

US Supreme Court

Sturgeon vs. Frost - NPS



January 20, 2016

Stopped by NPS enforcement agents September 2007
while on State owned Navigable waters for operating a
hovercraft.



Yukon River near Eagle, Alaska

- While repairing my hovercraft I was approached by 3 uniformed and armed NPS employees
- They informed me my hovercraft was not allowed in NP preserves and demanded I remove it immediately without starting it.
- I explained to them I was on Navigable waters owned by State of Alaska land. They didn't care.
- I have hunted this same area consecutively since 1971
- I had used my hovercraft there since 1991



What are Navigable Water?

- The origin of **Navigable Waters** goes back to kings of England
- Navigable waters were the super 'highways' of old
- They were all put into a Public Trust – no one actually owns Navigable waters. They are set aside for the peoples use, it called the **Public Trust Doctrine**
- The original 13 colonies reserved the Navigable waters to each state and not the Federal government
- When Alaska became a state it was given title to all Navigable water under the **Equal Protection Clause**
- Alaska owns all the subsurface land from ordinary high water to ordinary high water on Navigable Waters
- The State also owns from ordinary high tide to ordinary low tide on salt water.
- The exceptions are area already given some type of Federal designation such as Denali National Park



Decision to Sue the Federal Gov't

- Confirmed State owned the Navigable waters and sandbars of the Yukon River
- Consulted with State DNR & ADF&G
- Secured 3 independent legal opinions on merits of my case
- Searched for the best legal team I could hire
- Chances of going to the US Supreme Court – **0.05%**. In the first term of 2016 there were over 2,000 appeals, mine was one of 13 selected to be heard by the US Supreme Court
- Checked with the big boss, my wife!

Core of the case:

Section 103 (c) of ANILCA says Fed regs don't apply on inholdings including the States Navigable waters.



What does Section 103 (c) of ANILCA say?

The first sentence says
inholdings are not part of the park.

The second sentence
clearly says these lands won't be regulated as though they were part of a park

The third sentence
makes clear that if the Federal government wants to regulate these lands they have to go out and acquire them.

In September 2011, I filed a “public interest”
lawsuit in Federal Court



What is this lawsuit really about?

- This is a case about State sovereignty and the promises of Statehood
- This is a case about Federal Government overreach
- This is a case about the Federal Government keeping the promises it made in ANILCA to the people of Alaska especially Sec 103 (c)
- This is a case about the Federal Government keeping the promises it made under the Alaska Natives Claims Settlement Act. 41% of Native lands are within Fed parks, preserves and refuges.
- This is a case to tell the Federal Government they do have limits by law.

Route to the US Supreme Court- District Court then 9th Circuit



Amici curiae who have filed briefs in support of John Sturgeon

Safari Club International
Pacific Legal Foundation
Southeastern Legal Foundation
State of Alaska
U.S. Senator Dan Sullivan (Alaska)
U.S. Senator Lisa Murkowski (Alaska)
U.S. Representative Don Young (Alaska)
Arctic Slope Regional Corporation
Cook Inlet Region, Inc.
Salamatof Native Association, Inc.
Doyon, Limited
NANA Regional Corporation
Calista Corporation
Ahtna, Inc.
Aleut Corporation
Bristol Bay Native Corporation
Gana-a'yoo, Limited
Tihteet'aai, Incorporated
Resource Development Council
Alaska Miners Association
Alaska General Contractors
Alaska Oil and Gas Association
Alaska Chamber
Alaska Forest Association
Alaska Conservation Trust

SC hearing

- Outstanding lawyers – lead attorney was Matt Findley from Ashburn & Mason
- Experts said it would be difficult to guess which way the court will rule by their questions
- However, in my layman's opinion I would much rather have been our attorney than the Federal attorney



Justice Alito to Federal Lawyer

“you filed a 58 page brief and, as I read it, you didn't get to the reason that the Ninth Circuit based its decision on until page 49, and you devoted exactly a paragraph to it.

And why don't you concede that it's wrong? It's a ridiculous interpretation, is it not?

(Laughter.)



Closing Statement : Matt Findley

“The government's position here, they keep saying their authority is limited, and Mr. Chief Justice hit the nail on the head. They're relying on the Organic Act which allows them to enact any regulations they feel necessary at any time. They've already done that with the 9(b) oil and gas regulations, seeking to apply those to Non-Federal land within Alaska. ***And the hits are going to keep on coming unless this Court stops this interpretation and goes back to what 103(c) was meant to do, which was to prevent the Park Service from taking these lands that aren't owned by the government and regulating them as though they are part of the park.***”

Case received a lot of National Press

The Washington Post

Prices may vary in areas outside metropolitan Washington.



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TUESDAY, JANUARY 19, 2016

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With hovercraft suit, an Alaskan hero is born

BY ROBERT BARNES

John Sturgeon's path to the Supreme Court began in a broken-down hovercraft on a gravel shoal in middle-of-nowhere Alaska.

He was on his way to hunt moose.

