

# THE LITIGATOR

MOUNTAIN STATES LEGAL FOUNDATION

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# How to Stop the Biden Agenda

Cristen Wohlgemuth

**D**uring the Democratic primary race, some saw Joe Biden as a more moderate alternative to other Democratic candidates on the ballot, such as Bernie Sanders or Elizabeth Warren. But in the weeks since the election, Joe Biden has rapidly filled his cabinet with a collection of names and faces—some new and some who are all-too-familiar—that are anything but moderate.

One of the first things Biden did after the election was invent a cabinet-level post called the “Special Presidential Envoy for Climate” for his friend in the Senate, John Kerry. What are Kerry’s qualifications to lead environmental policy for the United States? Your guess is as good as mine.

Kerry has long cast himself as a climate champion. But his track record is abysmal. Under the Obama administration, Kerry helped write the disastrous Paris Climate Accord, which not only crippled American industry but also gave China a huge strategic advantage over our country. China emits more greenhouse gases than the U.S. and Europe combined, but wouldn’t be required to reduce its emissions until 2030, under the agreement Kerry helped forge.

President Trump wisely withdrew from the Paris Accord, but Biden rejoined it on day one of his presidency.

Kerry wants to push our country even further down this disastrous road. He recently said that the Paris Accord was “not enough,” and now Biden and Kerry are promoting a \$2 trillion climate plan even while Americans are battling the ongoing pandemic.

Kerry’s \$2 trillion scheme will continue to erode our property rights and increase regulation and control over small businesses owners—all in the name of fighting “the war on climate change.” MSLF is



*Biden has put John Kerry in charge of environmental policy*

currently preparing for the new wave of litigation needed to respond to these costly and destructive policies, and we'll need your help to see it through. We will continue to stand up for property rights, limited government, and economic opportunity.

From the moment Biden chose Kamala Harris as his running mate, it should have been evident to all that he had no plans to govern as a moderate. Harris had the most liberal voting record in the entire U.S. Senate. Biden's choice for Secretary of Energy, Jennifer Granholm, made Biden's intentions even clearer. Granholm is a career politician who made a name for herself peddling Russian conspiracies while she was governor of Michigan. She has no background in science or energy, but Granholm was praised by environmental extremist groups like Earth Justice. Biden's choice for Secretary of the Interior, New Mexico congresswoman Deb Haaland, is another favorite of environmental extremists. Commenting on Biden's choice of Haaland, Left-wing agitator and Green New Deal author Alexandra Ocasio-Cortez said, "I'm over the moon right now."

In the end, there may be no more ominous a pick for Biden's cabinet than his choice for Attorney General, Merrick Garland.

You probably remember Garland's name. Although he was nominated by Obama, Senate Republicans famously denied Garland the chance to replace Antonin Scalia on the Supreme Court in the waning days of Obama's presidency. While there are many reasons to be concerned about Garland, his long record of hostility to gun owners' rights is chief among them.

Garland was portrayed by the media as a moderate in 2016. But if he'd had the chance, there is good reason to believe Garland would have voted to overturn Justice Scalia's majority opinion in the case, *D.C. v. Heller*—an extremely important Supreme Court ruling that affirmed the Second Amendment's protection of the individual's right to keep and bear arms.

In 2007, Garland voted to reverse a lower court ruling that overturned a local D.C. government's ban on individual handgun ownership. Garland also voted years before to uphold illegal Clinton-era gun registration laws. His record from the bench proves that Garland is "willing to uphold executive actions that violate the rights of gun owners," writes Carrie Severino of the Judicial Crisis Network. Elsewhere, the Independence Institute's Dave Kopel, a leading expert on gun laws, noted Garland's "strong hostility to gun owner rights."

Unfortunately, Garland's record shows he does not respect the Constitution's guarantee of the right to keep and bear arms, and now he is the chief law



*Justice Amy Coney Barrett is one of more than 230 federal judges confirmed during Trump's presidency*

enforcement officer of the United States. This fact will almost certainly have a significant impact on the recognition of gun owners' rights in the years to come.

