

PLF Liberty Blog

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NRDC attempts to silence dissent in delta smelt litigation

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As the delta smelt litigation [proceeds in Fresno](#), Pacific Legal Foundation continues its fight to have the U.S. Supreme Court review [the constitutionality of delta smelt water cutbacks](#). This week, numerous groups and organizations filed amicus curiae briefs in support of PLF's petition for a writ of certiorari. These groups, which include [the Center for Constitutional Jurisprudence](#) and the [Cato Institute](#), [the National Federation of Independent Business](#), [Mountain States Legal Foundation](#), and [a broad coalition of western and California water organizations](#), agree that the Supreme Court should review the Ninth Circuit's [flawed delta smelt Commerce Clause decision](#) from this past March.

It should be noted, however, that not everyone is willing to allow these groups to voice their opinions in this important matter. The Natural Resources Defense Council (which is an intervenor in the delta smelt litigation) has taken the unusual step of refusing to consent to the groups' filing of amicus curiae briefs in support of PLF, even though the rule to seek consent is [seen by many as pro forma](#).

Practically speaking, this did not pose much of a burden for PLF's supporters. All the amici curiae needed to do as a result of NRDC's denial of consent was file a short motion demonstrating why the Supreme Court should accept their briefs.

But NRDC's needless refusal to grant consent does speak volumes of how it treats differing viewpoints on environmental issues. And if NRDC is so convinced that it is in the right when it comes to the delta smelt, why should it fear simply allowing others to offer divergent perspectives?

Indeed, [one commentator has suggested](#) that "opposition to the filing of an amicus brief brings Shakespeare to the minds of most judges: ['The lady doth protest too much.'](#)" In this case, NRDC's treatment of amici curiae in the delta smelt Supreme Court litigation is at best petty, and at worst discourteous.

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