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PULLING THE RUG

When ideology trumps merit

A dear friend and former roommate used to be an air traffic controller (ATC) for the United States Navy. He enjoyed the work tremendously and even now sends me videos of controllers going about their work. He tries to explain what the people in the videos are saying, but to me, the combination of their fast talking and jargon might as well be an alien language. But his joy for the craft led me to ask, “Why not just go back to being an air traffic controller? I’m sure Denver International Airport is hiring.”

His reply was jarring: “The FAA doesn’t want someone like me, even if I’m experienced.” I wouldn’t understand the response until I began my time with Mountain States Legal Foundation and discovered the Federal Aviation Administration’s (FAA) folly of prioritizing the ideology of racial diversity over merit.

Matthew Douglas did contract work for Google Maps back in 2011 when he graduated from the University of Washington. The work wasn’t challenging, but the coworkers were great people. During a conversation with one, he came to find out that her husband was a controller in Seattle. Matthew asked for a tour of the center where his colleague’s husband worked, and it was there he was hooked.

Perfect fit or not, becoming an air traffic controller is no joke. On top of a college degree requirement, there are only so many schools in the nation that have certified training programs, and fewer with top-notch facilities. Matthew had the degree, but if he was serious about becoming an ATC, he’d have to leave his safe and reliable job at Google. After working hard to put himself through college in Washington, his network of friends and professional contacts were all in Seattle.

“It was a big risk—huge, really. But every day, when I got home from work, I would research late into the night, looking at the options and the career path. I knew what kinds of classes I would have to take, how fast I could get to graduation, and everything in between.”

“I found every aspect of controlling exciting. The pay and benefits are great, but the work is challenging, and requires a lot of focus and honed skills. It was perfect for the kind of guy I am.”

In May 2012, Matthew sold his car for one more suitable for his new home, 2,500 miles north in Anchorage, Alaska. With his dog, Scoop Jackson, Matthew drove for three days, 15 hours a day, to an unknown city full of strangers on a gamble to become a professional in arguably the world's most stressful job. Why the Last Frontier? The University of Alaska Anchorage is reputed for its excellent ATC training and quality simulators. If Matthew was going to take this gamble, he was going all-in.

Thankfully, Alaska wasn't all that foreign to him. "My grandmother is actually part of the King Island Native Community, born as an Inuit. She was a really strong influence in my life, so I'm not a complete stranger to the land." And despite the mental slog of arctic winters, Matthew relished the spectacular summers, and built a strong community of fellow students and professors. He formed study groups, organized sessions to prepare for exams and go over notes, and pursued opportunities typically reserved for more advanced students. Matthew poured his heart into his learning and future career.

As any student would hope, his preparation paid off. Like his colleagues in school, Matthew was required to take and pass the Air Traffic Selection and Training test, or AT-SAT. For potential graduates, this is the big one—an eight-hour, computer-based exam that comprises seven cognitive tests to measure the right aptitudes required for a career in air traffic control. Unlike your standard final exam, there's no studying for this aptitude evaluation. The only way you pass this test is if you've been paying close attention to the past few years of training.



Matthew and his grandmother in Alaska

Young, driven, and with excellent performance, it was all but a done deal.

Candidates must score at least a 70 out of 100 to be eligible for controlling jobs. An 85 makes you exceptionally qualified. On April 11th, 2013, Matthew Douglas—after a week of fear, panic, and stress leading up to the test—earned a perfect score of 100.

"I was overjoyed! I couldn't believe it. I mean, I worked my butt off, and I thought I could pass, but I couldn't imagine this kind of score." By the end of that year, because of his ambition and advanced skills, Matthew was able to graduate early with a 4.0 GPA. The only thing left was to wait for the FAA to call and invite him to take the next step: official FAA training in Oklahoma. Young, driven, and with excellent performance, it was all but a done deal.

But by December of 2013, the Obama Administration altered the deal.

Only a few weeks after Matthew's graduation, the FAA announced changes to the hiring process for ATCs. On the whole, they scrapped much of the training program that Matthew had undergone (and which he had financed by additional debt, by the way), including the aptitude test he aced. Instead, aviation bureaucrats created a social background "Biographical Questionnaire," as part of a broader effort by President Obama to "diversify" the federal government. While he felt betrayed that all of his hard work was now wasted, Matthew remained positive. Even if the new goal was racial "diversification," he felt confident that whatever the questionnaire asked, he would be fine—surely, no rational test would flush out someone who had previously gotten a perfect score.

Unfortunately, that new test in February of 2014 had nothing to do with skills or knowledge as a controller. They asked questions about his favorite and worst subjects in high school, what sports he enjoyed, how friends might describe him, or if he'd ever been unemployed.

