 92	Free-StockPhotos.com
Page 93	Sharlee McNamee
Page 94	Sharlee McNamee
Page 96	Ayn Rand Institute
Page 98	Ryan Balis
Page 99	Anne Kinkella
Page 101	William B. Folsom/ National Oceanic and Atmospheric Administration
Page 105 (1st photo)	National Oceanic and Atmospheric Administration
Page 105 (2nd photo)	U.S. Fish and Wildlife Service photo/Roger Peters
Page 106	SimpsonCity.com/U.S. Forest Service

## State Index of Regulatory Victims

**Alaska** — Fort Richardson, pp. 85-86

**Arizona** — Christian Alf, p. 19; Essence Farmer, pp. 26-27; Goldwater Air Force Range, p. 61; Robin Hoover, p. 47; Edward and Nouha Salib, p. 82; Matt Salmon, pp. 79-80

**California** — Bay Area Rapid Transit, pp. 62-63; Benicia Bridge, pp. 62-63; Howard Blair, p. 49; Cabin Owners, p. 106; Damon Giglio, p. 21; Fred Grand, p. 57; Inland Empire, pp. 63-64; George and Sharlee McNamee, pp. 93-94; Operation Gatekeeper, pp. 64-65; Leonard Peikoff, p. 96; Rancho Viejo, LLC, p. 59; Lanny Rose, p. 11; Salmon Buffer Zones, p. 50; Santa Barbara Pedicabs, p. 27; Stephen Shacklett, Jr., p. 105; Sonar, pp. 86-87; Russell Souza, p. 69; State Route 125, pp. 65-66; Yosemite National Park, pp. 88-89

**Connecticut** — Maria Aposporos and Eleni Begetis, p. 33; Susette Kelo, pp. 34-35

**Delaware** — Desiree Mulford, p. 9

**District of Columbia** — American Towers, p. 13; Debra Bolton, p. 92; Anne Kinkella, p. 99; Photo-Enforced Cameras, pp. 90-91; Larry Quillian, p. 16; Lawrence M. Small, p. 43

**Florida** — James Michael Kovach, pp. 55-56; Fane Lozman, pp. 40-41; Max Mayfield, p. 68; Michael McCormick, p. 74; Rick Rescott, p. 75; Wildside Adult Sports Cabaret, p. 12; Zita Wilensky, p. 83

**Georgia** — Stan Pike, p. 15

**Iowa** — Missouri River, p. 42

**Kentucky** — Bald Eagle Egg, p. 56; Terry Brock, p. 67

**Louisiana** — Sandy Meadows, Shamille Peters and Barbara Peacock, pp. 19-20; Josh Wexler and Anne Jordan Blanton, p. 26

**Maine** — Douglas and Laura Pelletier, p. 31

**Maryland** — FedEx Field, p. 98; Anne Kinkella, p. 99; Lydia Goulart and Kyle Travers, p. 29

**Massachusetts** — Bryant Family, pp. 28-29; James M. Knott, Sr., p. 73

**Michigan** — Freda Alibri, p. 37; Jim Galloway, pp. 67-68; John Rapanos, pp. 102-103

**Minnesota** — Mikaela Ziegler, pp. 25-26

**Mississippi** — Welch Family, pp. 17-18

- Missouri** — Sarah and Gary Kothe, p. 76; Missouri River, p. 42
- Nevada** — Cliff and Bertha Gardner, p. 70; Bill Jones, p. 23
- New Jersey** — Kristine and Patrick Flynn, Jr., p. 72; Carol Thomas, p. 90
- New Mexico** — Jerry Fennell, p. 71; Jimmy and Frances Goss, pp. 52-53; Richard Humphrey, p. 54
- New York** — East Hampton Residents, p. 95; Angela Lipsman, p. 30; Jane Marx, p. 24; Jacqueline O'Brien, pp. 9-10; Donald Schoenholt, p. 10; Amritesh and Sunita Singh, p. 103-104
- North Carolina** — Fort Bragg, pp. 60-61; Lora Brozovic, pp. 48-49
- Ohio** — Kim and Herman Blankenship, pp. 32-33; Carl and Joy Gamble, pp. 35-36; Jim and JoAnn Saleet, p. 39
- Oregon** — Oregon Beaches, pp. 45-46; Jeff Grimm, p. 18; John Hays, p. 46; Klingon Language Translator, p. 84; Salmon Buffer Zones, p. 50
- Pennsylvania** — Bayard Rustin High School, p. 66; Joseph and Brenda Cochran, p. 81; Laurie Hanniford, p. 25
- South Carolina** — Sam McQueen, p. 101
- Tennessee** — Nathaniel Craigmiles, pp. 22-23
- Virginia** — Amy Bayer, pp. 14-15; Anne Kinkella, p. 99; Frank and Dana Ottofaro, p. 38; Chiquita Slaughter and Tonnie Badie, p. 97; John Taylor, p. 53; Warrenton Baptist Church, p. 17
- Washington** — Dennis Ballen, p. 77; Jim Baum, p. 100; Firefighter Deaths, pp. 105-106; Futon Factory, pp. 78-79; Ron Haider, pp. 21-22; Greg and Sue Pattillo, p. 58; Salmon Buffer Zones, p. 50, p. 58
- West Virginia** — Windmills, p. 51
- Wyoming** — Hope Clark, p. 88; Jim and Amy LeSatz, p. 44



## Alphabetical Index

XVIII Airborne Corps, p. 60  
82nd Airborne, p. 60  
172nd Infantry Brigade, p. 85

