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PPL Montana, LLC v. State of Montana
Brief For The Montana Farm Bureau Federation And the CATO Institute As Amici Curiae In Support of
Petitioner

Contributor: [Cato Institute](#) 

SUMMARY: The Montana Supreme Court overturned more than 100 years of state property law concerning navigable waters by effectively converting the title in hundreds of miles of riverbeds to the State. The majority of that court ruled that the entirety of the Missouri, Clark Fork, and Madison rivers were navigable at the time of Montana's statehood, producing a broad holding that eradicates property rights to the rivers and riverbanks that Montanans had enjoyed for over a century. Before this case, the hydroelectric energy company PPL Montana and thousands of other private parties exercised their property rights over these non-navigable stretches that the state never claimed. Cato joined a brief filed by the Montana Farm Bureau Federation supporting the PPL Montana's request that the U.S. Supreme Court review the Montana high court's ruling for possible Takings Clause violations under the Fifth Amendment. We argue two main points. First, that the Court should adhere to its standard for navigability rights set out in *Utah v. U.S.* in 1933. Unlike the approach taken by the Montana Supreme Court's majority — that entire rivers were navigable simply because certain reaches of the river were navigable — the U.S. Supreme Court in *Utah* used an approach of meticulously analyzing the rivers at issue section-by-section. Second, we argue that this arbitrary ruling against rights long protected by Montana law amounts to a "judicial taking," as explained last term *Stop the Beach Renourishment v. Florida Dept. of Environmental Protection* (in which Cato also filed a brief). There, a plurality of the Court held that there is no "textual justification" for limiting takings claims deriving from executive or legislative action, thereby extending it to a judicial action of the same nature.... Here, the Montana court did exactly that, violating due process rights...

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DOCUMENT INFO

Doc Type:
 Appellate Brief

Filed: 9/15/2010- **Hot Document!**

Subject Matter:
 Constitutional Law
 Real Estate - Residential
 Zoning, Planning & Land Use

Legal Document Name:

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Case Number: 10-218

Jurisdiction: Federal, U.S. Supreme Court

Legal System: United States

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