From Kerry and Granholm to Haaland and Garland, it's clear that Biden has tipped his hand. With both houses of Congress and the major regulatory agencies all controlled by Democrats, those on the Left have a smooth path to implement their agenda. The GOP nominated and confirmed over 230 judges during the Trump administration. The judicial branch is the only real remaining check on the progressive agenda.

## **The judicial branch is the only real remaining check on the progressive agenda. It will require strategic work by those of us who are committed to the Constitution and the rule of law.**

That's where you come in. Together, we must strengthen our resolve to stop the progressive agenda in the courts. It will require strategic work by attorneys like ours at MSLF, with support from all of us who are committed to freedom, the Constitution, and the rule of law. This work has never been more vital!

We at Mountain States Legal Foundation are so energized by the opportunities before us, and deeply committed to the work of defending property rights, economic liberties, and the Second Amendment. We see clearly what is coming. But we are not dispirited! On the contrary, our resolve to defend your constitutional rights has never been stronger.

***Cristen Wohlgemuth*** is President and CEO of Mountain States Legal Foundation.





# Wild & Woolly in Wyoming

Traveling nearly 100 miles off the grid to meet the First Lady of Western sheep ranching

Sean Paige

**F**ield trip? Why not? It's a great way to gain fresh perspective, meet amazing people, and highlight the compelling human stories behind MSLF's legal cases. That's the way I pitched it to my boss, MSLF President Cristen Wohlgemuth, who readily agreed. "Don't come back without a good story," she said. Little did I know just how great a story I was about to encounter.

High on my list of must-meet clients was 91-year-old Mickey Thoman of Sweetwater County, Wyoming, a Cowboy Hall of Fame member who is also a plaintiff in one of our most important grizzly cases. Mickey and her three daughters are strong Western women who have taken on all challengers, including grizzly bears, government bureaucrats, and professional green extremists, in a bid to save their family ranch and preserve a vanishing way of life.

When I called daughter Mary Thoman to invite myself for a visit, she explained that the fall sheep camp was coming up. That would be a great way to see her mom and the rest of the family in action. That's what landed me one morning last fall in the teeming metropolis of Farson, Wyoming, bustling hub of Sweetwater County, trying to get my bearings. The Thoman sheep camp was out there somewhere. But where?

Don't bother with GPS, I was told. Google Maps won't help out here. Head toward Lander from Farson on Highway 28. Go about 35 miles, maybe 40. Go another 30 miles or so down a dirt road. Eventually a mountain will rear up on the left. When the road takes a big dip, look to your right and you should see it.

I took a leap of faith, powered-down my phone, and did what I was told. And sure enough, after 60 or 70 miles of travel—some of it over paved road, the rest over a meandering dusty washboard that made my teeth chatter and shook my rental car to the core—there, as a mountain appeared on my left, was what must have been a sheep camp, just as foretold.

It was the first sign of human life I'd seen in an hour and a half.

The "camp" consisted of a large maze of ancient corrals and chutes, which were bursting over with a fluffy beige sea of bleating sheep. Bordering the corral was a hodgepodge of pickups, 18-wheelers, trailers, and campers of mixed vintage, including three or four that looked ancient, like something gypsies used in old Europe. Dogs were everywhere,



*MSLF client and Wyoming rancher, Mickey Thoman*

dashing back and forth in or around the corrals, standing watch on the periphery, tethered near the campers and sheep trailers, eyeing me warily.

No welcoming committee emerged when I got out of the car. Such pleasantries are a luxury when you've got a task this big to do and only a few days to do it. This is no dude ranch. And if you're not there to work you're just in the way.

