

HB

176

803 P.2d 402 ANCHORAGE DAILY NEWS V. ANCHORAGE SCH. DIST. (S. Ct.
1990) 1990 Alas. Lexis 127

ANCHORAGE DAILY NEWS, Appellant,
vs.
ANCHORAGE SCHOOL DISTRICT, Appellee

No. 3652, File No. S-3374
SUPREME COURT OF ALASKA
803 P.2d 402, 1990 Alas. LEXIS 127
December 7, 1990

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, J. Justice Ripley, Judge. No. 3AN 88 11807 Civil.

COUNSEL

D. John McKay, Middleton, Timme & McKay, Anchorage, for Appellant.
Kermit E. Barker, Jr., Stephanie D. Galbraith, Lane, Powell & Barker, Anchorage, for Appellee.

JUDGES

Matthews, Chief Justice, Rabinowitz, Burke, Compton and Moore, Justices. Moore, Justice, dissenting.

AUTHOR: BURKE

OPINION

In this appeal we hold that a public interest litigant is entitled to the full amount of its attorney's fees. We so hold despite whatever minimal private interest the litigant may have had in the outcome of its suit.

Following our decision in *Anchorage School District v. Anchorage Daily News*, 779 P.2d 1191 (Alaska 1989), the prevailing party, the Anchorage Daily News, moved for its costs and "full reasonable" attorney's fees, contending that "the Daily News . . . qualified as a public interest litigant." The school district opposed the motion, arguing that the Daily News was motivated to bring suit by economic self-interest.

The superior court "accepted" the argument that the Daily News was a public interest litigant, but awarded it only **part** of its attorney's fees, stating:

The plaintiff is in the business of gathering news. It does so for the entirely proper purpose of publishing that news for profit. This profit takes many forms -- from the rates paid by its readership, to its own editorial proclamation as society's crusading voice, to, it might even be supposed, its aspiration to a Pulitzer Prize for meritorious service in the cause of the public's right to know. There is no vice in any of these. Indeed most are praiseworthy. However, they benefit, they profit the Anchorage Daily News.

. . . The court concludes that a significant part of the plaintiff's motivation to bring this action was commercial in nature and personal to itself, but in part accepts plaintiff's characterization of

public interest litigation. For want of a more precise method of measure, the [c]ourt considers the motivations equal, and awards plaintiff one half the actual fees of \$ 4,139, or \$ 2069.50, as a prevailing public interest litigant. Applying the partial compensation rule at 40% to the balance of the fees actually incurred produces an additional \$ 827.60, for a total fee award of \$ 2,897.10.

This appeal followed.

II

We reject at the outset any suggestion that a newspaper engaged in litigation to obtain information for public dissemination is automatically a public interest litigant.¹ The facts of the particular litigation must be evaluated on a case-by-case basis to determine public interest status. Thus, we examine first the factors critical to this determination in the case at bar.²

In general, a litigant must satisfy the following criteria to be deemed a public interest litigant:

- (1) Is the case designed to effectuate strong public policies?
- (2) If the plaintiff succeeds will numerous people receive benefits from the lawsuit?
- (3) Can only a private party have been expected to bring the suit?
- (4) Would the purported public interest litigant have sufficient economic incentive to file suit even if the action involved only narrow issues lacking general importance?

Murphy v. City of Wrangell, 763 P.2d 229, 233 (Alaska 1988). The school district implicitly concedes that the Daily News satisfies the first three criteria, but maintains all four criteria must be met to be a public interest litigant. We held accordingly in **Murphy**, where the purported public interest litigant satisfied three of the four criteria, but was, nevertheless, denied public interest status for having sufficient personal economic motive to bring suit. **Murphy**, 763 P.2d at 233; see also **Gold Bondholders Protective Council v. Atchison, Topeka & Santa Fe Ry.**, 658 P.2d 776, 778 (Alaska 1983) (public interest status denied where court concluded bondholders had substantial private economic motivation to bring suit).

In our earlier decision, we recognized the important public policy violated by the school district's refusal to disclose the terms of the settlement agreement:

The people of this state, through their elected representatives, have stated in the clearest of terms that it is more important that they have access to this type of information than that it remain confidential. Thus, we hold that a public agency may not circumvent the statutory disclosure requirements by agreeing to keep the terms of a settlement agreement confidential. Under Alaska law, a confidentiality provision such as the one in the case at bar is unenforceable because it violates the public records disclosure statutes.

