

# THE LITIGATOR

MOUNTAIN STATES LEGAL FOUNDATION

VOL. 2, 2020



## **‘Patch of Heaven’ Floods Again**

**PASTOR VICTOR AND ANNETTE  
FUENTES SUFFER MORE HARM FROM  
GOVERNMENT’S ILLEGAL ACTIONS**



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# Case Update: ‘Patch of Heaven’ Camp Floods Again

## Nevada Church Still Seeking Justice

Zhonette Brown

Days before Easter, the Patch of Heaven property in Amargosa Valley, Nevada flooded again due to the federal government’s illegally diverted stream. Each new flood is a painful reminder of what the government took from the small church, and further motivation to keep fighting for justice.

The church retreat operated by Ministerio Roca Solida and Pastor Victor Fuentes, has flooded repeatedly since the Fish and Wildlife Service stole their water and diverted it around their property a decade ago.

Victor’s wife Annette Fuentes still chokes up when she thinks about Aug. 5, 2010. That date remains fixed in her memory as the “day they took the water.” For Annette, Victor, and the entire Ministerio Roca Solida congregation, it was a “horrible day.”

Their Patch of Heaven church camp had been an oasis in the desert and a spiritual refuge away from the bright lights and darker influences of Las Vegas. The camp was a place of hope for the troubled youth who traveled there.

Until Aug. 5, 2010.

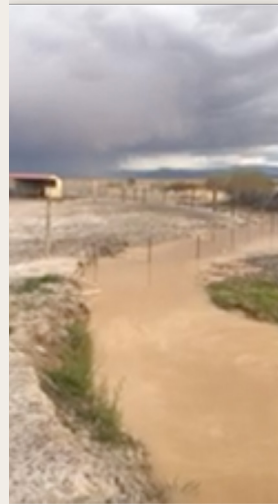
That was the day the Fish and Wildlife Service began a project to take away the stream that had flowed across the Patch of Heaven parcel for decades. Fish and Wildlife officials did not seek essential Nevada state permits for this diversion and ignored hydrological experts’ advice.

They foolishly directed the water to higher ground around the church’s property in their quest to remove it from Patch of Heaven – with devastating consequences.

### The Government Must Pay for this Damage

The church’s property is now parched, except when the rains come... then the new stream swells and overflows its banks, flooding the property as it did last month. (Visit [mslegal.org](http://mslegal.org) to see video of the flood.)

“You hear about floods and things and how dangerous it is. But until you’re standing right in front of it, and to see what we saw – the devastation. Wow,” Annette says.



*Pictured left, an image of the latest flooding of the church’s property – the result of the government illegally redirecting water from its natural stream bed. Pictured right, Victor Fuentes as a young lieutenant before he fled from communist Cuba and gained his freedom.*

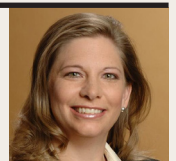
Floods have caused more than \$200,000 worth of damage and made the property nearly useless. Until the stream is rerouted or other flood mitigation is installed, repairs are futile since the risk of flooding is ongoing.

“What happened to us is wrong,” Victor says, “but we don’t have the money to pay attorneys.” Mountain States Legal Foundation continues to fight for the Fuentes’ and Patch of Heaven in state and federal courts, thanks to MSLF’s faithful supporters.

“I have to believe that justice will be done. I have to believe that they’re going to have to finally, finally pay for what they’ve done. Because it’s wrong,” says Annette.

In December 2019, MSLF attorneys argued for the Fuentes’ water rights before the Nevada State Engineer’s (NSE). As we await the NSE ruling, our attorneys continue to prepare for the federal trial. Court closings for COVID-19 postponed the trial, but it will likely be rescheduled for later this year.

**Zhonette Brown** is the General Counsel for Mountain States Legal Foundation.



# Coronavirus Gun Store Shutdown

## New Mexico's Constitutional Crisis Sparks MSLF Lawsuit

Cody Wisniewski

Even in an emergency, constitutionally-protected rights must be defended. New Mexico's governor shut down the state's firearms retailers as part of her emergency orders designed to stop the spread of COVID-19.

But her order illegally deprives citizens of their Second Amendment protected rights. MSLF filed a lawsuit in April, on behalf of multiple individuals, firearm retailers, and a litany of Second Amendment advocacy organizations, to vindicate those rights.