### A

AAA Mid-Atlantic Insurance Co., p. 91  
Abshez, Allen, p. 89  
*Adaptation*, p. 55  
Advocacy Center for Persons with Disabilities, p. 12  
Afghanistan, p. 60, 61, 85  
Alaska Community Action on Toxics, p. 85  
Alexandria Circuit Court, p. 14  
Alexandria City Council, p. 14  
Alexandria, VA, p. 14  
Alf, Christian, p. 19  
Alibri, Freda, p. 37  
Allied Waste Industries, p. 21  
al-Queda, p. 60  
American Alligator, p. 74  
American Black Bear, p. 67, 72  
American Eagle Foundation, p. 56  
American Land Rights Assn., p. 89  
American Towers Corp., p. 13  
Americans With Disabilities Notification Act, p. 12  
Anchorage, AK, p. 85  
Anderson, Jeffrey R., pp. 35-36  
Angeles National Forest, p. 106  
Anthrax, p. 83  
Aposporos, Maria, p. 33  
Appel, Steve, p. 50  
Arizona Board of Cosmetology, p. 27  
Arizona Democratic Party, p. 80  
*Arizona Republic*, p. 54  
Arizona Republican Party, p. 80  
Arizona Structural Pest Control Comm., p. 19  
Arrington, Arabell, p. 17  
Arrowhead Regional Medical Center, p. 64  
Arroyo Southwestern Toad, p. 59  
Assn. of American Physicians and Surgeons, p. 80  
Associated Press, p. 67, 84  
Aultman, Rosemary G., p. 17  
Avondale Estates, p. 15

### B

Babbitt, Bruce, p. 53  
Backbone Mountain, p. 51  
Badie, Tonnie, p. 97  
Baker County, OR, p. 46  
Bald Eagle, p. 51, 53, 56  
*Ballen v. City of Redmond*, p. 79  
Ballen, Dennis, p. 77  
Barry M. Goldwater Air Force Range, p. 61  
Bass Pro Shop, p. 38  
Baton Rouge, LA, p. 20  
Baum, Jim, p. 100  
Bay Area Rapid Transit, p. 62  
Bayard Rustin High School, p. 66  
Bayer, Amy, pp. 14-15

Bear Lodge Meadow Jumping Mouse, p. 44  
Beaufort, SC, p. 101  
Begetis, Eleni, p. 33  
Belmont Public School District, p. 29  
Beluga Whale, p. 86  
Benicia, CA, p. 62  
Bennet, Deirdre H., p.64  
Berliner, Dana, p. 32, 36  
Big Soo Terminal, p. 42  
Bigfoot, p. 100  
Blair 71L Ranch, p. 49  
Blair, Howard, p. 49  
Blair, Rob, p. 49  
Blankenship, Kim and Herman, pp. 32-33  
Blanton, Anne Jordan, p. 26  
Blazing Bagels, p. 77  
Blowouts Salon and Hairstons, p. 27  
Bog Turtle, p. 66  
Bolles, David and Monica DeRaspe, p. 78  
Bolton, Debra, p. 92  
Border Patrol, p. 47, 65  
Borough of Manhattan Community College, p. 30  
Boulet, Jim, Jr., p. 83  
Brady, Anthony, Jr., p. 12  
Breakers Bar and Billiards, p. 9  
Brock, Terry, p. 67  
Broderick, Greg, p. 45  
Brooklyn, NY, p. 10  
Brown, Michael, p. 40  
Brozovic, Lora, p. 48  
Bryant, Kim, George, Nick and Nyssa, pp. 28-29  
Buffalo, NY, p. 9  
Bull Trout, p. 105  
Bullock, Scott, p. 34  
Bureau of Land Management, p. 49  
Burke, Patrick, p. 92  
Burke, Tim, p. 36  
Burton, Matthew, p. 36  
Burton, Sanae Ichikawa, p. 36  
Bush, George W., p. 79, 87  
Bush, Jeb, p. 40  
Buxton, NC, p. 48

### C

Cabeza Prieta National Wildlife Refuge and  
Wilderness Area, p. 47  
Cain, Madeline, p. 39  
California Coastal Comm., pp. 64-65, pp. 93-94  
California Dept. of Fish and Game, p. 63, 69  
California Dept. of Forestry, p. 105  
California Dept. of Real Estate, p. 21  
California Dept. of Transportation, p. 62  
California Desert Protection Act, p. 49  
California Transportation Ventures, pp. 65-66  
Calvert County, MD, p. 29  
Campbell, Bradley, p. 72  
Canada Lynx, p. 46  
Canterbury, Clark, p. 85  
Canton, OH, p. 48  
Cape Hatteras Access Preservation Alliance, p. 48

Cape Hatteras National Seashore, p. 48  
 Capital Tax Collection Bureau, p. 25  
 Capitol Hill Restoration Society, p. 16  
 Capitol Hill, Washington, D.C., p. 16  
 Carlisle, PA, p. 25  
 Carlson, Randall, p. 15  
 Carlton, Jim, p. 52  
 Carmel, CA, p. 11  
 Carquinez Straight, p. 62  
 Carroll, Phil, p. 45  
 CBS News, p. 100  
 Cedar Fire, p. 105  
 Center for Biological Diversity, p. 49, 54  
 Center for Study of Responsive Law, p. 33  
 CenterPoint Properties, p. 39  
 Chabbott, Hy, p. 10  
 Chattanooga, TN, p. 22  
 Chewuch, pp. 105-106  
 China, People's Republic of, p. 86  
 Chinook Salmon, p. 105  
 Chugwater, WY, p. 44  
 Chula Vista, CA, p. 65  
 Cincinnati, OH, p. 23  
 Circuit Court of Fauquier County, p. 17  
 Clark County, NV, p. 23  
 Clarke, Hope, p. 88  
 Clean Elections Act, pp. 79-80  
 Clean Indoor Air Act, p. 9  
 Clean Water Act, p. 73, 85, pp. 102-103  
 Cleveland Indians, p. 39  
 Clinton, MS, p. 17  
 Clinton, William J., p. 53, 84  
 Cluff, George, p. 72  
 Coastal California Gnatcatcher, pp. 64-65  
 Coastal Sage Scrub, p. 65  
 Cochran, Joseph and Brenda, p. 81  
 Cohen, Ben, p. 85  
 Cole, Steve, p. 75  
 Coloradans for Water Conservation and  
 Development, p. 44  
 Colorado Springs, CO, p. 44  
 Colton, CA, p. 63-64  
 Committee for a Constructive Tomorrow, p. 56  
 Comprehensive Environmental Response,  
 Compensation and Liability Act, p. 85  
 Connecticut Supreme Court, p. 34  
 Connecticut Trust for Historic Preservation, p. 34  
*Constitutional Chaos: What Happens When the  
 Government Breaks Its Own Laws*, p. 7  
 Convention on International Trade in  
 Endangered Species, p. 55  
 Cooper, Florence-Marie, p. 87  
 Corcoran Jennison/Berkeley Partners Inc., p. 33  
 Cornelia, Reginald, p. 95  
 Corona del Mar State Beach, p. 93  
 Corona del Mar, CA, p. 93  
 Cottage of Sweets, p. 11  
 Coughenour, John, p. 50  
 Court of Appeals for Hamilton County, p. 36  
 Cowan, Clayton, p. 68  
 Cozumel, Mexico, p. 88  
 Craigmiles, Nathaniel, pp. 22-23  
 Craven, Tom L., p. 106

