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NCLA Amicus Brief Asks Ninth Circuit to Stop Bureau of Land Management from Writing Criminal Laws

United States of America v. Gregory Pheasant

Washington, DC (April 26, 2024) – Today, the New Civil Liberties Alliance filed an *amicus curiae* [brief](#) in *U.S. v. Pheasant*, urging the U.S. Court of Appeals for the Ninth Circuit to affirm a decision barring the Bureau of Land Management (BLM) from wielding legislative power to criminalize activity on public lands. Gregory Pheasant was charged with three violations of BLM rules for allegedly failing to use a taillight on his dirt bike at night on federal land in Nevada. A federal district court dismissed the charges, ruling that Congress unconstitutionally delegated “virtually unfettered” legislative power to criminalize activities on BLM-managed lands. NCLA asks the Ninth Circuit to uphold this decision and reasoning.

Congress purportedly gave the Bureau complete authority to criminalize activity on BLM-managed public land through a provision in the Federal Land Policy and Management Act of 1976. That provision violates the Vesting Clause of the Constitution, which reserves all legislative authority for Congress and forbids it from divesting that power to an administrative agency or anyone else. Determining what actions are criminal is an exclusively legislative task. The text and structure of the Constitution support NCLA’s view that only Congress has the power to define crimes—not agencies like BLM.

In transferring legislative power to the BLM, Congress weakens its accountability to the public and deprives Americans of their freedom to rule themselves through elected representatives, instead allowing unelected bureaucrats to unilaterally brand them as criminals. Congress cannot be allowed to fend off political consequences for its actions by shifting its criminal lawmaking responsibility elsewhere.

NCLA released the following statements:

“Where the fundamental interest in one’s liberty is involved, skepticism of agency-claimed power should be at its highest. The Bureau has no independent constitutional power to criminalize activity on its managed lands, nor could Congress provide such power to it.”

— **Kara Rollins, Litigation Counsel, NCLA**

“That more than 65% of the land in Nevada will have its criminal law imposed by bureaucrats in Washington with no democratic accountability is insupportable under our Constitution, which vests the power to make criminal law solely in the Congress.”

— **John Vecchione, Senior Litigation Counsel, NCLA**

For more information visit the *amicus* page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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