Each animal in the sea of sheep must be counted, evaluated, inspected, branded (with color-coded paint markings), sorted, and, in some cases, shipped out after a summer spent with great Pyrenees watchdogs on nearby federal grazing allotments. Some sheep would be heading to California later that morning for a few months of fattening-up before eventually landing in the supermarket for families to enjoy. Others would be held back, to be bred and shorn of their wool in the spring. The job of loading up the California-bound semis was in full frenzy when I arrived.

The Thoman women of Western lore didn't disappoint. There were men at camp, including two Peruvian herders and Mickey's college-bound grandson, Rex. A male brand inspector was standing by. And the semi loaders and drivers were male. But there's no doubt that Mickey and her daughters, Mary, Kristy and Laurie, run the show, with an able assist from granddaughter Taylor, age 11, who is already being groomed to take the reins someday.

During a lunchtime lull in the action, when a hearty buffet is served from the bed of a pickup truck, the hospitality and warmth for which ranchers are known is on full display. Ranchers aren't big talkers; they're doers. But the family saga I began to piece together, from snapshots and snippets of discussion, is truly epic in scope.

Mickey and her husband and ranching partner Bill Thoman Sr. began ranching on a small-scale in the 1950s, shortly after marrying. The family business grew, along with the family. The couple had 7 children in all, two of whom died tragically; Catherine while swimming with her horse in a river (the family searched the banks for five days before she was found) and William Jr. in a rollover accident while hauling hay. Bill Sr. himself was killed tragically in 1998, likely at the hands of a drunk driver. This family has held together through immense hardship and tragedy.

Time and again, the family fought through adversity, including wildfires and floods, to keep the ranch going. Some of what they endured is the norm for almost any rancher: market swings, natural calamities, the danger of decimating disease outbreaks, problems attracting dependable help. But the trials of the Thomans didn't end there. It's when Big Government and grizzly bears took aim at the already-besieged family that the story really got infuriating.



*Mickey Thoman surrounded by her daughters (back row, L-R) Mary, Kristy, and Laurie, with granddaughter Taylor*

Their government troubles began when the U.S. Bureau of Reclamations forced the family off 1,000 acres of prime private grazing ground to make way for a reservoir project, using the power of eminent domain. The family vigorously fought the taking for years, including in court, but the feds eventually prevailed, paying the family a relative pittance for some of the best river bottom acreage in the region.

The dam project came back to haunt the family repeatedly over the years, first when a dam break flooded what was left of the property the feds didn't take, and then again when the feds returned to condemn another 1,000 acres of family ranchland, this time for use as a wildlife refuge. The suits in Washington justified the new land taking, saying it was mitigation for the habitat loss caused by the reservoir project.

In two grotesque land grabs, the U.S. Government took from the Thomans 2,000 acres of prime private grazing ground, which made the family more reliant on federal grazing allotments to keep their operations going. And that's where federally protected grizzly bears lumber into the story.

All began peacefully enough when the Thomans started grazing their stock on national forest allotments along the Upper Green River. The land was lush and the sheep came off the mountain happy, healthy, and well-fed, helping them bring top dollar on the market. But signs of trouble appeared in the late 1980s and early 1990s, as formerly absent grizzly bears reentered the area.

The grizzly has been listed as a federally protected species since the 1970s, but the population initially appeared confined to just the area around Yellowstone and Grand Teton National Parks, roughly 100 miles away. It's not surprising that the range of these territorial apex predators expanded over time. But the suddenness with which their presence began to be felt made locals suspect that something more than natural forces were at play.



*Generations of the Thoman family work together at the sheep camp*

Federal biologists might be speeding the process along, locals came to think, by releasing problem grizzlies trapped and removed from the Yellowstone area into the Upper Green. Federal officials vigorously denied that such dumping took place, just as they dismissed and denied warnings from ranchers of a grizzly bear invasion. But by the late 1990s there was no denying the crisis, as the number of predation cases, bear sightings, and dangerous bear to human encounters began to mount.

Rather than admit this was a grizzly problem, federal officials and their allies in Big Green environmental groups began portraying it as a rancher problem, casting blame on the prey rather than the predators. The bizarre hoops they made the Thomans jump through in order to keep their flocks and employees safe from increasingly aggressive bears descended into farce.