Creole, p. 83  
 Curley's Diner, p. 33  
 Curve and Williams Fire, p. 106  
 Cushman, Chuck, p. 89  
 Cuyahoga County Common Pleas Court, p. 39

## D

Dachshund, p. 40  
 Daimler-Chrysler Jeep Co., p. 32  
 Dairy Act, p. 81  
 Dairy Promotion Program, p. 81  
 Daniels, Ellreese, p. 105  
 Dawley Creek Ranch, p. 70  
 Day, Susan, p. 25  
 Dedman, Dorothy S., p. 93  
 Defenders of Property Rights, p. 53  
 Defenders of Wildlife, p. 61  
 Delhi Sands Flower-Loving Fly, pp. 63-64  
 Delta Force, p. 60  
 Delta Smelt, p. 62  
 DeLuca, Will, p. 36  
 Denver Museum of Nature and Science, p. 44  
 Dept. of Motor Vehicles, p. 92  
 DeRaspe, John, p. 78  
 Desert Tortoise, p. 49  
 Detroit Lions, p. 37  
*Detroit News*, p. 37  
 Detroit Red Wings, p. 37  
 Detroit Tigers, p. 37  
 Detroit, MI, p. 37  
 Detroit/Wayne County Stadium Authority, p. 37  
 Diablo Range, p. 69  
 Dickson, Eric, p. 103  
 District of Columbia City Council, p. 13, 16  
 District of Columbia Fraternal Order of Police, p. 91  
 Dodgers, Charles, p. 102  
 Dollywood, p. 56  
 Durost, Richard, p. 31  
 Duval, Stanwood, Jr., p. 26  
 Dykstra, Gretchen, p. 24

## E

Eagle River Flats, pp. 85-86  
 Eakes, Bob, p. 48  
 Earthjustice Legal Defense Fund, p. 52  
 East Hampton Building Dept., 95  
 East Hampton Business Alliance, p. 95  
 East Hampton, NY, p. 95  
 Eastern Massasauga, pp. 67-68  
 Eastern Pipstrelle, p. 51  
 Eden, Joyce, p. 89  
 Edgar, R. Allan, p. 23  
 Egypt, p. 82  
 Elko County, NV, p. 70  
 Empire Center, pp. 63-64  
 Endangered Species Act, p. 43, 44, 45, 47, 48, 49,  
 50, 51, 52, 59, 60, 61, 63, 65, 68, 100  
 England, Morrison, p. 21  
 English First, p. 83  
 Erie County, NY, p. 10  
 Etscovitz, Susan, p. 28  
 Excelsior College, p. 30  
 Executive Order 13166, p. 84

# Alphabetical Index

## F

Fair, Dennis, p. 92  
Fairfax County, VA, p. 97  
Farmer, Essence, pp. 26-27  
Fashion Institute of Technology, p. 30  
Fayetteville, NC, p. 60  
Federal Bureau of Investigation, p. 27  
Federal Tort Claims Act, p. 73  
FedEx Field Coordinating Group, p. 98  
FedEx Field, p. 98  
Feeley, Elizabeth, p. 91  
Feinstein, Dianne, p. 49  
Fennell, Jerry, p. 71  
Finkbeiner, Carty, p. 32  
Finkelstein, Howard, p. 83  
Fitzpatrick, Karen L., p. 106  
Five (entertainment club), p. 38  
Florida Constitution, p. 83  
Florida Fish and Wildlife Conservation Commission, p. 74, 75  
Florida Keys, p. 68  
Flynn, Patrick, Jr. and Kristine, p. 72  
Fontana, CA, p. 63  
Forest Guardians, pp. 52-53  
Forest Land and Resource Management Plan, p. 70  
ForSaleByOwner.com, p. 21  
Fort Bragg Private Lands Initiative, p. 60  
Fort Bragg, p. 60  
Fort Richardson, p. 85  
Fort Trumbull, pp. 34-35  
FOX News Channel, p. 7  
Fox, Scott, p. 68  
FPL Energy, LLC, p. 51  
Framingham Juvenile Court, p. 28  
Framingham, MA, p. 28  
Friends of Yosemite Valley, p. 89  
Futon Factory, pp. 78-79

