Stephen Masciocchi

Partner
303.295.8451
Denver
smasciocchi@hollandhart.com

Jessica Smith

Partner
303.295.8374
Denver
jjsmith@hollandhart.com

Tenth Circuit Holds That a State Can Cede Its Jurisdiction to the Federal Government Only Through State Legislation

Insight — January 25, 2021

Law.com

Rejecting an argument that Wyoming had implicitly, through negotiations and other actions, ceded jurisdiction over its land, the U.S. Court of Appeals for the Tenth Circuit confirmed that states may only cede jurisdiction to the federal government through state legislation by a state legislature.

In *Defenders of Wildlife v. Everson*, — F.3d —, 2020 WL 7759468 (10th Cir. Dec. 30, 2020), environmental organizations challenged the National Park Service's (NPS) determination that its hunting prohibition in national parks did not apply to state or private land inside Grand Teton National Park. Rejecting an argument that Wyoming had implicitly, through negotiations and other actions, ceded jurisdiction over its land, the U.S. Court of Appeals for the Tenth Circuit confirmed that states may only cede jurisdiction to the federal government through state legislation by a state legislature.

The Plaintiffs' Claims Against NPS

Grand Teton National Park (the Park) is an iconic portion of northwest Wyoming, which is home to a large part of the Teton mountain range and to parts of the Jackson Hole valley. Through negotiations between Wyoming and federal government officials in 1949 and 1950, “the Park was [ultimately] created through the Grand Teton Enabling Act, legislation enacted in 1950 that established the modern-day park.” Id. at *4. The federal government owns 99% of the Park, leaving the remaining 1% in the hands of either Wyoming or private parties. Id. at *1.

Under the National Park Service Organic Act, NPS is empowered to “promote and regulate the use of the National Park System by means and measures” that “conserve [and] … provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” Id. at *2 (quoting 54 U.S.C. §100101(a)). To “carry out this mandate,” NPS has promulgated regulations, including a prohibition on hunting inside national parks, and this prohibition applies “regardless of land ownership, on all lands and waters within a park area that are under the legislative jurisdiction of the United States.” Id. (quoting 36 C.F.R.

§2.2(g)).

The parties in *Defenders of Wildlife* disputed who had jurisdiction over the 1% of the Park owned by Wyoming or private parties—the federal government or Wyoming. In particular, and by raising various administrative law challenges, the plaintiffs wanted NPS's ban on hunting in national parks to apply to the remaining 1% of the Park. NPS declined, concluding that it lacked jurisdiction over that 1%. NPS relied on the fact that "Wyoming never ceded legislative jurisdiction to the federal government" during negotiations for the Park's creation. Id.

The plaintiffs argued that NPS's conclusion was arbitrary and capricious. The district court agreed with NPS, concluding that while the plaintiffs had standing to challenge NPS's administrative actions, they failed to show that any of those actions were contrary to law or arbitrary and capricious. Plaintiffs appealed.

Wyoming Did Not Cede Its Jurisdiction

On appeal, the Tenth Circuit applied "the APA's familiar arbitrary-and-capricious standard, which provides that an agency action is to be set aside only if, as relevant here, it is "'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'" Id. at *10 (quoting 5 U.S.C. §706(2)(a)). "That test is met where the agency (1) entirely failed to consider an important aspect of the problem, (2) offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise, (3) failed to base its decision on consideration of the relevant factors, or (4) made a clear error of judgment." Id. (quotations omitted).

The Tenth Circuit concluded that the test wasn't met, because a state cannot cede its jurisdiction to the federal government by mere "agreement." Id. at *12. Instead, "action by a state legislature—and by a state legislature only—is required for a cession of jurisdiction[.]" Id. This "holding is grounded in time-honored principles of American government, as well as the significant weight of caselaw uniformly finding a cession of jurisdiction only where there had been corresponding state legislative action." Id. Central to this conclusion was this country's long-held respect for separation of powers between the three branches of government. Because Wyoming's power to cede jurisdiction to the federal government is a *legislative* power, only the Wyoming *legislature* could do so. Id. at *13 ("[I]t is the *state legislature* that may cede legislative jurisdiction to the federal government.") (emphasis in original).

It mattered not that "state and federal officials reached a 'compromise agreement' … under which no hunting would be allowed anywhere within" the 1% not owned by the federal government "regardless of State law." Id. at *16. This "compromise agreement" and any negotiations "plainly, do not constitute state legislation; instead, they simply reflect the contemporaneous communications and negotiations between the Wyoming and federal parties regarding the issues underlying the Park's

expansion." Id. at *16.

This evidence, "not constituting any form of legislative act," was "irrelevant as a matter of law to the question of whether Wyoming ceded its jurisdiction to NPS." Id. "By necessary implication, then, in rendering its … decision, the NPS did not act arbitrarily or capriciously by not considering the [evidence] that purportedly reflected the aforementioned agreement" because "an agency is charged with considering only those matters that are relevant to the action that it plans on undertaking." Id.

The Tenth Circuit therefore concluded that NPS had not acted arbitrarily or capriciously in declining to exercise jurisdiction over the 1% of the Park not owned by the federal government.

The Conservation Association Lacked Standing To Challenge 2015 Boundary Decision

One plaintiff (the "Conservation Association") also challenged NPS's approval of a boundary amendment to the 99% of the Park owned by the federal government, which effectively caused one small section of the Park to fall under state, rather than federal, jurisdiction. The Conservation Association challenged this decision because it effectively removed this section from a federal 2015 Elk Reduction Program, leaving it instead to Wyoming hunting regulations.

The Tenth Circuit concluded that the Conservation Association lacked standing to raise this challenge. "[T]o establish standing, a plaintiff must show a 'present or threatened injury' at the time the complaint is filed." Id. at *20 (citations omitted). Because NPS's boundary decision only applied to the 2015 Elk Reduction Program, it no longer presented a "present … injury" in 2016 and beyond. Id. The appellate court also rejected an argument that the boundary changes caused an injury of "continuing nature" such that it nonetheless constituted a "present injury for standing purposes." Id. at *21. Because the effect of the NPS decision had already expired when the Conservation Association sued, there simply was no Article III standing.

Stephen Masciocchi and Jessica Smith are attorneys at Holland & Hart specializing in complex commercial litigation. Steve assists clients with federal and state appeals and class actions in high-stakes trial and appellate litigation. Jessica has substantial appellate experience and leads the firm's religious institutions and First Amendment practice.

Subscribe to get our Insights delivered to your inbox.