IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

11-35661, 11-35670 [consolidated cases]

ALLIANCE FOR THE WILD ROCKIES *et al*.,
Appellants,

v.

KEN SALAZAR, United States Secretary of the Interior, *et al*.,
Appellees,

and

CENTER FOR BIOLOGICAL DIVERSTIY *et al*.,
Appellants,

v.

KEN SALAZAR, United States Secretary of the Interior, et al.,
Appellees,

and

SAFARI CLUB INTERNATIONAL AND NATIONAL RIFLE ASSOCIATION OF AMERICA, *et al*.,
Intervenor-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA, MISSOULA DIVISION,
NO. 9:11-CV-00070-DWM

BRIEF OF INTERVENORS SAFARI CLUB INTERNATIONAL AND NATIONAL RIFLE ASSOCIATION OF AMERICA

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CORPORATE DISCLOSURE STATEMENT REQUIRED BY FRAP 26.1

Appellees Safari Club International and National Rifle Association of America hereby state, by and through their respective attorneys, that they have no parent corporations and that there is no publicly held corporation that owns 10% or more of their stock.

Dated this 14th day of October, 2011.

/s/Anna M.Seidman
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I. JURISDICTIONAL STATEMENT

Safari Club International and the National Rifle Association of America ("Safari Club and NRA") do not dispute the representation of Appellants Center for Biological Diversity *et al*. ("CBD") and Alliance for the Wild Rockies *et al.* ("AWR") with respect to the factual basis for their potential Article III or Constitutional standing to bring this appeal. Safari Club and NRA do dispute CBD and AWR's prudential standing to pursue their constitutional challenges to Section 1713 of H.R. 1473, the Department of Defense and Full-Year Continuing Appropriations Act of 2011 ("Section 1713") CBD AD at 1. Safari Club and NRA discuss this point in the Argument Section below.

II. STATEMENT OF ISSUES PRESENTED FOR REVIEW

In addition to the issues presented by CBD and AWR in their Opening Briefs, Safari Club and NRA ask this Court to determine the following:

- **Whether CBD and AWR possess prudential standing to pursue their constitutional challenges to Section 1713.**

III. STATEMENT OF ADDENDUM AND EXCERPTS OF RECORD

All applicable statutes, etc., are contained in the briefs or addendum filed by CBD and AWR. 9th Cir. R. 28-2.7. References to CBD's Addendum will be designated as "CBD AD." In addition, Safari Club and NRA have filed their own supplemental Excerpts of Record which includes documents

referenced in this brief that have not been included in the Excerpts of Record filed by either CBD or AWR. Citations to the Safari Club and NRA Excerpts of Record are identified by "Safari Club ER" and are followed by Bates numbering of the document (e.g. "Safari Club ER 1"). Citations to the Excerpts of Record filed by CBD and AWR will be identified as "CBD ER" and "AWR ER" with the corresponding Bates number.

IV. STATEMENT OF THE CASE

CBD and AWR's Statements of the Case are essentially accurate but incomplete. CBD and AWR fail to explain and document the bases upon which they filed their constitutional challenges to Section 1713. A fundamental component of this case is that CBD and AWR's constitutional challenges to Section 1713 rely on the statute's purported interference with "pending litigation." The "pending litigation" refers to the appeals filed by Safari Club and NRA, Federal Appellants, the States of Montana and Idaho and other non-governmental groups (Safari Club ER 1, 4, 7, 10, 13, 16) to a ruling from the Montana District Court. Safari Club ER 19. In that ruling, federal district court Judge Donald Molloy invalidated and vacated the 2009 Delisting Rule, a federal regulation removing the wolves of Montana, Idaho and portions of Oregon, Utah and Washington from the endangered species list. 74 Fed. Reg. 15123 (April 2, 2009) CBD AD at 2; AWR ER at 182. The Montana District Court's ruling made the plaintiffs in that case, including

appellants Center for Biological Diversity, Cascadia Wildlands, Western Watersheds Project, Alliance for the Wild Rockies and Friends of the Clearwater[1], prevailing parties. When Safari Club and NRA and the other defendants and defendant-intervenors in that litigation appealed the District Court's ruling, those appeals threatened the plaintiffs' victory.[2] The appeals were Safari Club and NRA's and the other defendants and defendant-intervenors' opportunities to obtain a reversal of the invalidation of the 2009 Delisting Rule.