## G

Gamble, Carl and Joy, pp. 35-36  
Gannon, Michael R., p. 51  
Gardiner, Bill, p. 95  
Gardner, Cliff and Bertha, p. 70  
Gaudiani, Claire, p. 34  
George Washington High School, p. 30  
Gervase, Lisa, p. 19  
Giglio, Damon, p. 21  
Gila National Forest, p. 54  
Gillies Coffee Co., p. 10  
Goldberg, Bruce, p. 33  
Goliath Grouper, p. 68  
Goodwin, David, p. 48  
Gorton, Nathaniel, p. 73  
Goss, Jimmy and Frances, pp. 52-53  
Goulart, Lydia, p. 29  
Grand, Fred, p. 57  
Granz, Daniel, p. 73  
Graves, Sam, p. 11  
Green Berets, p. 60  
Green, Tomie, p. 17  
Grimm, Jeff, p. 18  
Grimm's Fuel Co., p. 18

Guides Assn. of New York City, p. 24

## H

Hadden, Donnelly, p. 68  
Haddock, Donald, p. 14  
Haider Construction, pp. 21-22  
Haider, Ron, pp. 21-22  
Hamilton County Court of Common Pleas, p. 36  
Hampton Industrial Development Authority, p. 38  
Hampton Roads Associates, LLC, p. 38  
Hampton, VA, p. 38  
Hanniford, Laurie, p. 25  
Harpy Eagle, p. 43  
Hartford, The, p. 11  
Harvard University, p. 73  
Hassell, Leroy R., p. 38  
Hathaway, Franna, p. 84  
Hatteras Island, NC, p. 48  
Hays, John, p. 46  
Heartland Developers, LLC, p. 39  
Herita, Rosita, p. 43  
Herring, Barbara, p. 32  
Higgins, Wesley, p. 55  
Hinds County Circuit Court, p. 17  
Hinkle, Monty, p. 74  
Hoak, Patrick H., p. 10  
Hoary Bat, p. 51  
Holaday, Bobbie, p. 54  
Holsinger, Kent, p. 44  
Home School Legal Defense Assn., p. 29, 31  
Hoover, Robin, p. 47  
Horney, Joe, p. 36  
Horton, Shirley, p. 65  
House of Os, p. 76  
Howells, Steve, p. 12  
Hueter, Craig, p. 69  
Huizenga, Wayne, p. 40  
Humane Borders, p. 47  
Humboldt-Toiyabe National Forest, p. 70  
Humphrey, Richard, p. 54  
Hurricane Wilma, p. 40  
Hyde Amendment, p. 73

## I

Ilitch, Mike, p. 37  
Illegal Immigration and Immigrant Responsibility Act of 1996, p. 64  
India, p. 103  
Indiana Bat, p. 51  
Indiana University, p. 92  
Inland Empire, p. 63  
Innkeepers Assn. of Western New York, p. 10  
Institute for Justice, p. 21, pp. 34-35, 39, pp. 78-79, 80, 81  
Iran, Islamic Republic of, p. 86  
Iraq, p. 61

## J

Jasper Energy, LLC, p. 51  
Jay, Stewart, p. 78  
Jeffrey R. Anderson Real Estate, Inc., p. 39  
Jelusich, Jerry, p. 84

Jicarilla Mountains of New Mexico, p. 71  
 Jicarilla, NM, p. 71  
 Jim Galloway, pp. 67-68  
*Johanns v. Livestock Marketing Association*, p. 81  
 Johnson, Jessica L., p. 106  
 Jones, Bill, p. 23

## K

Kansas City, MO, p. 42  
 Kawkawlin River, p. 102  
 Keane, John M., p. 60  
 Keller, Tim, p. 80  
 Kelo, Susette, pp. 34-35  
 Kendall Trucking, pp. 21-22  
 Kentucky Dept. of Fish and Wildlife Resources,  
 p. 56, 67  
 Kessler, Gladys, p. 42  
 Ketten, Darlene, p. 86  
 Kim's Auto and Truck Service, p. 32  
 King County Council, p. 100  
 King County Sensitive Areas Ordinance, p. 100  
 King County Superior Court, p. 22  
 King County, WA, p. 100  
 King, Holman, p. 69  
 Kinkella, Anne, p. 99  
 Klaunig, James E., p. 92  
 Klingon, p. 84  
 Knepper, Kevin, p. 42  
 Knott, James M., Sr., p. 73  
 Kothe, Sarah and Gary, Oswald, p. 76  
 Kovach, James Michael, pp. 55-56  
 Krese, Linda, p. 78  
 Kruger, Reiner, p. 106

## L

Lakewood City Council, p. 39  
 Lakewood, City of, p. 39  
 Lamberth, Royce C., p. 49  
 Landing Strip, The, p. 12  
 Laporte, Elizabeth, p. 86  
 Laroche, John, p. 55  
 Las Vegas, NV, p. 23  
 Law, Edward, p. 12  
 Lawson, John, p. 15  
 Least Bell's Vireo, pp. 64-65  
 Least Tern, p. 42  
 LeSatz, Jim and Amy, p. 44  
 Library of Congress, The, p. 96  
 Lincoln County, NM, p. 71  
 Lincoln National Forest, pp. 52-53, p. 71  
 Linn, Diane, p. 84  
 Lipsman, Angela, p. 30  
 Lipsman, Daniel, p. 30  
 Lodge, Terry, p. 32  
 Lopez-Ramos, Jose, p. 47  
 Louisiana Horticulture Comm., The, p. 20  
 Lozman, Fane, pp. 40-41  
 Lucas County Common Pleas Court, p. 32  
 Luke Air Force Base, p. 61  
 Lynnwood, WA, pp. 78-79