### NM Ignores Homeland Security Dept Guidelines

Record numbers of Americans purchased firearms in March 2020. This surge of demand for firearms demonstrates that Americans deem firearms to be "essential" in a time of national uncertainty. But New Mexico Gov. Michelle Lujan Grisham believes that she knows better than the people she governs.

Like other governors across the nation, Gov. Grisham issued emergency shutdown orders for all non-essential businesses in March, allowing "essential" businesses to remain open. But her list of essen-

tial businesses did not include firearms retailers, ranges, or repair facilities.

Days later, on March 28, the U.S. Dept. of Homeland Security issued a memorandum recommending classification of firearms retailers, ranges, repair facilities, and other related businesses as essential, but the New Mexico order remained unchanged.

Other states and cities racing to contain COVID-19 defied the Second Amendment, but corrected course later by exempting gun stores from their shutdown orders. New Mexico Governor Michelle Lujan Grisham, however, is refusing to recognize New Mexicans' rights and the guidelines of the Dept. of Homeland Security. She is acting as if she has authority to simply scratch the Second Amendment right out of the Constitution.

### Why Are Firearm Retailers 'Essential'?

The COVID-19 pandemic has caused massive societal changes. Prisons are releasing inmates early. Police in many cities have announced that they are

*(continued on p. 4)*



(continued from p. 3)

limiting arrests and responding only to the most essential calls for help. Not surprisingly, many citizens recognized they might need to protect themselves and sought to utilize their right to keep and bear arms. They chose to be prepared, just in case. Firearms retailers are saying that they have seen a surge in first-time gun purchasers.

Buying a firearm isn't like buying any other product. You can't simply order one online and have it delivered to your home. Federal law almost completely prohibits the sale of firearms except through authorized sellers at physical locations.

Just last year, New Mexico passed a law requiring nearly every firearm sale or transfer to be done by a federally licensed dealer — and now the governor has closed all of those dealers.

Closing physical retail locations makes it impossible to purchase a firearm and unlawfully infringes on citizens' natural right to self-defense, which is specifically protected by the Constitution.

### Our Legal Action

Mountain States Legal Foundation filed suit against Governor Grisham on April 10, on behalf of the National Rifle Association (NRA), the New Mexico Shooting Sports Association, Firearms Policy Coalition (FPC), Second Amendment Foundation, as well as several individual New Mexico citizens and businesses.

*"The failure of New Mexico's leaders to recognize our right to self-defense has not only diminished our rights, it has left New Mexicans vulnerable."*

*- Zachary Fort, President of the New Mexico Shooting Sports Association*

Among those individuals is Robert Aragon, who served as a representative in the New Mexico statehouse twice and has held county and city offices in New Mexico. Our clients are bravely standing up to defend the Constitutional rights of all New Mexicans.

Another of our clients, Zachary Fort, President of the New Mexico Shooting Sports Association, is actively seeking to buy a handgun to defend himself, his family, and his property. But he cannot



*New Mexico gun store owner, Louie Sanchez, appeared on Fox News to discuss the shutdown order impacting citizens across the state.*

lawfully buy one due to the closure of all firearms retailers. Not only that, but his concealed handgun license has expired, and he cannot renew it because license renewal requires a live shooting component that cannot be done at this time due to the governor's order closing all shooting ranges.

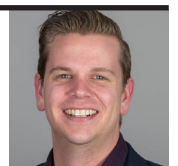
"The failure of New Mexico's leaders to recognize our right to self-defense has not only diminished our rights, it has left New Mexicans vulnerable," Zachary said. "This legal action seeks to restore our constitutional rights and protect New Mexicans by bringing New Mexico into alignment with guidance from the Dept. of Homeland Security that firearms retailers and shooting ranges are essential businesses."

FPC's Director of Legal Strategy Adam Kraut said, "Unfortunately, we find ourselves having to litigate yet another case where government officials believe that a crisis creates an exception to an enumerated constitutional right. We are happy to join with our friends from various organizations to defend the People of New Mexico's right to keep and bear arms."

MSLF is seeking an immediate injunction against the government to stop New Mexico from enforcing its unconstitutional order.

The historic surge in demand shows that the right to legally purchase a firearm is something the American people consider to be essential. Americans understand that the ability to protect yourself and your family is paramount. Our courageous clients are standing up to defend those rights for their fellow New Mexicans and all Americans.