When Congress enacted Section 1713, the law's only impact on the pending litigation was to potentially moot the appeals filed by Safari Club and NRA *et al.* Section 1713 directed the FWS to issue a regulation delisting the wolves of Montana, Idaho and portions of Oregon, Utah and Washington. That law potentially made it impossible for Safari Club and NRA *et al*. to ever seek a reversal of the Montana District Court's ruling on the 2009 Delisting Rule. Technically, if any "interference" occurred with pending litigation, that interference disadvantaged those who sought to appeal the district court's

[1] WildEarth Guardians is the only appellant in this action that was not a plaintiff in the litigation challenge to the 2009 Delisting Rule.

[2] *DOW et al. v. Ken Salazar et al. and Safari Club International, et al*., Civ. No. 10-35897 (Safari Club ER at 1); *DOW et al., v. Ken Salazar et al*., Civ. No. 10-35894 (Safari Club ER at 4); *DOW et al. v. State of Montana et al.*, Civ. No. 10-35898 (Safari Club ER at 7) ; *DOW et al. v. State of Idaho et al.*, Civ. No. 10-35885 (Safari Club ER at 10); *DOW et al. v. Montana Farm Bureau Fed'n. et al*., Civ. No. 10-35886 (Safari Club ER at 13); *DOW, et al. v. Salazar et al.*, Civ. No. 10-35926 (Safari Club ER at 16). These cases have been stayed pending the outcome of the instant matter.

ruling, not those who sought to defend it. Consequently, CBD and AWR were not harmed by any alleged interference with pending litigation. If anything, Section 1713 finalized their litigation victory. CBD and AWR's challenge is not based on interference with pending litigation. It is a challenge to a change in the law that has the effect of reversing their litigation victory. That type of Congressional action is constitutional.

V. STATEMENT OF FACTS

Safari Club and NRA do not dispute the accuracy of the facts as stated in the Opening Briefs of CBD and AWR, but do dispute the relevance of CBD and AWR's references to "editorial boards" [CBD Opening Brief at 9] and newspaper articles [*Id*. at 9-10; AWR Opening Brief at 24, 25]. In addition, CBD and AWR's Statements of Facts are incomplete without a discussion of the nature of the "pending litigation" that is at the heart of CBD and AWR's constitutional challenges to Section 1713, and a discussion of Safari Club and NRA's interests and status in this litigation.

A. **The Pending Litigation**

The "pending litigation" that fuels this suit are the appeals filed by Safari Club and NRA, Federal Appellants, the States of Montana and Idaho and other non-governmental groups (Safari Club ER at 1, 4, 7, 10, 13, 16) to a ruling from the Montana District Court. Safari Club ER at 19. In that ruling, federal district court Judge Donald Molloy invalidated and vacated the 2009

Delisting Rule. 74 Fed. Reg. 15123 (April 2, 2009) AWR ER at 182; CBD AD at 2. Several of the appellants in this litigation, including Center for Biological Diversity, Cascadia Wildlands, Western Watersheds Project, Alliance for the Wild Rockies and Friends of the Clearwater, were the prevailing parties in the 2009 Delisting Rule challenge. Safari Club and NRA and the other defendants and defendant-intervenors in that litigation appealed the District Court's ruling.[3] When Congress enacted Section 1713, the law's only impact on the pending litigation was to potentially moot the appeals filed by Safari Club and NRA *et al.* Any alleged interference with the appeals to the 2009 Delisting Rule caused no harm to CBD and AWR and merely finalized their victory in the Montana District Court.