## M

Magnuson, Paul, p. 42  
 Mahoney, Richard, p. 80  
 Maine Principals' Assn., p. 31  
 Malone, Bernard, p. 30  
 Manatee Sanctuary Act, p. 75  
 Mann, Zach, p. 88  
 Manville, Albert, p. 51  
 Marble Top Missionary Baptist Church, p. 22  
 Maricopa County Superior Court, p. 82  
 Maricopa County, AZ, p. 27  
 Marie Selby Botanical Gardens, p. 55  
 Marine Mammal Protection Act, pp. 86-87  
 Marx, Jane, p. 24  
 Maryland Dept. of Public Works and  
 Transportation, p. 98  
 Maryland-National Capital Park  
 and Planning Commission, p. 98  
 Marzulla, Nancie, p. 53  
 Massachusetts Dept. of Social Services, The, p. 28  
 Massachusetts Governor's Award, p. 73  
 Maurer, William, p. 78  
 Mayfield, Max, p. 68  
 Mayking, KY, p. 67  
 McCain, John, p. 61  
 McCormick, Michael, p. 74  
 McFadden's, p. 38  
 McKibben, Howard, p. 70  
 McNamee, George and Sharlee, pp. 93-94  
*McQueen v. South Carolina Department of  
 Health and Environmental Control*, p. 101  
 McQueen, Sam, p. 101  
 Meadows, Sandy, pp. 19-20  
 Mesa, AZ, p. 82  
 Metcalf, James, p. 47  
 Metro Transit Police Department, p. 99  
 Metropolitan Transportation Cmte., p. 62  
 Metropolitan Washington Council  
 of Governments, p. 97  
 Mexican Spotted Owl, p. 52  
 Mexican Wolf, p. 54  
 Mexico, p. 47  
 Meyersdale, PA, p. 51  
 Miami Dolphins, p. 40  
 Miami, FL, p. 55, 83  
 Miami-Dade County, FL, p. 83  
 Mica C&H, p. 70  
 Mica Creek, p. 70  
 Michaud, Michelle, p. 45  
 Michigan Dept. of Natural Resources, p. 102  
 Michigan Endangered Species Act, p. 68  
 Michigan Supreme Court, p. 37  
 Midland, MI, p. 102  
 Migratory Bird Treaty Act, p. 43  
 Military Toxics Project, p. 85  
 Miller, Jeffrey, p. 65  
 Miller, Pam, p. 85  
 Milne, George M., Jr., p. 34  
*Minneapolis Star-Tribune*, p. 26  
 Minneapolis, MN, p. 42  
 Minner, Ruth Ann, p. 9  
 Mississippi Supreme Court, p. 17

# Alphabetical Index

Missouri Dept. of Transportation, p. 76  
Missouri River, p. 42  
Modesto, CA, p. 69  
Mojave National Preserve, p. 49  
Moratorium on the Construction of Certain  
Telecommunications Towers Emergency Act  
of 2001, p. 13  
Morgan, Bob, p. 13  
Morgenweck, Ralph, p. 44  
Mount Vernon, VA, p. 53  
Mountain Falls Gold Preserve, p. 57  
Mountain Lion Foundation, p. 69  
Mountain Lion, p. 57, 69  
Mulford, Desiree, p. 9  
Multnomah County, OR, p. 84  
Multnomah Dept. of Human Services, p. 84  
Myrtle Beach, SC, p. 101

## N

Nader, Ralph, p. 33  
Napolitano, Andrew P., p. 7  
Napolitano, Janet, p. 27, pp. 79-80  
National Defense Authorization Act, p. 60, 87  
National Environmental Policy Act, p. 87, 89  
National Hurricane Center, p. 68  
National Marine Fisheries Service, p. 60, 62, 68, 86  
National Oceanic and Atmospheric  
Administration, p. 50, 68, 87  
National Park Service, p. 48, pp. 88-89  
National Rifle Association, p. 5  
National Zoo, p. 43  
Natural Resources Defense Council, pp. 86-87  
Nature Conservancy, p. 60  
Nevada Transportation Services Authority, p. 23  
New Jersey Appellate Court, p. 90  
New Jersey Constitution, p. 90  
New Jersey Dept. of Environmental Protection  
Division of Fish and Wildlife, p. 72  
New Jersey Supreme Court, p. 90  
New London Development Co., pp. 34-35  
New London, CT, pp. 34-35  
New Mexico Cattle Growers Assn., p. 54  
New Orleans, LA, p. 26  
New York City Council, p. 24  
New York City Dept. of Consumer Affairs, p. 24  
New York City Dept. of Environmental Protection,  
p. 7, 10  
New York State Supreme Court, p. 30  
*New York Times*, p. 5, 7, 64, 90  
New York, NY, p. 24, 30  
Newark, DE, p. 9  
Newcom, John, p. 105  
Nicley, Mike, p. 65  
Niskayuna, NY, pp. 103-104  
Nixon, Jay, p. 42  
North Korea, pp. 86-87  
Norton, Gale, p. 59  
Norwood City Council, p. 36  
Norwood, OH, pp. 35-36  
Nugent, Ted, p. 5

## O

O'Brien, Jacqueline, p. 9

O'Connor, Ashley and Lawrence, pp. 14-15  
O'Connor, Sandra Day, p. 35  
Ohio Sixth District Court of Appeals, p. 32  
Okanogan National Forest, pp. 105-106  
Okrand, Marc, p. 84  
Olsen, Doug, p. 45  
Operation Anaconda, p. 60  
Operation Gatekeeper, pp. 64-65  
Operation Iraqi Freedom, p. 61  
Operation Warrior Sweep, p. 60  
Orange County Superior Court, p. 94  
Oregon Dept. of Fish and Wildlife, p. 46  
Oregon Parks and Recreational Dept., p. 45  
O'Sullivan, John, p. 88  
Ottofarro, Frank and Dana, p. 38  
Outdoor Advertising Assn. of America, p. 76  
Outer Banks Preservation Assn., p. 48  
Outer Banks, NC, pp. 48-49  
Outerbridge, Peter, p. 88

