



Kyle Gray

Of Counsel

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Kyle Gray specializes in complex civil litigation and appellate advocacy with an emphasis on environmental litigation, including environmental insurance coverage litigation.

She has participated in Superfund trial litigation and has trial experience in a variety of environmental, property, and business matters. Kyle has extensive appellate experience, including a wide array of cases briefed or argued to the United States Supreme Court, the Ninth and Tenth Circuit Federal Courts of Appeals, and the Montana and Wyoming Supreme Courts.

Prior to joining Holland & Hart, Kyle clerked for United States District Court Chief Judge Clarence A. Brimmer.

PRACTICES

Environmental Litigation
Environmental
Environmental Transactions

INDUSTRIES

Mining

EDUCATION

University of Michigan Law School, J.D.,
1984
cum laude

Michigan State University, B.A., 1981
summa cum laude

BAR ADMISSIONS

Montana
Wyoming

COURT ADMISSIONS

U.S. Supreme Court
U.S. Court of Appeals for the Ninth
Circuit
U.S. Court of Appeals for the Tenth
Circuit
U.S. Court of Appeals for the Eighth
Circuit

EXPERIENCE

- Environmental and natural resources litigation
- Appellate practice
- Superfund trial litigation
- Tribal Treaty litigation
- Environmental insurance coverage litigation
- Other insurance coverage and bad faith litigation
- Navigable waters title disputes
- Natural resource property tax disputes
- Bank bad faith litigation
- Products liability litigation
- Constitutional disputes

CLIENT RESULTS

Herrera v. Wyoming, 587 U.S. 329 (2019). In a dispute over the continuing validity and effect of the off-reservation hunting clause in the 1868 Treaty of Fort Laramie between the Crow Tribe of Indians and the United States, the United States Supreme Court vacated the judgment against our client in the Wyoming courts, and held the Treaty hunting right is valid and continuing, and was not abrogated by either Wyoming's statehood or the establishment of a national forest. On remand, after four more years of litigation and two appellate victories for Mr. Herrera at the Wyoming state court level, in June 2023, the State of Wyoming dismissed with prejudice all charges against Mr. Herrera, leaving fully intact the Tribal Treaty right to

hunt off reservation (including in the Bighorn National Forest inside Wyoming) as affirmed by the U.S. Supreme Court.

PPL Montana, LLC v. Montana, 565 U.S. 576 (2012). In a title dispute between a power company and the State of Montana over ownership of the beds and banks of the upper Missouri, Madison, and Clark Fork rivers, the United States Supreme Court reversed a \$41 million judgment for back rent to Montana against our client. The Supreme Court ruled that the State does not own the lands under hydroelectric power sites along the Great Falls reach of the Missouri River, and reversed and remanded for further proceedings on the issue of navigability at the time of Montana's statehood in 1889 and corresponding title to the riverbeds under several other hydroelectric dams.

Mont. Env't Info. Ctr. v. Westmoreland Rosebud Mining, LLC, ___ P.3d ___ (Mont. 2023), 2023 MT 224. In a dispute over a proposed mine expansion, the Montana Supreme Court overturned summary judgment for the plaintiff environmental groups against our client, reversed in part and remanded for further proceedings, holding, *inter alia*, that parties who oppose agency decisions bear the burden of proof on appeal to the district court to affirmatively prove agency error under the standards imposed by the Montana Administrative Appeal Act, and that deference is due to agency interpretations of its own rules and regulations.

Montana v. Talen Mont., LLC, 2023 U.S. Dist. Lexis 150453 (D. Mont., August 25, 2023). On remand from the U.S. Supreme Court in *PPL Montana, LLC v. Montana*, the U.S. District Court upheld removal from state court (*State of Montana v. Talen Montana, LLC*, 2018 U.S. Dist. LEXIS 129198 (D. Mont. 2018)), and applying the Mandate Rule, determined that 8.2 miles of the Missouri River between Black Eagle Falls and the Great Falls, as a matter of law, were not navigable for title at the time of Montana's statehood, dismissing Montana's back rent claims for hydroelectric dams in that stretch of the river. In a subsequent ruling (*Montana v. Talen Mont., LLC*, 2019 U.S. Dist. LEXIS 22675 (D. Mont. 2019)), the court ordered joinder of the United States as a necessary party under the Federal Quiet Title Act. In the subsequent ten-day bench trial in January 2022, Talen, NorthWestern Energy and the United States defended against the State of Montana's claims of title to various segments of the beds and banks of the Madison, Missouri and Clark Fork rivers. In its August 25, 2023, Findings of Fact, Conclusions of Law and Order, 2023 U.S. Dist. Lexis 150453, the district court held in favor of the defendants on all but a small segment of the Missouri River, finding the other litigated segments were not navigable for title purposes at statehood in 1889, and dismissing Montana's claims to tens of millions of dollars in rent for those segments.

Montana Environmental Info. Center v. Dept. of Env. Quality, 451 P.3d 493 (Mont. 2019). In a dispute over renewal of a water discharge permit, the Montana Supreme Court reversed the judgment entered by the district court against the agency and mining company, held that use of the reclassification process championed by the plaintiff environmental groups was not required, and remanded for further factual development.