B. Safari Club International and National Rifle Association of America

Members of Safari Club International and the National Rifle Association of America participated in the 2009 wolf harvests in Montana and Idaho and have concrete plans to participate in the wolf seasons expected to take place in these states in 2011/2012. Safari Club and NRA members hunt,

[3] *DOW et al. v. Ken Salazar et al. and Safari Club International, et al.*, Civ. No. 10-35897 (Safari Club ER at 1); *DOW et al., v. Ken Salazar et al.*, Civ. No. 10-35894 (Safari Club ER at 4); *DOW et al. v. State of Montana et al.*, Civ. No. 10-35898 (Safari Club ER at 7) ; *DOW et al. v. State of Idaho et al.*, Civ. No. 10-35885 (Safari Club ER at 10); *DOW et al. v. Montana Farm Bureau Fed'n. et al.*, Civ. No. 10-35886 (Safari Club ER at 13); *DOW, et al. v. Salazar et al.*, Civ. No. 10-35926 (Safari Club ER at 16). These cases have been stayed pending the outcome of the instant matter.

guide and otherwise enjoy outdoor recreational opportunities in Montana and Idaho, and many depend on hunting for their livelihoods. These members have found their success and enjoyment of these activities diminished by the presence of excessive numbers of wolves and by the impact that wolves have had on elk, deer, moose, and other wildlife populations and behavior. Safari Club and NRA members have competed with wolves for prey and have lost prey to wolves. They have seen fewer and fewer numbers of elk, moose and deer in areas where wolves now live.

Safari Club International is a nonprofit corporation that promotes the principle and practice of sustainable use conservation, of which the existence of abundant hunting opportunities is an important component. The NRA is a nonprofit corporation whose purposes and objectives include, "[t]o promote hunter safety, and to promote and defend hunting as a shooting sport and as a viable and necessary method of fostering the propagation, growth and conservation, and wise use of our renewable wildlife resources." (NRA Bylaws Article II Section 5.)

This Court granted Safari Club and NRA leave to participate in this case as intervenor-appellees on September 19, 2011, Dkt. No. 39, No. 11-35661.

VI. SUMMARY OF ARGUMENT[4]

CBD and AWR lack prudential standing to attack the constitutionality of Section 1713. As the prevailing parties in the lawsuits in the underlying cases on appeal when Section 1713 was enacted, CBD and AWR are not within the zone of interest of the constitutional provision on which they base their arguments here. CBD and AWR cannot rely on the appeals filed by Safari Club and NRA and others to provide the "pending litigation" necessary to wage their separation of powers arguments.

In addition, because Federal Appellants have offered a constitutional interpretation of Section 1713, this Court has an obligation to uphold the law's constitutionality. Given the choice between a constitutional and unconstitutional interpretation, the Court is obligated to observe the former.

The Court must disregard any purported purposes for which Section 1713 was enacted if the Court deems such purposes unconstitutional since it is the statute itself and not the motives of the legislators upon which the Court must base its determination as to the law's constitutionality.

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[4] Safari Club and NRA's purpose in intervening in this litigation to defend the constitutionality of Section 1713 is to supplement and complement the arguments made by Defendant Salazar et al. ("Federal Appellees"), rather than to repeat or duplicate their arguments. For that reason, Safari Club and NRA use this brief to present only those arguments that the Federal Appellees failed to present in their summary judgment briefing of this case in the District Court below. For all other arguments in defense of Section 1713, Safari Club and NRA incorporate by reference the brief submitted by Federal Appellees.

Finally, the Court must disregard the fact that Section 1713 may moot the appeals to the 2009 Delisting Rule of Safari Club and NRA and the other appellants in that litigation, since that impact is not a proper basis for determining a law to be unconstitutional.

VII. ARGUMENT

A. Standard of Review

Safari Club and NRA do not dispute CBD and AWR's position on the standard of review for this case.

