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Farm Bureau Joins Supreme Court Case on Property Rights

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Written by Press Room

The Montana Farm Bureau Federation and the Cato Institute have jointly filed an amicus curiae brief asking the U.S. Supreme Court to grant a writ of certiorari to review the Montana Supreme Court's decision in PPL Montana, LLC v. State of Montana. In PPL Montana, the Montana Supreme Court held that the entirety of the Madison, Clark Fork, and Missouri rivers were "navigable" at the time of Montana's statehood, despite a mountain of evidence to the contrary. This decision unsettled decades of settled law and upended long-established property rights belonging to thousands of Montana farmers and ranchers.

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"Many of our members are landowners whose interests are particularly intertwined with property rights, land use, and water issues germane to this case," noted John Youngberg, MFBF's vice president of Governmental Affairs. "We want to protect our members' rights to utilize the beds of navigable streams, clarify which streams are truly navigable, and give property owners an opportunity to challenge navigability determinations. Property owners must have their day in court."

Youngberg explains that the real concern for the Montana Farm Bureau Federation is the long-held property rights imperiled by the Montana Supreme Court's decision. "What the Montana Supreme Court basically did is deem rivers as generally navigable based on evidence of present-day recreational use, which was very liberally construed in the State's favor."

"The Montana Supreme Court effectively robbed all property owners on the affected rivers based on an arbitrary and unfair analysis that was contrary to the law. This is a judicial taking. It denies property holders the due process that is the hallmark of disputes over property rights," noted Youngberg. "Montanans have always paid taxes on land under streams and that land is included in their land titles. Because of the broad reach of the Montana Supreme Court's ruling, Montana's farmers and ranchers never had a fair opportunity to defend their rights."

Thor Hearne, Robert O'Brien, and Steven Haskins of the law firm Arent Fox LLP represented the Montana Farm Bureau Federation in preparing the brief. "The ruling of the Montana Supreme Court resulted in the taking of property rights that have been held by Montana farmers and ranchers for generations," Haskins notes. "Those settled property rights cannot be redefined by judicial fiat, particularly when the standard used to determine those rights deviates from United States Supreme Court precedent in such spectacular fashion. We hope the United States Supreme Court will grant review of this important case and, ultimately, restore to Montana farmers and ranchers those property rights that rightfully belong to them."

The Cato Institute joined in the case because of its long-held support for property rights and the belief that courts are just as capable of—and should be held just as accountable for—takings that violate the U.S. Constitution. "What the Montana Supreme Court did here, if allowed to stand, could give other states ideas about how to gain tax revenues," said Cato's senior fellow in constitutional studies Ilya Shapiro, "ideas that threaten to erode important constitutional protections."



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