## P

Pacific City Chamber of Commerce, p. 45  
Pacific Legal Foundation, p. 45  
Pageler, Margaret, p. 22  
*Palazzolo v. Rhode Island*, p. 101  
Pallid Sturgeon, p. 42  
*Palm Beach Post*, p. 40  
Palm Springs City Council, p. 57  
Palm Springs, CA, p. 57  
Palmer, Arnold, p. 57  
Papper, Laszlo, p. 33  
Paramount Pictures, p. 84  
Parrella, Susan, p. 28  
Parton, Dolly, p. 56  
*Pasadena Star News*, p. 106  
Pattillo, Greg and Sue, p. 58  
Peacock, Barbara, pp. 19-20  
Pechman, Marsh, p. 77  
Pedicab, p. 23, 27  
Peikoff, Leonard, p. 96  
Pelletier, Douglas and Laura, p. 31  
Penelas, Alex, p. 83  
Peninsular Bighorn Sheep, p. 57  
Pennsylvania Dept. of Environmental  
Protection, p. 66  
Peru, p. 55  
Peters, Shamille, pp. 19-20  
Peterson, Jeanete, p. 22, 78  
Pfizer, Inc., p. 34  
Pickeral Lake, p. 67  
Pigeon Forge, TN, p. 56  
Pike, Stan, p. 15  
Pilgrim, Ira, p. 87  
Pine County Board of Supervisors, p. 47  
Piping Plover, p. 42, 48  
Polozola, Frank, p. 20  
Pope Air Force Base, p. 60  
Portland, ME, p. 31  
Preble's Meadow Jumping Mouse, p. 44  
Preserve America's Wolves, p. 54  
Preserve Golf Co., p. 57  
Prince George's Community College, p. 26

Prince George's County, MD, p. 98  
 Pronghorn, p. 47, 61  
 Proposition 117, p. 57, 69  
 Public Employers for Environmental  
 Responsibility, p. 49

## Q

Quillian, Larry, p. 16

## R

Rabanco, Ltd., pp. 21-22  
 Radanovich, George, p. 89  
 Ramey, Rob Roy II, p. 44  
 Rancho Viejo, LLC, p. 59  
 Rand, Ayn, p. 96  
 Rangarajan, Banumathi, p. 43  
 Rapanos, John, pp. 102-103  
 Ray, Brian, p. 29  
 Raymond, WA, p. 58  
 Reagan, Ronald, p. 7  
 Red Bat, p. 51  
 Red Drum Tackle Shop, p. 48  
 Red-Cockaded Woodpecker, p. 60  
 Redmond, City of, p. 77  
 Reilly, Mike, p. 94  
 Rell, Jodi, p. 35  
 Rescott, Rick, p. 75  
 Resource Conservation and Recovery Act, p. 85  
 Retail Florest Exam, p. 20  
 Rialto, CA, p. 63  
 Riverdale Mills Corp., p. 73  
 Riverside County Flood Control District, p. 57  
 Riverside County Superior Court, p. 57  
 Riverside County, CA, p. 63  
 Rivertown, WY, p. 88  
 Riviera Beach City Council, p. 40  
 Riviera Beach Municipal Marina, p. 40  
 Riviera Beach, City of, pp. 40-41  
 Rookwood Commons, p. 35  
 Rookwood Exchange, pp. 35-36  
 Rosas, Janeen, p. 26  
 Rose, Dennis, p. 106  
 Rose, Lanny, p. 11  
 Roseate Spoonbill, p. 43  
 Royal Pheasant, The, p. 9  
 Rucker, Craig, p. 56  
 Rudowsky, Bret, p. 12

## S

Sacramento Mountains, p. 52  
 Sacramento Splittail, p. 62  
 Sacramento, CA, p. 21  
 Sadler, Lynn, p. 69  
 Saleet, Jim and JoAnn, p. 39  
*Salib v. City of Mesa*, p. 79  
 Salib, Edward and Nouha, p. 82  
 Salisbury, MO, p. 76  
 Salmon, Matt, pp. 79-80  
 Salmon, p. 58  
 San Bernardino County, CA, pp. 63-64  
 San Diego Audubon Society, p. 65

San Diego County Sheriff's Dept., p. 105  
 San Diego County, CA, p. 105  
 San Diego Naval Station, p. 65  
 San Diego, CA, p. 59, 64, pp. 65-66  
 San Francisco Garter Snake, p. 63  
 San Francisco, CA, p. 62, 87  
*San Jose Mercury News*, p. 93  
 San Jose, CA, p. 11  
 San Vicente Reservoir, p. 105  
 San Ysidro Mountain, p. 64  
 Santa Barbara City Council, p. 23, 27  
 Santa Barbara, CA, p. 27  
 Santa Fe, NM, p. 52  
 Sarasota, FL, p. 55  
 Scarlet Macaw, p. 43  
 Schenectady County Supreme Court, p. 104  
 Schenectady, NY, pp. 103-104  
 Schoenholt, Donald, p. 10  
 Schreiber, Alan, p. 50  
 Seacoast Christian School, p. 31  
 Seattle City Council, pp. 21-22  
 Seattle, WA, pp. 21-22  
 Segway, p. 99  
 Serabia, Rob, p. 105  
 Seton Hall Law School, p. 7  
 Shacklett, Stephen, Jr., p. 105  
 Shotgun House, p. 16  
 Sierra Club Legal Defense Fund  
 (See: Earthjustice Legal Defense Fund)  
 Sierra Club, p. 49, 57, 65  
 Silver State Pedicabs, p. 23  
 Simpson, Steve, p. 81  
 Singh, Amritesh and Sunita, pp. 103-104  
 Sioux City, IA, p. 42  
 Slaughter, Chiquita, p. 97  
 Small, Lawrence M., p. 43  
 Smithsonian Institution, p. 43  
*Smithsonian Magazine*, p. 43  
 Smuggler's Gulch, p. 65  
 Snadgross, Roy, p. 105  
 Snohomish County Superior Court, p. 78  
 Snohomish County, WA, p. 79  
 Snyder, Dan, p. 98  
*Solid Waste Agency of Northern Cook County v.  
 United States Army Corps of Engineers*, p. 102  
 Somerville, Scott, p. 29  
 Sonoran Desert, p. 47, 61  
 Sonoran Pronghorn, p. 47, 61  
 South America, p. 43  
 South Bay Expressway, p. 66  
 South Carolina Office of Ocean and Coastal  
 Resource Management, p. 101  
 Southern Research Group, p. 17  
 Southwestern Willow Flycatcher,  
 pp. 64-65  
 Souza, Russell, p. 69  
 St. Paul Office of Licenses, Inspections and  
 Environmental Protection, p. 25  
 St. Paul, MN, p. 25  
 Stacey, Sherman, p. 93  
 Stacy, Kaye, p. 76  
 Stamford Urban Redevelopment Comm., p. 33  
 Stamford, CT, p. 33