B. CBD and AWR Lack Prudential Standing to Challenge Section 1713

Prudential standing is dictated by "judicially self-imposed limits on the exercise of federal jurisdiction." *Elk Grove Unified School District v. Newdow*, 542 U.S. 1, 11 (2004) (Father lacked prudential standing to challenge school's pledge of allegiance requirement), quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984). Prudential standing requires that the challengers' claims fall within the zone of interests protected by the law upon which they rely for the suit. *Id.*

In the instant matter, AWR and CBD have filed constitutional challenges based on claims that, in enacting Section 1713, Congress violated the constitutionally required separation of powers by interfering with pending litigation. The "pending litigation" that is the focus of this suit are the appeals

of two lawsuits, originally filed in the U.S. District Court for the District of Montana. These lawsuits challenged an April 2, 2009 federal regulation that removed the wolves of Montana, Idaho, and portions of Oregon, Utah and Washington ("NRM wolves") from the endangered species list. 74 Fed. Reg. 15123 (April 2, 2009) (2009 Delisting Rule") AWR ER at 182; *Defenders of Wildlife* v. *Salazar,* CV-09-77-M-DWM and *Greater Yellowstone Coalition* v. *Salazar*. CV-09-82-M-DWM. On August 5, 2010, the Montana District Court determined that the 2009 Delisting Rule violated the Endangered Species Act ("ESA"). *Defenders of Wildlife v. Salazar*, 729 F. Supp. 2d 1207 (D.Mt. 2010). The losing parties appealed that ruling. It was not AWR and CBD who filed those appeals and, as a result AWR and CBD were not the parties responsible for the pendency of the litigation upon which AWR and CBD's constitutional challenges are based. The only reason that any litigation concerning the listing status of the NRM wolf population remained "pending" at the time of the enactment of Section 1713 was because the U.S. Fish and Wildlife Service ("FWS"), the states of Montana and Idaho, and non-governmental groups like Safari Club and NRA appealed the Montana district court ruling that vacated the 2009 Delisting Rule. *DOW et al. v. Ken Salazar et al. and Safari Club International, et al.*, Civ. No. 10-35897 (Safari Club ER at 1); *DOW et al., v. Ken Salazar et al.*, Civ. No. 10-35894 (Safari Club ER at 4); *DOW et al. v. State of Montana et al.,* Civ. No. 10-35898 (Safari Club ER

at 7) ; *DOW et al. v. State of Idaho et al*., Civ. No. 10-35885 (Safari Club ER at 10); *DOW et al. v. Montana Farm Bureau Fed'n. et al*., Civ. No. 10-35886 (Safari Club ER at 13); *DOW, et al. v. Salazar et al*., Civ. No. 10-35926 (Safari Club ER at 16).

CBD and AWR had no reason to appeal because they prevailed in their challenge to the 2009 delisting rule. But for the appeals filed by Safari Club and NRA *et al*., no relevant litigation would have been pending and no separation of powers constitutional challenge allegation would have been available for any party to assert to challenge the constitutionality of Section 1713.

As victors in the challenge to the 2009 Delisting Rule, CBD and AWR neither desired nor had the ability to appeal the ruling in their favor. One who prevails in court generally cannot appeal from a judgment that has succeeded in remedying his harms. *Platt Elec. Supply, Inc.* v. *EOFF Elec., Inc.,* 522 F.3d 1049, 1059 n.3 (9th Cir. 2008) (Court prohibited litigant who prevailed on question of whether there was a fraudulent concealment claim to appeal the judgment), citing *Envtl. Prot. Info. Ctr., Inc v. Pac. Lumber Co.,* 257 F.3d 1071, 1075 (9th Cir. 2001). Just as they could not have appealed the ruling in their favor, CBD and AWR, as prevailing parties, are prohibited from suing to avoid (alleged) Congressional interference with an appeal that they could not have taken.