United States v. Atl. Richfield Co., 2016 U.S. Dist. LEXIS 169364 (D. Mont. 2016). In decades-long federal environmental litigation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), the Court ruled that newspaper petitioners were barred from intervening in the case and could not attend on-going consent decree negotiations held subject to a confidentiality order entered under the inherent Article III powers of the Court, thereby allowing the parties to negotiate and reach agreements on consent decrees entered by the court in subsequent years, including a consent decree for the Butte Priority Soils Operable Unit in 2020, and for the Anaconda Smelter NPL Site in 2022.

Over the course of her career, Kyle has been involved in the litigation and settlement of a wide variety of complex disputes between private citizens and their governments. Along with the decisions noted above, these include:

- *Bd. of Regents of Higher Educ. of Mont. v. State*, 512 P.3d 748 (Mont. 2022). Ruling in favor of our client, the Montana Supreme Court declared unconstitutional an attempt by Montana's Legislature to override policies related to firearms at Montana universities and colleges under the authority of the Montana Board of Regents, and ruled that the Board, not the Legislature, is constitutionally vested with full authority to determine the priorities of the Montana University System.
- *Sheehy v. Comm'r of Political Practices for Mont.*, 458 P.3d 309 (Mont. 2020). Affirming judgment for our client, the Montana Supreme Court held that Montana's Commissioner of Political Practices had incorrectly interpreted Montana law in clothing its office with enforcement jurisdiction over individual members of the Montana Board of Regents carrying out their constitutional and statutory duties to ensure the health and stability of the Montana University System.
- *Disability Rights Montana, Inc. v. Batista*, 930 F. 3d 1090 (9th Cir. 2019). Reversing dismissal by the district court, the Ninth Circuit Court of Appeals reinstated claims under 42 U.S.C. § 1983 contending that treatment of prisoners with serious mental illness in the Montana State Prison violates the Eighth Amendment's ban on cruel and unusual punishment. The case was remanded for review of such practices as extended periods of solitary confinement.
- *Montana Association of Counties, et al. v. State of Montana*, 404 P.3d 733 (Mont. 2017). The Montana Supreme Court, *en banc*, granting a petition for declaratory and injunctive relief under its original jurisdiction, declared invalid a Constitutional Initiative (CI-116, commonly known as Marsy's Law) that had amended Montana's Constitution to extend far-reaching rights to alleged crime victims and their relatives. The Court ruled for our coalition of challenging clients, agreeing that contrary to the requirements of the Montana Constitution for how it may be amended by initiative, Marsy's Law improperly amended multiple pre-existing constitutional provisions, including provisions involving Due Process, bail and other rights of accused persons, and provisions

on the Right to Know and Right of Privacy governing all Montanans. The Court, therefore, held Marsy's Law void in its entirety.

- *State of Montana v. Atlantic Richfield Company*, No. CV-89-39-BU (D. Mont.). In decades-long federal litigation regarding the environmental consequences of the activities of the Anaconda Company and its century-long development of the copper and other natural resources from “the richest hill on earth,” this Superfund litigation involving the State of Montana, the United States and the corporate successors of the Anaconda Company was settled to the mutual satisfaction of the parties in a Consent Decree entered by the federal district court in 2008.
- *Many Horses v. State of Montana*, No. CV-93-37-BU (D. Mont.). Establishing the requirement of gender equality for inmates in the Montana Prison system, a class action dispute between women incarcerated in the Montana Women's Correctional Center and the State of Montana resulted – after years of litigation – in an agreement by the State to construct a new women's correctional facility in Billings. Kyle was Montana counsel for the women inmates (along with counsel from the ACLU National Prison Project) in the 1990s, and (along with counsel from the ACLU of Montana), represented women inmates in the 2000s in various disputes with the Montana Prison system involving allegations of unequal treatment based on gender, including in *Fish v. Montana*, No. CV 11-0099-BLG (D. Mont. 2000), the settlement of which required the State to open prison-avoidance “boot camp” programs to women inmates.

PUBLICATIONS

"Is Campaign Finance Reform Still a Thing? ," *Montana Lawyer*, Vol. 41, No. 5, May 2016

RECOGNITION

- American Academy of Appellate Lawyers, Fellow
- Mountain States Super Lawyers®, Appellate, 2019-2026
- *The Best Lawyers in America*® Lawyer of the Year, Insurance Law – Billings, 2024
- *The Best Lawyers in America*® Lawyer of the Year, Appellate Practice – Billings, 2018, 2020, 2023
- *The Best Lawyers in America*®, Appellate Practice, 2011-2026; Insurance Law, 2016-2026
- *Bar Register of Preeminent Women Lawyers* based on Martindale-Hubbell®, AV Preeminent® Rating, 2013
- *Chambers USA*, Natural Resources & Environment, 2021-2024
- Neil Haight Pro Bono Award, State Bar of Montana, 2019
- Frank I. Haswell Award for Outstanding Contribution to Montana Lawyer Magazine, Honorable Mention, 2016

PROFESSIONAL AND CIVIC AFFILIATIONS

- ACLU of Montana, Litigation Committee, Member
- American Bar Association, Environment, Energy and Resources Section, Member
- Montana Bar Association, Women's Law Section, Member
- Wyoming Bar Association, Member