Eventually, a grizzly attacked one of the family's employees. Forest officials used the attack to paint the Thomans as the villains, bringing even more restrictions on their use of the allotment. After fighting the usual good fight for as long as possible, the heavy toll the battle was taking on family finances and morale compelled them to give up those grazing rights and seek greener pastures elsewhere.

Selling the national forest grazing rights was one of the most painful decisions she's ever made, Mary Thoman told me. It goes against the grain of the family's principles, and the tough, never-say-die attitude that Mickey and Bill Sr. instilled in their kids from an early age. But Mickey and family still have one trump card left to play in their hand—the legal assistance made possible by MSLF's donors and supporters, which gives ranchers a fighting chance against aggressive grizzlies, unhelpful (if not hostile)

federal land managers, and the Big Green Lawsuit Machine that's determined to push livestock producers off the public lands.

The Bureau of Land Management allotment the family currently uses for summer grazing might reduce the problem of predation, but the high desert environment hardly counts as pasture and it definitely isn't as valuable as the allotment they were pressured into surrendering. That means the sheep shipped in November weighed about 20 pounds less, on average, than they would if fed on the lush forest allotments where the grizzlies are now king. That's a major loss of revenue in an already challenging market for domestic lamb producers.

Mary Thoman tells me that she felt fortunate to sell any product at all last fall, given the shortage of U.S. processing facilities. And the market for wool is also off, leaving the product they sheered from the sheep last April in storage and unsold, even as a new sheering season looms.

Spending a few days tagging along with the Thomans at sheep camp left me humbled by their work ethic, amazed at the versatility of skills and talents these women-ranchers have mastered, and grateful to be working for an organization that helps worthy clients like them. The Thomans are still fighting the good fight, often against long odds. Our time together confirmed for me that the spirit of the "Old West" is alive and well in the "New West," as evidenced by the resilience, resourcefulness and self-reliance of this indomitable American ranch family.

*Sean Paige is the Director of Communications for Mountain States Legal Foundation.*





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# LET'S STOP BIDEN'S AGENDA

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- Fight Big Government Regulations that Suffocate Small Business Owners
- Block the Government's Attempts to Restrict or Eliminate Your Right to Own a Firearm

## YOUR GIFT PAYS LEGAL COSTS FOR CLIENTS LIKE THESE



### Zachary Fort

The governor of New Mexico reversed a gun store shutdown order after we filed a lawsuit on his behalf.



### Mickey Thoman

She's fighting grizzlies and government bureaucrats in order to keep her family ranch alive, with MSLF attorneys by her side.

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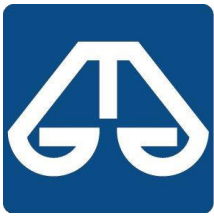
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## MSLF TO SUPREME COURT: 'PRIVATE PROPERTY MUST BE RESPECTED'

No business owner should be forced to allow outside union organizers onto his property during business hours. But California regulations force business owners to do exactly that.

In January, MSLF attorneys urged the United States Supreme Court to declare California's law requiring private businesses to open their property to hostile union organizers a "taking" under the 5th and 14th Amendments of the U.S. Constitution in the case, *Cedar Point Nursery v. Hassid*.

If the Court agrees, it will force the state of California to pay just compensation to property owners whose property rights are violated by its pro-union law.

Such state-sanctioned property rights violations help shine a light on the rot that has infested American property law since the Progressive Era.

A correct ruling in this case would negate a law that unjustly favors unions over business owners.



*MSLF's new U.S. Supreme Court brief is a powerful statement in defense of property rights*

A correct ruling could also bolster property rights by allowing property owners to seek compensation when a law or government action compels them to open their property to uninvited and disruptive intrusions.

**To support MSLF's fight to defend your property rights, visit [mslegal.org](http://mslegal.org)**