The zone of interests for separation of powers claims should not include parties who are not responsible for the pending nature of the underlying litigation. Prudential standing should not extend to parties who, but for the actions of their opponents, would have chosen to terminate the now pending litigation and walk away with their victory. Prudential standing encompasses only those with an "injury in fact" that is "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. *Bennett v. Spear*, 520 U.S. 154, 163 (1997).

Assuming, for the sake of argument, any alleged interference with litigation did occur, the only injured parties from that interference would be parties who appealed the Montana District Court's ruling on the 2009 Delisting Rule. The sole impact that Section 1713 could have on the pending litigation in *Defenders of Wildlife* v. *Salazar* and *Greater Yellowstone Coalition v. Salazar*, would be to potentially moot the appeals taken by the FWS and other appellants such as Safari Club and NRA. Section 1713 potentially interferes with the ability of the parties who filed those appeals to seek a substantive reversal of their loss in the District Court. CBD and AWR do not have this interest and do not share this potential harm. CBD and AWR have only one interest in preserving the appeals of the district court's ruling on the 2009 Delisting Rule – to use these appeals as a basis for pursuing their constitutional challenges to Section 1713. The zone of interests related to the

constitutional protections from interference with pending litigation should not extend to those whose only interest in prolonging the underlying pending litigation is to provide the basis for their separation of powers challenge. Because AWR and CBD are not within the required zone of interests, their claims should have been dismissed in the District Court and should ultimately be dismissed in this Court.

At most, CBD and AWR's alleged injuries are derivative of the potential interference that Section 1713 causes to the appeals pursued by the Safari Club and NRA and the other appellants in the 2009 Delisting Rule litigation challenge. CBD and AWR are attempting to assert third party prudential standing to redress their alleged injuries. "To demonstrate third party standing, a plaintiff must show his own injury, a close relationship between himself and the parties whose rights he asserts, and the inability of the parties to assert their own rights." *McCollum v. California Dept. of Corrections and Rehabilitation*, 647 F.3d 870, 879 (9th Cir. 2011) (Court held that because prisoners could assert their own rights, volunteer prison chaplain lacked third party prudential standing to assert his loss of payment as derivative of prisoners' First Amendment right claims), *quoting Powers v. Ohio*, 499 U.S. 400, 409-10 (1991). As CBD and AWR will suffer no harm from the interference with the pending appeals that they did not take, they cannot rely on a claim of interference with pending litigation to invoke this Court's jurisdiction to

consider their constitutional challenge.

As noted above, the U.S. Supreme Court has recognized two exceptions to the rule that third parties may not assert derivative prudential standing on behalf of an injured party who does not assert his or her own challenges. First the Supreme Court has considered the association between the litigators and the injured parties to determine whether "the relationship between the litigant and the third party may be such that the former is fully, or very nearly, as effective a proponent of the right as the latter." *Singleton v. Wulff*, 428 U.S. 106, 115-117 (1976). (Court allowed physicians to sue on behalf of patients to challenge constitutionality of law pertaining to Medicaid benefits available for abortions, finding that a woman's ability to obtain an abortion is inextricably intertwined with the physician's ability to perform and to receive compensation for performing the abortion).

Second, the Supreme Court looks to see whether there is any obstacle preventing the affected party from asserting his or her own right. *Id*. at 117 (Court found that obstacles such as the desire to preserve privacy and potential mootness from the short duration of individual pregnancies could pose obstacles (albeit not insurmountable ones) that could make it appropriate for the physician to bring the claim on behalf of his patients); *see also Fleck v. City of Phoenix*, 471 F.3d 1100, 1105 n.3 (9th Cir. 2006). Neither of these two exceptions applies in the instant case. Safari Club and NRA and the other