*Cody Wisniewski is an attorney with Mountain States Legal Foundation, specializing in Second Amendment law.*



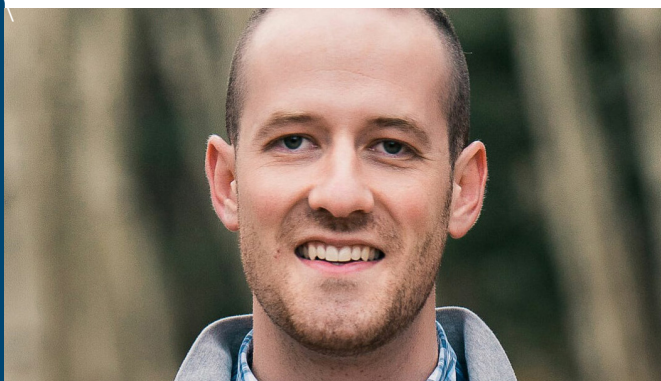
# Free Country. Free People.

Freedom isn't free. Champions of liberty like you make every legal victory possible.

Your support empowers MSLF attorneys to defend constitutional liberty in courtrooms across the American West and around the nation — all the way to the Supreme Court when necessary.

Join the battle to preserve American freedom and defend limited, constitutional government. Make your gift today.

## Defend Zachary's Right to Bear Arms!



MSLF client Zachary Fort was prevented from purchasing a firearm in the state of New Mexico, due to the governor's unconstitutional shutdown order. Other clients in the case include a local gun retailer and gunsmith. Your gift funds our lawsuit in federal court, protecting the Second Amendment rights for them and for all Americans.



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## CALLING ALL SECOND AMENDMENT DEFENDERS

### INVEST IN YOUR RIGHTS!

We are stepping up our commitment to defend the Second Amendment and are currently raising funds to launch MSFL's Center to Keep and Bear Arms.

Mountain States Legal Foundation is a non-profit, 501(c)3 organization. Please send your tax-deductible gift along with this form in the pre-addressed envelope. Thank you for defending liberty!

**Or donate securely online:**  
**[mslegal.org/donate](https://mslegal.org/donate)**

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## New Case Alert

### Environmentalists Bully Feds to End Gila River Grazing

Brian Gregg

Southwestern cattle ranchers are in danger. In fact, the very future of southwestern ranching is at stake because of radical environmentalists who are suing the federal agencies who manage grazing allotments in two states.

Center for Biological Diversity claims it is suing to protect habitat for two kinds of garter snakes. In reality, it's a ploy to force cattle ranchers off federal lands.

Environmentalists claim cattle grazing is harming areas in the Gila River Watershed on the border of Arizona and New Mexico. However, MSLF client Tom Paterson's record of conservation in the region contradicts their narrative.

*"We are committed conservationists. If we don't take care of the land, it certainly cannot provide for us."*

*- Rancher and MSLF client, Tom Paterson*

Paterson's Spur Ranch Cattle Company not only raises great cattle, it is a recognized example of land stewardship. He negotiated an agreement with the Fish and Wildlife Service to restore habitat, a project that cost his ranch \$1 million.

He's been recognized as The Outstanding Conservation Rancher for New Mexico, the Tree Farmer of the Year for New Mexico, and Outstanding Conservationist in New Mexico.

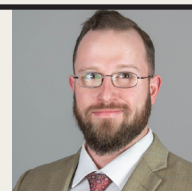
"We are committed conservationists. If we don't take care of the land, it certainly cannot provide for us," Paterson says.

The Center for Biological Diversity is using the courts to try to force the U.S. Forest Service and U.S. Fish and Wildlife Service to end cattle grazing on federally-managed Arizona and New Mexico lands. The radicals at CBD brag about having already removed grazing from millions of acres of Western lands, but they're not about to stop.

Unless we can defeat them in court. In March 2020, your support allowed MSLF to file a motion to intervene on behalf of Paterson, three cattle grower's associations and the New Mexico Coalition of Counties for Stable Economic Growth.

(You can learn more about Center for Biological Diversity v. U.S. Forest Service at [mslegal.org](https://mslegal.org))

**Brian Gregg** is an attorney with Mountain States Legal Foundation, specializing in grazing rights and property law.



# MSLF Client Dies, Still Waiting for Justice

## David McDonald

A man I deeply respected died last month.

