

No. 13-1374 and 13-1391

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

TAB BONIDY, *et al.*,
Plaintiffs-Appellees/Cross-Appellants,

v.

UNITED STATES POSTAL SERVICE, *et al.*,
Defendants-Appellants/Cross-Appellees.

On Appeal from the United States District Court for the District of Colorado
No. 10-cv-02408-RPM, The Honorable Richard P. Matsch

**DECLARATION OF STEVEN J. LECHNER IN SUPPORT OF
PLAINTIFFS-APPELLEES/CROSS-APPELLANTS' UNOPPOSED
MOTION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR
PANEL REHEARING AND/OR REHEARING EN BANC**

I, Steven J. Lechner, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am counsel for Plaintiffs-Appellees/Cross-Appellants in this appeal.
2. On June 26, 2015 the panel issued an opinion and judgment affirming in part and reversing in part the judgment of the district court. The panel's opinion addressed important Second Amendment issues that affect not only my clients, but could affect other law-abiding, responsible citizens in this circuit and nationwide.

3. Under FRAP 35(c) and FRAP 40(a)(1)(B) and (C), a petition for panel rehearing and/or rehearing en banc is due on August 10, 2015.

4. I am diligently reviewing and researching the panel opinion to determine whether a petition for panel rehearing and/or rehearing en banc is warranted. Although I have and intend to continue to work diligently on this case, there are extraordinary and compelling circumstances that justify a 14-day extension of the deadline for filing a petition for panel rehearing and/or rehearing en banc.

5. I am Vice President and Chief Legal Officer for Mountain States Legal Foundation (“MSLF”), a non-profit, public interest legal foundation located in Lakewood, Colorado. Based upon my long involvement in this case and because of my familiarity with the facts and legal issues, I cannot simply assign another attorney in my office the task of determining whether a petition for panel rehearing and/or rehearing en banc is warranted and, if so, preparing that petition.

6. Since the panel opinion was issued, I have been working diligently on other cases to meet court deadlines. For example, between June 26, 2015 and July 8, 2015, I worked over 80 hours on an answer brief in *Nesbitt v. U.S. Army Corps of Engineers*, 9th Cir. No. 14-36049 (filed July 8, 2015). Between July 8, 2015 and July 13, 2015, I also performed the necessary research and reviewed, edited, and approved for filing amicus curiae briefs in *People v. Rinehart*, California

Supreme Court No. S222620 (filed July 13, 2015), and *Brott v. United States*, Case No. 1:15-cv-00038 (W.D. Mich., filed July 13, 2015).

7. Over the next three weeks, in addition to this case, my responsibilities will include, *inter alia*:

- Preparing and filing a dispositive motion and supporting documentation in *McIlroy v. United States*, No. 2:14-cv-02163-PKH (W.D. Ark.). This deadline is July 30, 2015, and I have already moved it once because of my schedule and because my co-counsel is on maternity leave. It is not reasonable to extend this deadline further because doing so may not allow the district court enough time, after completion of briefing, to render a decision before trial, which is set for the week of October 19, 2015.
- Preparing and filing final briefs in *State of Wyoming v. EPA*, 10th Circuit Nos. 14-9512 and 14-9514. These briefs are due on July 30, 2015, and my co-counsel is on maternity leave.
- Preparing for and arguing *Herr v. U.S. Forest Service*, 6th Cir. No. 14-2381, on August 4, 2015, in Cincinnati, Ohio. Because I litigated this case at the district court and briefed it at the Sixth Circuit, I cannot ask another MSLF attorney to argue. This argument will require substantial preparation and two days of travel.
- Performing the necessary research and reviewing, editing, and approving for filing an amicus curiae brief in *Kerr v. Hickenlooper*, 10th Cir. No. 12-1445. This case is on remand from the Supreme Court and all amicus curiae briefs are due on July 31, 2015. MSLF previously filed amicus curiae briefs in this case on behalf of its clients before this Court and the Supreme Court.
- Performing the necessary research and reviewing, editing, and approving for filing an amicus curiae brief in support of Petitioner in *State of Utah v. United States*, S. Ct. No. 15-27. Petitioner is seeking review of this Court's decision *Kane County, Utah v. United States*, 772 F.3d 1205 (10th Circuit 2014), which addressed jurisdiction under the Quiet Title Act, 28 U.S.C. § 2409a. This is an important issue for

MSLF because it regularly litigates quiet title cases against the United States. *E.g.*, *Marvin M. Brandt Revocable Trust v. United States*, 134 S. Ct. 1257 (2014); *George v. United States*, 672 F.3d 942 (10th Cir. 2012); *United States v. Jenks*, 129 F.3d 1348 (10th Cir. 1997). This amicus curiae brief is due on August 6, 2015.

- Performing the necessary research and reviewing, editing, and approving for filing an amicus curiae brief in support of Appellants in *Evenwel v. Abbott*, S. Ct. No. 14-940. MSLF previously filed an amicus curiae brief in this case in support of Appellants' Jurisdictional Statement. This amicus curiae brief is due on August 7, 2015.

8. I consulted with counsel for Plaintiffs-Appellees/Cross-Appellants, who stated that his clients have no opposition to the granting of the 14-day extension.

DATED this 20th day of July 2015.

Respectfully submitted,

/s/ Steven J. Lechner

Steven J. Lechner

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CERTIFICATE OF VIRUS SCANNING AND PRIVACY REDACTIONS

In accordance with this Court's CM/ECF User's Manual and Local Rules, I hereby certify that the foregoing has been scanned for viruses with Trend Micro Antivirus+, updated July 20, 2015, and is free of viruses according to that program. In addition, I certify that all required privacy redactions have been made and the electronic version of this document is an exact copy of the written document to be filed with the Clerk.

DATED this 20th day of July 2015.

/s/ Steven J. Lechner
Steven J. Lechner

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system on this 20th day of July 2015.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED this 20th day of July 2015.

/s/ Steven J. Lechner
Steven J. Lechner