

US Supreme Court

Sturgeon vs. Frost - NPS



January 20, 2016

Stopped by NPS enforcement agents September 2008
while on 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 Navigible 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.



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



Basics of the lawsuit

It is our belief that the NPS can not ban hovercrafts on Navigable waters owned by the State of Alaska.

Section 103 (C) of ANILCA specifically says Federal management regulation do not apply on inholdings. A point made crystal clear by the co-sponsors of ANILCA.

The legislative history of 103(c) is extensive. Rep. Sieberling, 125 Cong. Rec. 11158 (1979) (Rep. Sieberling was the sponsor of the amendment adding 103(c):

“All this amendment does is restate and make clear beyond any doubt that any State, native or private lands, which may lie within the outer boundaries of the conservation system unit are not parts of that unit and are not subject to regulations which are applied to public lands which, in fact, are part of the unit.

...within the boundaries drawn on the map for the conservation unit does not in any way change the status of that State, native, or private land or make it subject to any of the laws or regulations that pertain to U.S. public lands, so that those inholdings are clearly not controlled by any of the public land laws of the United States.”

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
- This is a case about the Federal Government keeping the promises it made under the Alaska Natives Claims Settlement Act
- This is a case to tell the Federal Government they do have limits by law.

What does Alaska have to lose?

- Even though the State of Alaska owns all navigable waters they could lose all management control within CSU's
- The State could lose management control over all its lands with the boundaries of parks, preserves and refuges
- Native Corporation have 18 mm acres of their 44 mm acres within ANILCA designated CSU's. They would have to follow Federal parks and refuges management rules
- All private inholding would be subject to park and refuge rules
- In general, Alaska's economy would suffer greatly

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'aii, Incorporated

Resource Development Council

Alaska Miners Association

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 say it is 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.)



Total Cost of the Lawsuit

- Cost prior to US Supreme Court accepting the case (Ed Rasmuson has been my partner in this lawsuit from day 1) - **\$325,000**
- Supreme Court portion - **\$326,761**
- Total cost to Date - **\$651,761**
- Donations for the Supreme Court portion to date - **\$235,000**
- State of Alaska contribution to date - **\$0**



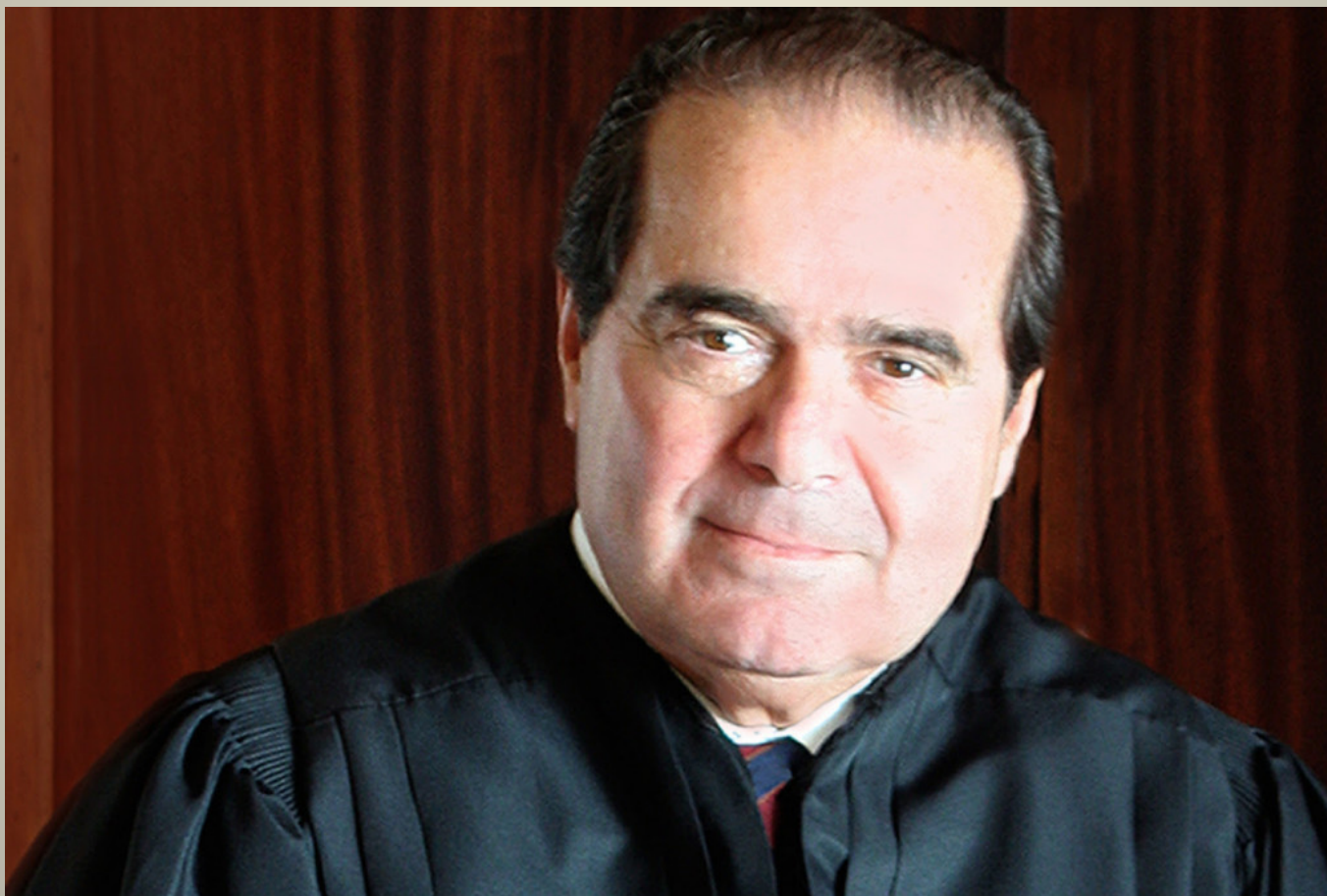
Closing Statement :

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.***

And the second point want I want to make-

There's a lot of discussion about whether ANILCA covers official navigable waters or not. The clear statement rule covers that question. And in that circumstance, it's a question of is anything in the statute clearly saying we are taking away State authority over navigable waters? You will not find the term navigable waters in the statute once. Let's contrast this to other park enabling legislation. This is for Olympic National Park, and you'll find this at 16 U.S.C. 251(n). And here's what it says: "The boundary of Olympic National Park Washington is hereby revised to include within the park all submerged lands and waters of Lake Ozette, Washington, and the Ozette River, There's your clear statement.

Impact of Justice Scalia's Death?



SCOTUS Fantasy Prediction

Reverse 8-0

Justice	Fantasy SCOTUS Crowd Prediction	{Marshall}+ Algorithmic Prediction	Final SCOTUS Decision
John G. Roberts, Jr. 	92 (R)	69 (R)	Outcome pending...
Antonin Scalia 	Recused		
Anthony M. Kennedy 	86 (R)	69 (R)	Outcome pending...
Clarence Thomas 	92 (R)	69 (R)	Outcome pending...
Ruth Bader Ginsburg 	75 (R)	56 (R)	Outcome pending...
Stephen G. Breyer 	79 (R)	60 (R)	Outcome pending...
Samuel A. Alito 	93 (R)	72 (R)	Outcome pending...
Sonia Sotomayor 	72 (R)	57 (R)	Outcome pending...
Elena Kagan 	71 (R)	60 (R)	Outcome pending...

Alaskan's gave it our best,
we now wait for a ruling by June -