Anchorage School District, 779 P.2d at 1193 (emphasis deleted). It is clear, therefore, that the lawsuit filed by the Daily News vindicated an important public right;³ the main reason for the litigation, and its primary accomplishment, was to compel the school district to disclose information required by law to be available to the public. Moreover, whatever private interest the Daily News might have had, economic or otherwise, was comparatively minor. Indeed, it is

highly unlikely that the Daily News would have brought its suit "if the action [had] involved only narrow issues lacking general importance." **Murphy**, 763 P.2d at 233.

Given these circumstances, we conclude that the Daily News is, in this instance, a public interest litigant, and that the superior court abused its discretion in awarding it only part of its attorney's fees. Having qualified as a public interest litigant, the Daily News is entitled to the full amount of its attorney's fees, to the extent that they are otherwise reasonable.⁴

REVERSED and REMANDED for entry of an amended judgment.

DISSENT

MOORE, Justice, dissenting.

Because I find that the Daily News fails the fourth criterion set out in **Murphy**, I do not agree with the majority's holding that the Daily News is a public interest litigant.

The majority summarily concludes that the Daily News' economic interest in this litigation is "comparatively minor." On the record presented in this case, I do not see any justification whatsoever for the majority's conclusion.

The Daily News' submissions to the superior court fail to substantiate its claim that the commercial benefits of this litigation are minimal. The paper simply asserts that its status as public interest litigant is beyond reasonable dispute. It argues that it would never have brought this suit if it was only interested in financial gain because the costs of litigation outweigh any short-term increase in newsstand sales resulting from the school district story.¹

This argument is unpersuasive. A newspaper's financial well-being depends on its circulation base and the paid advertisements generated by that circulation base, not on the 25 cent cover price. When a newspaper seeks access to information that is being kept from the public, it builds goodwill in the community and gains a competitive advantage. A newspaper with an image as champion of the public's right to know increases its circulation base and attracts more advertisers in the long-run.² Plain common sense dictates that this suit will have a direct impact on the paper's circulation base and future profits. Absent any evidence to the contrary,³ it is impossible to conclude that the Daily News pursued this suit only to further the public interest.⁴

The superior court properly considered these long-term economic benefits in reaching its decision. It weighed the paper's commercial interest in its reputation⁵ and found that the Daily News had a significant commercial motivation in bringing this suit. A trial court's determination of a litigant's public interest status will not be overturned unless it is "manifestly unreasonable." **Kenai Lumber Co. v. LeResch**, 646 P.2d 215, 222 (Alaska 1982). Thus any party challenging the superior court's decision in this regard has a heavy burden of persuasion. **Western Airlines, Inc. v. Lathrop Co.**, 535 P.2d 1209, 1217 (Alaska 1975). On appeal, the Daily News has not met its heavy burden of persuasion. The superior court's determination that the Daily News has a commercial interest in this litigation should be upheld and the paper should be denied public interest status.

In granting the Daily News public interest status, the majority applies the fourth criterion without reflecting on its purpose. The fourth criterion tests whether a litigant has a sufficient private interest in a suit to offset the deterrent effect of the costs of litigation. **Kenai Lumber Co.**, 646 P.2d at 223. In the past, we have been unwilling to award public interest status to litigants who are acting in their private interests and not on behalf of the public. See **Mobil Oil Corp. v. Local Boundary Comm'n**, 518 P.2d 92, 104 (Alaska 1974). In its analysis, the majority fails to appreciate the fact that the public importance of this litigation is directly tied to its commercial value to the newspaper. Thus the majority's rote application of the fourth criterion sidesteps the basic question of whether the litigation costs will, in fact, deter the newspaper from bringing similar suits. When the majority observes that "it appears highly unlikely that the Daily News would have brought its suit 'if the action [had] involved only narrow issues lacking general importance,'" it fails to reach the issue of deterrence.

The newspaper's economic interest in this litigation is not rendered insignificant simply because it is dependent on the public importance of the issues at stake. The Daily News has a significant economic interest in maintaining and increasing its circulation and advertising revenues. Given the record presented in this case, the Daily News has ample economic incentive to bring this suit despite the costs of litigation. Thus, the Daily News fails the fourth criterion and should be denied public interest status.