# Alphabetical Index

Stanczyk, Richard, p. 68  
Stanislaus County, CA, p. 69  
*Star Trek*, p. 84  
*State of New Jersey v. One 1990 Ford Thunderbird*, p. 90  
State Route 125 (See: South Bay Expressway)  
Steelhead, p. 105  
Steinhardt, Fred, p. 37  
Stevens, John Paul, p. 33  
Striped Bass, p. 62  
Superfund, p. 85  
Superior Court of Cumberland County, p. 90  
Superior Court of Maricopa County, p. 27  
Superior Court of the District of Columbia, p. 13  
Supreme Court of Ohio, p. 33, pp. 35-36  
Supreme Court of South Carolina, p. 101  
Supreme Court of Virginia, p. 38  
Surf Ocean Beach Comm., p. 45  
Sutula, Kathleen Ann, p. 39  
Szymkowicz, John Paul, p. 98

## T

Tachevah Canyon, p. 57  
Tacl, Joseph, p. 11  
Taliban, p. 60  
Target Corp., p. 33  
Task Force 1-501, p. 85  
Taylor, John, p. 38, 53  
Ted Nugent Kamp for Kids, p. 5  
Tenleytown, Washington, D.C., p. 13  
Tennessee Board of Funeral Directors, pp. 22-23  
*The Fountainhead*, p. 96  
The National Center for Public Policy Research, p. 53  
Thirty Mile Fire, p. 105  
Thomas, Carol, p. 90  
Thomas, Elton, p. 106  
Tiller, Donald, p. 47  
Tioga County, PA, p. 81  
Toledo, OH, p. 32  
Trask, Gloria Conner, p. 57  
Travers, Kyle, p. 29  
Tualatin, OR, p. 18  
Tucson, AZ, p. 47  
Turner, Helen, p. 93  
*Tuscon Citizen*, p. 54

## U

U.S. Air Force, p. 47, 61  
U.S. Army Corps of Engineers, p. 42, 59, pp. 103-104  
U.S. Army Environmental Center, p. 60  
U.S. Army Woodbridge Research Facility, p. 53  
U.S. Army, p. 60, pp. 85-86  
U.S. Bureau of Customs and Border Protection, pp. 64-65  
U.S. Constitution, p. 5, 7, 53, 78, 101  
    Fifth Amendment, p. 46, 53, 101  
    First Amendment, p. 21, 29, 80  
    Fourteenth Amendment, p. 23, 29  
    Fourth Amendment, p. 73  
U.S. Court of Appeals for the D.C. Circuit, p. 13, 59  
U.S. Court of Appeals for the Eleventh Circuit, p. 75

U.S. Court of Appeals for the First Circuit, p. 73  
U.S. Court of Appeals for the Fourth Circuit, p. 29  
U.S. Court of Appeals for the Ninth Circuit, p. 50, 77, 89  
U.S. Court of Appeals for the Sixth Circuit, p. 23, 103  
U.S. Court of Appeals for the Third Circuit, p. 81  
U.S. Customs and Border Protection, p. 88  
U.S. Dept. of Agriculture, p. 50, 81  
U.S. Dept. of Commerce, p. 87  
U.S. Dept. of Defense, p. 85  
U.S. Dept. of Homeland Security, p. 64, 88  
U.S. Dept. of Housing and Urban Development, p. 32  
U.S. Dept. of Justice, p. 96  
U.S. Dept. of the Interior, p. 47, 54, 61  
U.S. Dept. of Transportation, p. 91, 99  
U.S. District Court for Northern California, p. 11  
U.S. District Court for the Central District of California, p. 87  
U.S. District Court for the District of Alaska, p. 85  
U.S. District Court for the District of Arizona, p. 47, 80  
U.S. District Court for the District of Columbia, p. 13, 42, 48, 59, 61  
U.S. District Court for the District of Maine, p. 31  
U.S. District Court for the District of Maryland, p. 29  
U.S. District Court for the District of Massachusetts, p. 73  
U.S. District Court for the District of Nevada, p. 70  
U.S. District Court for the Eastern District of California, p. 21, 45, 62  
U.S. District Court for the Eastern District of Louisiana, p. 26  
U.S. District Court for the Eastern District of Michigan, p. 102  
U.S. District Court for the Eastern District of Tennessee, p. 23  
U.S. District Court for the Middle District of Florida, p. 75  
U.S. District Court for the Middle District of Louisiana, p. 20  
U.S. District Court for the Middle District of Pennsylvania, p. 81  
U.S. District Court for the Northern District of California, p. 86  
U.S. District Court for the Southern District of California, p. 65  
U.S. District Court for the Western District of Washington, p. 50, 77  
U.S. Environmental Protection Agency, p. 50, 73, 85, pp. 102-103  
U.S. Fish and Wildlife Service, p. 43, 44, 45, 47, pp. 48-49, 51, 53, 54, 55, 59, 60, 61, 63, 75  
U.S. Forest Service, p. 46, 70, 71, 106  
U.S. House Committee on Natural Resources, p. 89  
    Subcommittee on National Parks, p. 89  
U.S. House Cmte. on Small Business, p. 76