appellants in the pending appeals to the Montana District Court's invalidation of the 2009 Delisting Rule certainly cannot rely on CBD and AWR to represent their interests as they are on the opposite side of the wolf delisting controversy from CBD and AWR. Safari Club and NRA and the remaining appellants seek the delisting of the Northern Rocky Mountain ("NRM") wolves, while CBD and AWR seek to have the wolves of the NRM returned to the endangered species list. In addition, no impediment stands in the way of Safari Club and NRA and the other appellants bringing their own challenges to the constitutionality of Section 1713, other than the fact that Section 1713 is constitutional. If there was some valid problem with Section 1713's constitutionality, Safari Club and NRA and the other appellants in the 2009 Delisting Rule case could have sued on their own to preserve their right to continue their appeals and obtain a ruling from this Court in their favor on the validity of the 2009 Delisting Rule.

In addition, it matters not that the third party bringing suit asserts an injury that is derivative of the injury potentially suffered by the parties whose rights have been affected by the alleged interference. *Danos v. Jones*, 2011 WL 3795168, *3 (5th Cir. 2011) (Judicial secretary who lost her job due to the impeachment of her employer did not have prudential standing to challenge the constitutionality of the disciplinary proceedings against the judge).

Although CBD and AWR allege an injury, their injury does not flow

from the interference with pending litigation. Their purported injury stems simply from the fact that Congress has passed a law that has resulted in the delisting of the NRM wolves. CBD and AWR cannot challenge the constitutionality of that law by artificially piggybacking on the appeals filed by other parties in order to fabricate harms that do not belong to CBD and AWR.

A. Given the Choice Between Constitutional and Unconstitutional Interpretations of a Law, the Court Cannot Designate a Law as Unconstitutional

The parties have presented this Court with a number of opposing interpretations of Section 1713. CBD and AWR insist that the law is unconstitutional and Federal Appellants offer the court a contrary interpretation. The existence of opposing interpretations resolves the question. A fundamental canon of statutory construction requires that, when given the choice between constitutional and unconstitutional interpretations of a law, a Court has no recourse other than to select the Constitutional interpretation. In such a case, the Court's "plain duty" is to "save the act." *NLRB v. Jones & Laughlin Steel Corp*., 301 U.S. 1, 30 (1937).

> When a statute is fairly subject to a variety of interpretations all but one of which would make it unconstitutional, then the courts must presume Congress intended the interpretation which is constitutionally permissible.

Apache Survival Coalition v. U.S., 21 F.3d 895, 904 (9th Cir. 1994) (Court

rejected Constitutional challenge to Arizona-Idaho Conservation Act), quoting *United States v. Thompson*, 452 F.2d 1333, 1337 (D.C. Cir. 1971). The canon of statutory construction goes beyond the court's duty to interpret the law and relates to the judiciary's underlying duty to uphold the constitution as well as to respect the authority and integrity of its fellow branches of the government.

> This approach not only reflects the prudential concern that constitutional issues not be needlessly confronted, but also recognizes that Congress, like this Court, is bound by and swears an oath to uphold the Constitution. The courts will therefore not lightly assume that Congress intended to infringe constitutionally protected liberties or usurp power constitutionally forbidden it.

Edward J. De Bartolo Corp. v. Florida Gulf Coast Building and Construction Trades Council, 485 U.S. 568, 575 (1988) (Court upheld the constitutionality of provisions of the National Labor Relations Act).

Because on its face, Section 1713 offers the Court a plausible and constitutional interpretation, this Court bears the obligation to select the interpretation that makes the law constitutional.