The Daily News is a profit-making enterprise. The costs of these suits are part of doing business and should not be subsidized by the taxpayer⁶ as a matter of policy. The majority provides no adequate justification for creating what amounts to a special exception for newspapers (or any other news organization) by insulating their business motives from scrutiny under the fourth criterion. The majority's analysis guarantees a newspaper public interest status for virtually any suit that a newspaper is likely to bring. This is a Pandora's box that should not be opened. There are better uses for public funds. The Daily News and other commercial news organizations should not be held to a less rigorous standard than the ordinary litigant.

For the above reasons, I respectfully dissent.

OPINION FOOTNOTES

1 We also expressly reject the trial court's bifurcation of the public interest litigant analysis. We find no justification to create such a dichotomy. A litigant either satisfies the requirements for being a public interest litigant, or does not.

2 We apply the abuse of discretion standard "in reviewing a trial court's finding that a litigant has a public interest status." **Citizens for the Preservation of the Kenai River, Inc. v. Sheffield**, 758 P.2d 624, 626 (Alaska 1988); see also **Murphy v. City of Wrangell**, 763 P.2d 229, 233 (Alaska 1988).

3 There is no question that the documents were released solely because of the Daily News's efforts. Cf. **Public Law Education Inst. v. United States, Dep't of Justice**, 240 U.S. App. D.C. 166, 744 F.2d 181, 183-84 (D.C. Cir. 1984).

4 The superior court concluded that some of the fees submitted were unreasonable. On remand, the superior court need only award the Daily News full reasonable attorney's fees. **Hunsicker v. Thompson**, 717 P.2d 358, 359 (Alaska 1986).

DISSENT FOOTNOTES

1 The Daily News calculates that it would have to sell 18,000 extra newspapers to recoup the costs of litigation.

2 This court should take judicial notice of the Daily News' television advertisements which claim that its circulation greatly exceeds that of its nearest competitor. Clearly the Daily News understands the commercial importance of a wide circulation base.

3 The Daily News offers no hard proof on this issue. It merely asserts:

The fact that the news media, acting as surrogates for the public in pursuing access to information, must stay in business to do so and in fact attempt to operate at a profit as other businesses do, does not change the nature of the public-interested pursuit of such records and meetings. No **economic** interest can reasonably be argued . . . that might have motivated the Daily News to proceed as it has below.

4 There is no reason to assume that newspapers are different than any other kind of business. Many large businesses routinely engage in public service activities to improve their public image. Often such businesses even run advertisements selling this image to the public. Like any form of advertising, such public service activities are an investment in future profits and a part of doing business.

5 The Daily News contends on appeal that reputational benefits are non-economic and thus legally irrelevant. This argument is without merit.

6 The state (and by extension the taxpayers) will always have to bear the full cost of defending these suits even when the newspaper loses.

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Representative Joe Green

District 10

House Majority Leader

Sponsor Statement

HB 176 – Attorney fees for public interest litigants

The Alaska Supreme Court has established a unique and creative doctrine, known as the Public Interest Litigant Doctrine (PILD), which is not codified in any law or set out in any procedure, but has evolved through the court's decisions. PILD was established by the court to allow private plaintiffs to advocate for issues in the public interest.

PILD provides an exception to Civil Rule 82. Rule 82 sets out a formula for the reimbursement of attorney fees to be collected by a prevailing party in a legal action. The prevailing party is entitled to 30% of actual, reasonable attorney fees if the case goes to trial, and 20% if it does not. It is interesting to note that Alaska is the only state in the union that utilizes this system. In all other states, the party that files or defends a legal action is responsible for their own expenses.

If the court grants a party in a legal action "public interest litigant" status that party is allowed to collect *full* reasonable, actual attorney fees if they prevail. If they lose, the public interest litigant pays none of the prevailing party's attorney fees.

I believe that PILD has developed into an encouragement, an incentive for litigation causing valuable state assets to be used to fund plaintiffs' law firms. Over the past several years these organizations have challenged the state in our effort to develop our resources.

Representative Joe Green
Sponsor Statement
HB 176

HB 176 does not *in any way* hinder these groups from filing legal challenges to administrative decisions, but it does require them to pay for their own lawsuits, to the extent that other Alaskans do. The state employees responsible for utilizing our natural resources are conscientious public servants. Guided by our constitution, statutes and regulations, they practice due diligence in determining that the disposal of our hydrocarbons, minerals, timber, fish, water, and land, are in the best interests of Alaskans. Not surprisingly, this public process never seems to be good enough for the people who profit from filing lawsuits. HB 176 doesn't prevent these people from challenging the process, but it does make them do it at their own expense.