U.S. House Rural Enterprise, Agriculture  
and Technology Subcommittee, p. 46  
U.S. Immigration and Customs Enforcement,  
p. 88  
U.S. Navy, pp. 86-87  
U.S. Senate Cmte. on Armed Services, p. 60, 86  
U.S. Supreme Court, p. 13, 29, 33, 35, 36, 73, 80,  
81, 84, 101, pp. 102-103  
Uniform Code of Military Justice, p. 60  
University of Michigan, p. 68  
University of Washington, p. 78

## V

Ventenberg, Joe, pp. 21-22  
Viking Inlet Harbor Properties, pp. 40-41  
Virginia Institute for Public Policy, p. 38

## W

Wade, Liz, p. 41  
*Wall Street Journal*, p. 52  
Waltham Public Schools, p. 28  
Warrenton Architectural Review Board, p. 17  
Warrenton Baptist Church, p. 17  
Warrenton Town Council, p. 17  
Warrenton, VA, p. 17  
Washington Asparagus Comm., p. 50  
*Washington City Paper*, p. 98  
Washington Constitution, p. 22, 78  
Washington County, OR, p. 18  
Washington Farm Bureau, p. 50  
Washington Forest and Fish Law, p. 58  
Washington Heights, NY, p. 30  
Washington Metropolitan Area Transit Authority,  
p. 98, 99  
Washington Redskins, p. 98  
Washington State Court of Appeals Division I,  
p. 22  
*Washington Times*, p. 64  
Washington Toxics Coalition, p. 50  
Washtenaw County, MI, p. 68  
Waste Management of Washington, pp. 21-22  
Waste Management, Inc., p. 21  
Watson, Jay, p. 89  
Weaver, Devin A., p. 106  
Weed, NM, p. 52  
Welch, Mary, p. 17  
Weldon, Dave, p. 105  
Wenatchee National Forest, p. 106  
West Chester, PA, p. 66  
West Indian Manatee, p. 75  
West Milford Municipal Court, p. 72  
West Milford Township Police, p. 72  
West Milford, NJ, p. 72  
West Palm Beach, FL, p. 12  
West Valley, AZ, p. 26  
Western Snowy Plover, pp. 45-46  
Wexler, Josh, p. 26  
WFI Stadium, Inc., p. 98  
Whiskey Basin, p. 49  
Wildcat Canyon, p. 105  
Wilderness Society, p. 89

Wildlife Damage Group, p. 54  
Wildside Adult Sports Cabaret, p. 12  
Wilensky, Zita, p. 83  
Williams, Anthony, p. 13, 91  
Winchell's Donut, p. 82  
*Windpower Monthly*, p. 51  
Winthrop, WA, p. 105  
Winuk, Gary, p. 65  
Wolfe, Sherry, p. 95  
Woods Hole Oceanographic Institute, p. 86  
WSVN-TV, p. 83

## Y

Yellowstone National Park, p. 88  
Yosemite Area Regional Transportation System, p. 88  
Yosemite National Park, pp. 88-89  
Yosemite Valley Plan, pp. 88-89

## Z

Zall, Barnaby, p. 84  
Zatkoff, Lawrence P., pp. 102-103  
Ziegler, Mikaela, pp. 25-26  
Zilly, Thomas S., p. 77  
Zweben, Gene, p. 11

*"Wherever unaccountable, unelected bureaucrats enforce an increasing number of unconstitutional rules and regulations, the human cost is high. Shattered Dreams should alarm every citizen about the real and potential abuse by their own government."*

**Reagan Administration Attorney General Edwin Meese, III**  
Ronald Reagan Distinguished Fellow, The Heritage Foundation

*"Most Americans are unaware of the massive attacks on our property rights and other personal liberties, and for a good reason; they are being confiscated bit by bit in a relatively unnoticeable way. The fifth edition of Shattered Dreams gives us case by case documentation of this unpleasant process."*

**Walter E. Williams**

John M. Olin Distinguished Professor of Economics, George Mason University  
Nationally syndicated columnist and substitute host for the *Rush Limbaugh Show*

*"The National Center for Public Policy Research has performed a great service by cataloging the ways in which the growth of the regulatory state threatens our natural rights to 'life, liberty, and the pursuit of happiness.' Anyone who wishes to understand how paternalistic government is crushing liberty needs to read this book!"*

**Congressman Ron Paul (R-TX)**

*"It is inconceivable that the founders of our great republic would approve of modern government's meddling into ordinary Americans' daily lives. Shattered Dreams is a stunning, retail-level case study of the inequitable application of government power. Indeed, this book shows why far too many of today's wrongful federal and state regulations not only undermine constitutionally protected liberties in an abstract sense but also ruin the lives of countless numbers of Americans."*

**Mark Levin**

Nationally syndicated radio talk show host and president of Landmark Legal Foundation

*"Big government is wasteful, inefficient, sinister – and funny. Half of the tales of regulatory abuse in "Shattered Dreams" are hilariously absurd – like the little girl whose lemonade stand was deemed illegal and shut down because she had not applied for a \$60 license. But funny or sinister –and other stories show regulatory abuse destroying lives and fortunes – this book reveals how Big Regulation increasingly throttles our freedom. Ignore it – and the laugh will be on you."*

**John O'Sullivan**

Author and Senior Fellow, Hudson Institute

*"This collection of sometimes-funny, often-shocking horror stories should leave readers with one clear lesson: When Big Government comes knocking, don't be afraid. Be very afraid."*

**Deroy Murdock**

Nationally syndicated columnist and Senior Fellow, Atlas Economic Research Foundation

**THE NATIONAL CENTER**



**FOR PUBLIC POLICY RESEARCH**

501 Capitol Court, N.E., Suite 200, Washington, D.C. 20002  
202-543-4110 Fax: 202-543-5975  
[www.nationalcenter.org](http://www.nationalcenter.org)  
email: [info@nationalcenter.org](mailto:info@nationalcenter.org)