Sidney Longwell, a devoted family man and entrepreneur in the finest tradition of the American Frontier, passed away last month at age 81. A fighter to the last, he died after 38 years of waiting for justice in his lawsuit against the federal government.

It is hard to comprehend the brute force of the federal government until it has been turned against you, personally, as it had been against Sidney. As an attorney for people like him, I see that force being used against good men and women every day.

Federal agencies have practically limitless resources to fight court battles, in terms of both money and manpower. They have no competition, no shareholders to placate, and no one person who can be held personally responsible for their malfeasance.

They also have the cruelest weapon of all — time.

In Sidney's case, he purchased a Montana oil and gas lease from the federal government in 1982, passed a decade of rigorous environmental and archaeological reviews, and was all set to develop the land when the government suspended his lease in 1993. He spent 38 years fighting a David-and-Goliath battle to use the leased mineral rights — a battle I'm still fighting as an attorney for his family.

*The federal government strung Sidney along for decades, waiting for a decision that would never come. Instead of justice, bureaucrats gave him another slap in the face.*

Sidney's passing reminds me that time really is the most devastating weapon the government has in its arsenal. We can give our clients resources, expertise, and a team of people to fight on their behalf, but sometimes they can't outlast Uncle Sam.

Despite obtaining drilling approvals four separate times after proving that environmental and tribal cultural concerns were unfounded, federal agencies refused to act, keeping Sidney stuck in bureaucratic purgatory.

Ronald Reagan was in his first term when Sidney's struggle began — think about that.



(L-R) Sidney's daughter, Kelly Longwell, MSLF attorney David McDonald, and Sidney Longwell's business partner, Sonny Cranch.

A favorable court ruling in 2016 seemed to promise a resolution. But, given 21 days to come up with a schedule to act, the government dug in its heels instead, abruptly cancelling the lease. Incredibly, the government's lawyers justified the decision by inventing a procedural defect that contradicted what agency officials had told Sidney for 30 years. We are still appealing on behalf of the family Sidney left behind.

The federal government strung Sidney along for decades, content to let him spend his golden years waiting for a decision that would never come. After all that waiting, instead of justice, bureaucrats gave him another slap in the face.

More than ever, Americans are being governed, not by laws, but by regulations. These regulations are created and enforced by countless unelected and unaccountable officials who staff government agencies. There is a terrible cost that comes with delegating so much power to this permanent bureaucracy to control our lives. If agency officials wish to prevent you from doing something, they can probably find a way to tie you up in red tape for as long as it takes, knowing you will never be able to outspend or outlast the federal government.

We must hold government agencies accountable when they abuse their power. Applying for a permit, as Sidney did, and spending decades fighting in court for the right to use it, should not be the legacy inherited from a dying parent.

*(This article was adapted from an op-ed published in The Federalist.)*

MSLF attorney **David McDonald** represents the Longwell family in the case *Solenex LLC v. Bernhardt*, currently before the D.C. Circuit Court of Appeals.







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## **MSLF FORUM** Electoral College Expert Addresses MSLF Guests

Mountain States Legal Foundation hosted author Tara Ross, one of the nation's leading experts on the Electoral College, as a guest speaker during our recent public forum in Las Vegas. Tara shared highlights from her book, "Why We Need the Electoral College."

Tara shared that the Electoral College is important because it rewards the candidate who does the best job of coalition building. The system doesn't allow you to ignore the issues that are important to voters in rural states. The Founders wanted a system of geographical checks and balances.

The Electoral College is also a safeguard against the threat of voter fraud because it limits the effects of corruption. If someone cheats in Illinois, for example, he can only change the electoral votes in one state. If we had a national popular vote, it would open up a free-for-all where fraud anywhere could directly affect the national total. It would be an election security nightmare.

### **The Electoral College** and why it matters



*Tara Ross explained to MSLF guests why the Electoral College is crucial to our constitutional system.*

The Electoral College was an crucial part of the Founders' design. If progressive states succeed in their plan to create an unconstitutional popular vote "compact," it's a guarantee that there will be fierce litigation to overturn their scheme. It's important to get ahead of the threat and educate the public. Thanks to your support, MSLF is out there proactively informing Americans about why the Electoral College is so vital to our constitutional system.

**Watch the video of Tara's talk at [mslegal.org](https://mslegal.org)**