Abuse of the broad definition of who can be a public interest litigant, and an even broader definition of "prevailing party" has occurred. HB 176 establishes some limits in the public interest litigant doctrine.



Trustees for Alaska is a public interest environmental law firm that has provided legal services in Alaska since 1974. Our advocacy work and legal cases deal with oil and gas development, mining, hazardous waste management, air pollution, water pollution, wetlands management, land use management, and protection of marine ecosystems. Our successes have set significant legal precedent in environmental law on a state and national level. We have initiated hundreds of administrative actions and legal cases on behalf of a broad constituency, including

local and national environmental groups, Alaska Native villages and nonprofit organizations, community groups, commercial fishermen, and individuals committed to protection and wise management of Alaska's natural resources. While we have a number of cases pending in state and federal courts, we view litigation as a tool of last resort for achieving effective and lasting resolution of resource management conflicts. Where appropriate, we encourage and assist our clients in working to achieve desired protection through negotiation and consensus.

★ Why do we exist?

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★ What have we accomplished?

Over the last twenty years, Trustees has instituted a number of important legal actions and initiatives:

- Helped prevent oil and gas drilling in the Arctic National Wildlife Refuge.
- Fought forestry and marine development projects that threatened traditional Native Alaskan values and practices.
- Forced the US Environmental Protection Agency to set nationwide standards to reduce mining industry pollution to rivers and streams.
- Prevented offshore oil and gas development in fragile marine ecosystems off Alaska's coasts.
- Halted illegal and shortsighted road development in some of Alaska's most pristine and natural areas.
- Worked to reduce the waste and pollution from industrial high seas fishing fleets in the North Pacific.



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Many of our legal victories are far-reaching, setting precedent nationwide for environmental protection. These precedents are part of the body of laws ensuring clean air and water, and the wise development of natural resources in your community.

*** Why do we need your support?**

Trustees has been providing legal counsel to environmental groups, Native villages and nonprofit organizations, rural communities, fishers, hunters and other conservationists who have asked for our help in defending the rich natural resource heritage that makes Alaska unique. Throughout this time, Trustees for Alaska has been willing and able to respond to these requests.

As doors to achieving environmental protection are being slammed in Congress and the Alaska Legislature, they are also being quietly closed in state and federal agencies. This trend leaves the court system as the only effective avenue for achieving environmental protection. Consequently, we have been deluged with requests for advice and assistance.

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SCLDF

Sierra Club Legal Defense Fund

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What is SCLDF?

The Sierra Club Legal Defense Fund (SCLDF) is a public interest law firm (IRC 501(c)(3)), founded in 1971, that brings environmental litigation on behalf of the Sierra Club and other environmental organizations. Headquartered in San Francisco, with offices in Washington, D.C., Denver, Seattle, Honolulu, Juneau, Montana, Florida, New Orleans, and Tallahassee.

Using Law and the Courts To Protect the Land

It may be hard to believe now, but until the late 1960s there was no such thing as environmental law, at least in the way we understand it today.

Conservationists had tried rarely, and with little success, to pursue their goals through the legal system. Plaintiffs seeking to protect the environment lacked what most judges considered a prerequisite to a day in court: a financial interest in the outcome of the dispute. For all intents and purposes, the courthouse door was closed to those who would preserve mountains, meadows, forests, and streams, for recreation, wildlife, or for other uses that resource managers call "non-consumptive."

In the late 1960s, however, a profound change began in the courts, triggered by a lawsuit brought against the Federal Power Commission. At issue was a plan by a New York utility, Consolidated Edison, to build a hydroelectric plant at Storm King Mountain on the Hudson River. Lawyers for the Scenic Hudson Preservation Conference, the Sierra Club, and three nearby towns persuaded the federal Court of Appeals that the plaintiffs' "aesthetic, conservational, and recreational interest" in the area justified there being granted "standing" to sue. While this decision affected only disputes based on a limited area of the law regarding power development, conservationists were given hope that courts throughout the nation might soon grant them standing to file suit.

