IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CENTER FOR BIOLOGICAL DIVERSITY, ) No. 3:17-cv-00091-JWS
 )
 )
v. ) Plaintiff,
 )

Decl. of Todd F. Gaziano

CBD v. Zinke, No. 3:17-cv-00091-JWS
I, TODD F. GAZIANO, declare that:

1. I submit this Declaration in support of Pacific Legal Foundation (PLF)’s Motion to Intervene in the above-captioned case (Lawsuit).

2. I have personal knowledge of the facts stated in this Declaration, and if called as a witness, I could and would testify to these facts under oath.

3. I graduated from the University of Chicago Law School in 1988.

4. I have worked in all three branches of the United States Government. In each of the two political branches, I served in positions that were acutely responsible for enforcing the constitutional separation of powers. Promoting the separation of powers has remained an important part of my work in non-profit jobs thereafter, including at the Pacific Legal Foundation.

5. From 1988–1989, I was a judicial law clerk in the U.S. Fifth Circuit Court of Appeals to the Honorable Edith H. Jones.

6. In 1988 and again in 1992–1995, under three different presidential administrations, I was an attorney advisor in the U.S. DOJ, Office of Legal Counsel,
which is responsible for advising the President, Attorney General, and other cabinet secretaries on executive authority and the interpretation and application of the constitutional separation of powers and separations of powers principles.

7. During the time the Congressional Review Act was being considered and enacted in 1996, I served as Chief Counsel to the U.S. House of Representatives Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs, which was then Chaired by Rep. David M. McIntosh, a Member of Congress from Indiana’s 2nd Congressional District. That position entailed both oversight investigations and hearings related to various regulatory agencies and legislation involving government-wide reform of the regulatory process.

8. Mr. McIntosh was the principal sponsor in the House of Representatives of the Congressional Review Act (CRA), which was enacted in 1996. Pub. L. No. 104–121, Title II, Subtitle E, codified at 5 U.S.C. §§ 801–808, and is also designated as chapter 8 of the Administrative Procedure Act.

9. I was the principal House negotiator and staff drafter of the CRA, the final version of which was negotiated between bipartisan House and Senate sponsors. The text of the final law drew from three bills, and it was placed in what became Pub. L. 104–121, an omnibus bill with some unrelated titles. There was no committee report discussing the terms of the final CRA law. As a consequence, I assisted all the House and Senate sponsors from both political parties draft a joint statement on its legislative history and purposes, which identical joint statement
was entered into the Congressional Record of each House, with only differing introductions.

10. I am very familiar with the CRA’s provisions and purposes, including writings and presentations on its purposes, applications, and uses when I was a non-profit scholar. I was invited and did testify at a congressional hearing on the CRA’s 10th Anniversary. I have been described by former Rep. McIntosh, other scholars, and the national media as the nation’s foremost expert on the CRA.

11. For many years, I was the chair of the Federalist Society’s separation of powers committee within its Practice Group Executive Committee on Federalism and the Separation of Powers. I remain on the Federalist Society’s Federalism and Separation of Powers Practice Group Executive Committee. I have also published or lectured on separation of powers many times in the last 20 years.

12. Currently, I am the Executive Director of PLF’s D.C. Center and PLF’s Senior Fellow in Constitutional Law. A large part of my substantive focus is to help PLF’s mission to restore the original constitutional separation of powers and curb administrative abuses of power.

13. PLF is a leading public-interest law firm with a mission to protect individual liberty and promote limited government by, among other things, seeking to enforce the United States Constitution’s tri-partite division of powers and promoting the Constitution’s grant of legislative power to Congress.

14. PLF frequently litigates cases involving the constitutional separation of powers, regulatory-agency power, and a balanced approach to environmental
protection. Many of PLF’s cases, including its victories in the Supreme Court of the United States, involve limiting government to its enumerated powers, enforcing the separation of powers, and curbing administrative abuses.

15. PLF also publishes scholarly research in the areas of Constitutional rights, separation of powers, and administrative law.

16. Recently, PLF launched its “Red Tape Rollback” project, which is devoted to educating the general public and public officials about the use and benefits of the Congressional Review Act. See https://www.redtaperollback.com/. I am the director of PLF’s Red Tape Rollback project.

17. Since January of this year, PLF’s Red Tape Rollback initiative has promoted the CRA and identified administrative rules for review under the CRA. To date, thirteen administrative rules have been invalidated through laws passed under the CRA. Among these thirteen rules is the “Refuges Rule” at issue in this Lawsuit. See Non-Subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska. 81 Fed. Reg. 52,248 (Aug. 5, 2016). The Refuges Rule was invalidated by Public Law No. 115–20.

18. Through the Red Tape Rollback project, as well as scholarly research, promotion, and advocacy of the CRA and related Constitutional and administrative-law concepts, PLF has acquired a particular expertise regarding administrative law and the Congressional Review Act in particular.

19. PLF’s participation in this lawsuit is directly related to its mission to reform federal administrative law to conform to the original understanding of the
Constitutional separation of powers and, in particular, the proper use of the Congressional Review Act, so that Congress will engage in careful oversight of the rulemaking process.

20. If PLF is not permitted to intervene in this Lawsuit, its ability to continue the Red Tape Rollback project and related efforts at promoting the Congressional Review Act will be harmed. In particular, a ruling that invalidates or narrows the Congressional Review Act will require PLF to transfer resources away from administrative oversight and continued application of the CRA and toward additional legislative reform and additional litigation to overturn illegal regulations that Congress disallowed under the Congressional Review Act.

* * *

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.


s/ Todd F. Gaziano (consent)

TODD F. GAZIANO