Despite all of his training (and even his indigenous heritage), Matthew's future was now dependent on a glorified social ice-breaker game. He was ultimately rejected by the FAA for being biographically ineligible. Matthew had the "wrong" experiences in life.

"I was devastated. All those who said I was taking a risk to become a controller were all of a sudden right. I saw classmates who barely showed up to class pass the questionnaire and get accepted—people who frankly have no business being in a control tower. All because I didn't meet their idea of the right profile."

That the FAA doesn't have its act together is obvious to anyone paying an iota of attention. Chunks of American airspace are regularly shutdown, resulting in wild routes, often due to a lack of qualified controllers. The prioritization of politics over performance—both back in 2012 and throughout the present administration—has created unsustainable work hours and shifts for current controllers, creating a scenario for chaos and accidents. Where there was once an effective pipeline to train qualified candidates and get them to the FAA's program in Oklahoma, there is now a dearth. Matthew, who still works around the aviation industry, told me that there have been spikes in aviation incidents. Worse still, there is a large portion of controllers who are rapidly nearing the mandatory retirement age of 55, and there aren't enough people to replace them. Fewer qualified personnel will be working more shifts with greater stress.

Mountain States has helmed the primary lawsuit against the FAA's policy. Along with the case's first lead plaintiff, Andrew Brigida, Matthew is part of a class action with over 900 members hoping for justice. "I'm worried there are other things like this happening elsewhere in the federal government. For me, I want to make sure the DOT, the FAA, and every other agency can't do this to anyone ever again. That's what's important to me."

"For me, I want to make sure the DOT, the FAA, and every other agency can't do this to anyone ever again. That's what's important to me."



Matthew, his wife, and their furry companion(s)

The case is currently in the middle of the discovery phase, where the federal government must turn over tens of thousands—perhaps more—pages of documentation. MSLF attorneys are scanning each document, gathering evidence and building the case for the day when we can present the facts of injustice to a judge. It's a process that takes time, money, and effort, but the details of discovery are utterly crucial if the lawsuit is to be successful.

In the meantime, Matthew is enjoying time with his wife. He's even learning to become a licensed pilot—he already has 33 hours in flight time. When I asked him where he goes from here, he said, "I keep leaning on who I am as a person. I'm fortunate to have a gorgeous house, and we're looking to start a family. I just want to improve, grow with my wife, and be a great dad. I want to be a good man."

KEY FACTS

Case: *Brigida v. Dept. of Transportation*

Court: US District Court for the District of Columbia

Who's fighting for you?

Will Trachman is our general counsel, and has extensive experience in equal protection case law and litigation.



What's at stake: The FAA violated the rights of Andrew Brigida, Matthew Douglas, and over 900 other air traffic controller candidates when it abandoned merit-based programming for a social diversity background test.



KEEPING THE PROMISE

Last quarter, we told you about how Mountain States Legal Foundation is focusing its energy on protecting the Free American as the Other Endangered Species. Part of that effort is reminding ourselves what is really at risk—the promise our forefathers made in the Declaration of Independence.

The Declaration's opening paragraphs outline one of the most eloquent arguments for self-government ever penned.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.

This powerful statement asserts that human rights are not granted by governments. Instead, inherent to basic human nature are essential rights that cannot be denied by any power on Earth. Such a principle rejects any form of tyranny and fiercely demands a rule of consent of the governed. It demands a basic respect for the fundamental equality between all human beings.

The very fact that we are equal and equally endowed with our rights, means that no one may justly take our rights from us.

The principles enshrined in the document have been used as a basis for countless political and social movements throughout American history, from the abolition of slavery to the struggle for women's suffrage and the civil rights movement. Frederick Douglass's famous "What to the Slave is the Fourth of July?" speech articulates in a powerful voice the promise:

The rich inheritance of justice, liberty, prosperity and independence, bequeathed by your fathers, is shared by you, not by me. The sunlight that brought light and healing to you, has brought stripes and death to me. This Fourth of July is yours, not mine. You may rejoice, I must mourn.

Delivered before the abolition of slavery, Douglass' point, though bitter, is inspiring. The Declaration's promise is that all men are equal, and that the American society will uphold and respect this equality in law and government. Slavery was the stain that painfully highlighted that we had fallen short of our promise, but it was nevertheless the right promise, worthy of being kept.

Our Founding Fathers envisioned, Frederick Douglass longed to have, and Mountain States fights for an America that keeps its promises. The Declaration of Independence and the Constitution outline an American society where we are each free to live our lives without being treated differently based on race. It's what patriots died for at Bunker Hill. It's what patriots died for at Gettysburg. And it is our legacy to protect today.

That vision of society—built upon and acting upon the principles of the Declaration—is the promise.