New initiatives within the Sierra Club also contributed to the genesis of environmental law. For many years, the Club's legal program served mainly to help with contracts and other internal matters. But in the late 1960s, newly appointed Sierra Club Legal Committee Chair Phil Berry and Conservation Director Michael McCloskey began to urge using the courts to pursue conservation objectives. Two San Francisco

attorneys, Don Harris and Fred Fisher, joined the fledgling campaign and helped recruit other lawyers to the cause.

Soon, volunteer attorneys were battling government agencies over timber sales and other matters, and in 1970 Harris argued the first case brought under the National Environmental Policy Act. With Earth Day fresh in mind, Congress was swiftly enacting new environmental statutes, and such suits were vital to ensuring enforcement and clarifying lawmakers' intentions. It soon became evident that a volunteer organization was inadequate to realize the potential of environmental law.

The Sierra Club Legal Defense Fund was formed to realize that potential. Established in 1971 with the aid of a generous grant from the Ford Foundation, and supported by The Sierra Club Foundation, the Legal Defense Fund was created legally and financially distinct from the Sierra Club. This allows the organization to solicit and accept tax-deductible contributions, and to represent clients other than the Sierra Club itself.

Mineral King

It didn't take long for the young Legal Defense Fund to break new ground in environmental law. A suit over a place called Mineral King, first filed in 1969 by attorneys hired by the Club and taken on by the Legal Defense Fund two years later, became one of the organization's most important victories when the U.S. Supreme Court used the case to broaden the principle of standing from the Storm King litigation.

Mineral King is a small valley about 7,000 feet high in the southern Sierra Nevada. The flat valley floor, a fraction of the size of Yosemite Valley, is ringed by magnificent 12,000-foot peaks. In 1926 an early Sierra Club campaign to establish Sequoia National Park brought protection to an area that surrounded Mineral King, but the valley itself remained under Forest Service jurisdiction, subject to the Service's multiple-use management.

In 1965 the Forest Service invited private companies to propose winter-sports resorts in Mineral King. Walt Disney Enterprises won the agency's approval for a plan that would have jammed Mineral King with as many as 27 chair lifts, an ersatz alpine village, a huge underground parking garage, restaurants, and more: a total installation that the Disney master plan called the equivalent of six Squaw Valleys. The plan envisioned more than two million visitors to Mineral King each year, a level of use that makes the far larger Yosemite Valley desperately overcrowded.

In the 1940s the Sierra Club had approved in principle a modest ski resort in Mineral King. Such resorts were smaller then, and the Club was trying to find suitable sites for a fast-growing ski industry. Twenty years later, however, the Club found many features of the Disney plan objectionable. First, it was too big. Second, it required upgrading the only road into the valley, a road that passes through Sequoia National Park. Third, it seemed a dubious proposition to devote so much public land to the profit of private enterprise. And fourth, Mineral King was designated a game refuge, and a giant resort was incompatible with the idea of preserving wildlife. While the Club mounted a campaign to preserve the valley through legislative action, it also sought ways to halt the proposed development.

The Club asked the Forest Service to estimate the environmental effects of the project; when the agency refused, the Club then asked the National Park Service to deny permission to improve the road through the park, again without success. Having run out of options, the Club filed suit. The district court issued an injunction that halted further work on the resort. The Forest Service's subsequent response was to ask the Court of Appeals to dismiss the case on grounds that the Club lacked standing to sue; losing that legal round, the Club appealed to the Supreme Court.

Setting ground rules for future environmental litigation, the Supreme Court handed the Sierra Club what might be called a friendly defeat: while the court rejected the Club's complaint as failing to show the organization's standing to sue, Legal Defense Fund attorneys were allowed to rewrite it to address a new, broadened rule of standing defined by the court. This rule stated that while a party must be injured to file suit, the injury can be to recreational interests, rather than only to financial interests. This new rule entered into the "common law" and opened the courts to environmental plaintiffs across the country. The door that had been slightly opened in the Storm King case under a particular statute was now thrown wide open. The Club's amended complaint detailed members' recreational use of Mineral King and the harm they would suffer without court action.

By the time attorneys filed the amended complaint, the National Environmental Policy Act had become law, and the Club asked the court to order the Forest Service to prepare an environmental impact statement on the project. This process, which involves public hearings and scientific studies, increased the public's interest in the dispute. Sensing a profound change in the public's mood, Disney dropped its proposal, and in 1978 the grassroots legislative campaign bore fruit when Congress and President Carter added Mineral King to Sequoia National Park.