Instead, Sturgeon became the target of three officers of the National Park Service. Hunting wasn't the problem — the hovercraft was. Even though Sturgeon had used his 10-foot rubber boat for years in the Yukon-Charley Rivers National Preserve, the officers pulled out the rulebook and

said noisy hovercraft were banned in all national parks, even in Alaska.

If Sturgeon was lucky enough to get it working again, they said, he still could not board it, even to get back to where he came from.

"To be frank, they were real jerks," Sturgeon recalled.

His pique led to a lawsuit, and the lawsuit led to a surprising grant from the Supreme Court, and the Supreme Court's interest led to an outpouring of support that has startled the businessman and moose hunter.

Strangers and politicians pack

fundraisers to pay for hundreds of thousands of dollars in legal bills. Admirers extol his Last Frontier virtues in a tribute video. The state's congressional delegation has filed a friend-of-the-court brief taking his side against the federal government.

"He's like the Alaskan version of *Gideon v. Wainwright*," said Sen. Dan Sullivan (R), referring to the landmark decision that established the right of the criminally accused to a lawyer.

"He is going to vindicate the rights of all Alaskans," Sullivan

ALASKA CONTINUED ON A2

On March 22, 2016 the US
Supreme Court overturned
the 9th Circuit decision
unanimously!!!!

The Court went to great lengths to explain the legal history of Alaska

- 1867 Alaska purchased from Russia
- 1950 Statehood act – land for **economic development** – title to navigable waters
- 1971 ANCSA – 40 mm acres for **economic and social needs of Alaska Natives**
- 1979 Carter unilaterally designated 56 mm acres as National Monuments
- 1979 “Great Denali-McKinley trespass” 2,500 Alaskan’s participated. Ended with the “Feds are coming, the Feds are coming” on horseback

- **1980 - ANILCA passed - “The Grand Compromise”**

ANILCA had two stated goals (a quote):

“First, to provide “sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska.”

*“And second, to provide “**adequate opportunity for satisfaction of the economic and social needs** of the State of Alaska and its people.”*

US Supreme Court Quote on ANILCA:

“ANILCA repeatedly recognizes that Alaska is different , and ANILCA itself accordingly carves out numerous Alaska exceptions to the Park Service’s general authority over Federally managed preserve areas. The Alaska specific provisions reflect the simple truth that Alaska is often the exception, not the rule.... The Court concludes that whatever the reach of the Park Services authority under ANILCA, Section 103 (c) did not adopt such a “topsy-turvy” approach.”

More ANILCA US Supreme Court Quotes:

*“ANILCA repeatedly recognizes that **Alaska is different**—from its “unrivalled scenic and geological values,” to the “unique” situation of its “rural residents dependent on subsistence uses,” to “the need for development and use of Arctic resources with appropriate recognition and consideration given to the unique nature of the Arctic environment.*

*All those Alaska-specific provisions reflect the simple truth that **Alaska is often the exception, not the rule**. Yet the reading below would prevent the Park Service from recognizing Alaska’s unique conditions.”*

**QUESTION PRESENTED at
District, 9th Circuit & the US Supreme Court:**

Whether Section 103(c) of the Alaska National Interest Lands Conservation Act of 1980 prohibits the National Park Service from exercising regulatory control over State, Native Corporation, and private Alaska land physically located within the boundaries of the National Park System.

What did SCOTUS have to say?

“The 9th Circuit’s interpretation of Section 103(c) is inconsistent with both the text and context of ANILCA”

“the Court concludes that this is an implausible reading of the statute. The Court therefore rejects the interpretation of Section 103(c) adopted by the court below.”

“The 9th Circuit’s interpretation of Section 103 (c) violates ‘a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.’

“Whatever the reach of the Park Service’s authority under ANILCA, we cannot conclude that Section 103(c) adopted such a topsy-turvy approach”

“The Court therefore rejects the interpretation of Section 103 (c) adopted by the court below.... We accordingly vacate the judgement of the court and remand or further proceedings.”

In summary what did SCOTUS say with their Unanimous Decision?

- Alaska is different by law and therefore the Feds must treat Alaska differently by law!!
- Alaska is the exception not the rule!!
- Over and over and over again SCOTUS said ANILCA was a grand compromise between environmental values and the development of its natural resources for the economic benefits of all Alaskans. It wasn't just about preservation!!
- Native Corp were also given land for economic development to benefit their people
- The lower court's interpretation of Sec. 103(c) is wrong and it is overturned, period!

On to the 9th Circuit - The adventure continues

Still some work to do-

- The District and 9th Circuit Court did not answer all the questions they should have so several issues were remanded
 - Define public and non-public land as used in ANILCA
 - Several State sovereignty issues
 - May be another 1-2 years until finally resolved

Total Cost of the Lawsuit

- Cost prior to US Supreme Court accepting the case - **\$300,000**
- Supreme Court portion - **\$429,290**
- Total cost to date - **\$729,290**
- Donations for the Supreme Court portion to date - **\$315,159**
- Still need to raise **\$114,131**



Why?

Freedom is not Free.

If Federal Government doesn't follow
the law then everyone's Freedom is
threatened

Alaskan's gave it our best!