WE'RE JUST GETTING STARTED

Young v. Colorado Department of Corrections

No doubt you have heard of “Equity, Diversity, and Inclusion,” or EDI, trainings. They have become practically standard seminars at corporations across the country. For most of us, we merely endure boring slideshows about tolerance. For a few of us, we are presented with some interesting workshops on the tapestry of culture in American society. For Josh Young, however, he was presented materials that effectively said it was people like him were the reason racism exists—and if he disagreed, he was just a white fragile man.

That would be enough to set anyone off the rails. In Josh's situation, however, it wasn't just a horrid message that he had to stomach for a day and move on with his job. Josh worked at the Limon Correctional Facility, one of Colorado's roughest prisons—and these materials and their messages created a hostile work environment. Inmates at Limon already divide themselves along racial lines, and tensions are pervasive. The guards, regardless of their races, must have a unified and cohesive culture to maintain order and safety. An EDI training that tells the guards, “Your white colleagues are not to be trusted because they invented the concept of race to justify oppression,” divides and undermines the very unity they need to do their jobs.



Despite a promising career, the situation that the training created was so severe that it altered the terms of Josh's working conditions, and ultimately compelled him to resign. This is classic race discrimination in the workplace, something which is prohibited under Title VII of the Civil Rights Act, which applies to government employers. Mountain States Legal Foundation represents Josh in his lawsuit against the Colorado Department of Corrections (CDOC).

The US District Court for Colorado recently dismissed the case in favor of the CDOC. But we are playing the long game that results in far-reaching precedent, and the judge left multiple paths wide open for our attorneys to continue the fight. Will Trachman, MSLF's General Counsel and the lead attorney on the case, said that Mountain States just appealed the decision to the 10th Circuit and is considering re-filing the case at the District Court level per the judge's decision.

Will said, “We're just getting started with this case. Anti-white training and policies are just as abhorrent as anti-black or any other prejudicial and discriminatory training. We have to continue this legal battle, because for folks like Josh and every other American, this is a moral fight for equal protection under the law.”

KEY FACTS

Case: *Young v. Colorado Dept. of Corrections*

Court: US District Court for the District of Colorado

Who's fighting for you?

Will Trachman is our general counsel, and has extensive experience in equal protection case law and litigation.



What's at stake:

The Colorado DOC created a hostile work environment under Title VII when it required prison guards to undergo EDI training that blamed white people for racism.

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The MSLF Board of Directors believes so strongly about the dire threat the “green” agenda poses to freedom that they have issued a special matching gift challenge.

Our generous Board members will match all donations we receive by June 7th dollar-for-dollar up to \$80,000—meaning that any contribution you send today will be doubled in value.

Mail your gift in the attached envelope, or give online: mslegal.org/donate

COME SEE US IN PERSON AT THE WESTERN CONSERVATIVE SUMMIT



The Western Conservative Summit is one of the largest annual gatherings of conservatives outside of Washington, D.C., aimed at educating Americans on the key issues facing the West and our nation, equipping individuals to stand for faith, family, and freedom and training up the next generation of conservatives.

The Summit's theme, Western Strong, strives to demonstrate the importance of the great Western tradition – from the foundational principles of Western civilization to the rugged individualism that characterizes the American West. At a time when Western Civilization is being denigrated by the left, attendees need to be reminded that it is our strong Western roots that make America the free nation that it is today.



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HOPE FOR THE RAYS!



MSLF attorney David McDonald was in California in early April for oral argument in our ongoing case of *Rayco v. Haaland*, a case I chatted with David about in our last edition of *The Litigator*. Here's what he said about the experience:

"I'm very happy with how the argument went. The judge seemed particularly animated by the fact that the Bureau of Land Management first informed the Rays of this supposed issue with their claims in a final, unappealable decision, without ever giving them the opportunity to make themselves heard. While mining law is always a complicated topic, our judge very much picked up on the lack of due process at play.

"The government seized on a harmless, 75-year-old clerical mistake (that was already corrected by the Rays without fanfare 30 years ago) as an excuse to destroy Rayco's mine.

They refused to inquire further about the clerical error, failed to examine any contrary evidence in contravention of law and over a century of court precedent, and refused to even ask Rayco what happened before declaring hundreds of acres of valuable property the Rays had worked for three generations null and void.

"We're confident that the court recognizes this grave injustice, and will start to make things right."

KEY FACTS

Case: *Rayco v. Haaland*

Court: US District Court for the Central District of California

Who's fighting for you?

David McDonald has been with Mountain States since 2017, and has developed a specialty for property rights cases such as this.



What's at stake:

The government made a bad-faith excuse to justify denying the Ray Family their patent. The government tried to wait out the Rays, hoping they would give up. They didn't, and we're here to help get them justice.