In those early days the Legal Defense Fund represented the Sierra Club almost exclusively. But as the organization grew and its attorneys branched out, they took on new clients from other corners of the environmental community. While the Sierra Club remains a major client, Legal Defense Fund attorneys now represent dozens of other groups.

Over the years, the Legal Defense Fund has been involved in many of the classic cases in environmental law, both setting legal precedents that can be followed across the nation, and complementing legislative and grassroots campaigns to preserve valuable areas. Among the most important cases are these:

Admiralty Island, Alaska

The object of Sierra Club and Legal Defense Fund efforts that continue to this day, Admiralty Island is a million-acre paradise in the Pacific west of Juneau known to the native Tlingit as *Kootz-noowoo* the Fortress of the Bears. A part of the nation's largest national forest, the Tongass, the heavily forested island supports the world's densest concentrations of Alaskan brown bears and bald eagles, and vast numbers of salmon, otters, trout, and other creatures.

But the Forest Service had long been determined to see Admiralty's hemlock and spruce clearcut, despite the destruction this would wreak upon the majestic island's wildlife and Native peoples. When the Service ignored pleas from conservationists to halt an unprecedented 50-year timber harvest lease that would have left much of Admiralty roaded and barren, the Sierra Club launched what eventually became a number of incredibly complex series of lawsuits and appeals. As in the Mineral King case, the Admiralty litigation was begun by an attorney working directly for the Club (in this case Warren Matthews, now an Alaska Supreme Court Justice) and was later assumed by the Legal Defense Fund.

Also like the Mineral King case, litigation helped persuade the corporation holding the lease to abandon the project. This bought time while the Sierra Club and other groups waged a dramatic and long-running legislative campaign to protect Alaskan wild areas, including Admiralty. That campaign succeeded in 1980 with the passage of the Alaska National Interest Land Conservation Act, which granted wilderness status to almost all of the island; left out was Angoon, Admiralty's only settlement, and a controversial 23,040-acre

area comprised of three of the island's most valuable watersheds. Legal Defense Fund attorneys continue battling to protect portions of that area from clearcutting by the Shree Atika logging corporation.

Air Quality and the Colorado Plateau

The parks and wildlands of the Colorado Plateau--Grand Canyon, Zion, Canyonlands, and other areas--are famous for their expansive views. At the same time, developers have sought to build stripmines, coal-fired powerplants, uranium mines, and other projects that would spoil views and sully air quality across the entire region, parks and wildlands included.

Passage of the first Air Quality Act in 1967 committed the federal government to "protect and enhance" the nation's air. To implement the act, the National Air Pollution Control Administration (NAPCA, an agency then within the Department of Health, Education, and Welfare) decreed that in areas where the air was still relatively clean, like the Colorado Plateau, the federal government must undertake to "prevent significant deterioration" of air quality. This important provision of the regulations is abbreviated "PSD."

In 1970, however, NAPCA was transferred to the new Environmental Protection Agency, and when the Clean Air Act was enacted by Congress that year, there was no explicit reference to PSD. The EPA's regulations to implement the new Clean Air Act included provisions that would have allowed the dirtying of clean air in most of the country. On the Colorado Plateau, that would have meant polluted skies from stripmines, powerplants, and other projects, approval for which had been blocked in part by the PSD standards.

The Legal Defense Fund sued, arguing that the "protect and enhance" language in both clean air laws strongly implied the PSD requirement. A district court agreed, and so did the Court of Appeals and the Supreme Court (although neither wrote an opinion). When the Clean Air Act was amended in 1977, Congress added PSD as an explicit provision of the law. The PSD lawsuit helped protect air quality over the Colorado Plateau's parks and wildlands, while it aided in blocking developments that would have fouled land, water, and air throughout the region.

These are just two of the cases in which the Sierra Club Legal Defense Fund has made a difference. There have been hundreds of such lawsuits in the years since the organization hung out its shingle, and there will be many more.

Sierra Club members and other conservationists usually turn to litigation when all other remedies are exhausted. Upon being contacted by officers of a Club chapter considering a suit, Legal Defense Fund attorneys review the dispute to determine its prospects for success in court, whether it could set a precedent useful elsewhere, and if a victory could be sustained politically. When a good case cannot be accepted owing to workload, the Legal Defense Fund attempts to find volunteer or reduced-fee lawyers to help the chapter with its case.



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