B. A Constitutional Law Remains Constitutional Even If Allegedly Drafted For Unconstitutional Purposes

CBD and AWR and the Federal Appellants have each devoted much of their briefs to the question of whether the Court may or should review and/or consider the legislative history behind Section 1713, in addition to what properly constitutes the legislative history of the law. Whether or not it is appropriate for the Court to review whatever qualifies as legislative history,

the motives of the legislators in drafting and adopting legislation revealed by the legislative history cannot be used to impugn the constitutionality of that legislation. The language of the statute dictates whether or not it is constitutional. If the legislation, on its face, is constitutional, the Court cannot use the potentially inappropriate motives of the legislators to declare the legislation unconstitutional. *Walker v. United States Department of Housing and Urban Development*, 912 F.2d 819, 830 (5th Cir. 1990) (Despite controversial statements by bill's sponsors, Court held that federal statute that eliminated funding for the demolition of public housing did not interfere with pending litigation). Since nothing on the face of Section 1713 itself expresses Congress' intent to purposefully violate the separation of powers between the legislative and judicial branches, this Court must declare Section 1713 constitutional.

B. Legislation Is Not Unconstitutional Simply Because It May Moot a Pending Appeal

The sole impact that Section 1713 might have on pending litigation is to potentially moot the appeals noticed by Safari Club and NRA, Federal Appellees and the rest of the appellants in the appeal of the Montana District Court's ruling on the 2009 Delisting Rule. The fact that a statute may moot the appeal of litigation does not make that statute an unconstitutional violation of the separation of powers between the judiciary and legislative branches of

government. *Stop H-3 Association v. Dole*, 870 F.2d 1419, 1432 (9th Cir. 1989) (Court held constitutional a section of Federal-Aid Highway Act that exempted a Hawaiian highway construction project from NEPA requirements and mooted litigation challenging the project)

VIII. CONCLUSION

CBD and AWR lack prudential standing to pursue their constitutional challenge to Section 1713. A constitutional interpretation exists for 1713 and this Court must apply that interpretation, rather than any unconstitutional one posed by CBD and AWR. The alleged motivations of the legislators are irrelevant to the determination of the constitutionality of the statute. The mere fact that Section 1713 moots the appeals filed by Safari Club and NRA and others in the challenge to the 2009 Delisting Rule is not grounds for this Court to declare Section 1713 unconstitutional. For these reasons, and for all the reasons stated in the brief filed by Federal Appellees, Safari Club and NRA respectfully request that this Court uphold the Montana federal district court's Order upholding the constitutionality of Section 1713.

IX. STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, Safari Club and NRA provide this list of cases that potentially relate to this appeal.

1. *Alliance for the Wild Rockies v. Salazar et al. and Safari Club International and National Rifle Association of America et al.*, No. 11-35568.

This appeal of the District Court's denial of Safari Club and NRA's motion to intervene to defend against the constitutional challenges to Section 1713 has been consolidated with a similar appeal filed by Montana Farm Bureau, *et al.* identified in 2. below.

2. *Montana Farm Bureau et al. v. Alliance for the Wild Rockies et al.*, No. 11-35636. This appeal of the District Court's denial of a motion to intervene to defend against the constitutional challenges to Section 1713 by an additional non-governmental groups have been consolidated with Safari Club and NRA's appeal, identified in 1 above.

3. *DOW et al. v. Ken Salazar et al. and Safari Club International, et al.*, Civ. No. 10-35897 (Safari Club ER at 1); *DOW et al., v. Ken Salazar et al.*, Civ. No. 10-35894 (Safari Club ER at 4); *DOW et al. v. State of Montana et al.*, Civ. No. 10-35898 (Safari Club ER at 7) ; *DOW et al. v. State of Idaho et al.*, Civ. No. 10-35885 (Safari Club ER at 10); *DOW et al. v. Montana Farm Bureau Fed'n. et al.*, Civ. No. 10-35886 (Safari Club ER at 13); *DOW, et al. v. Salazar et al.*, Civ. No. 10-35926 (Safari Club ER at 16). These cases have been stayed pending the outcome of the instant matter.

Respectfully submitted this 14th day of October.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,676 words, excluding the parts of the brief that are exempted by Fed. R. App. P. 32(a)(7)(B)(iii). I relied on my word processor to obtain the word count.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Microsoft Office Word and set in 14-point Times New Roman type style.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Brief of Safari Club International and National Rifle Association of America with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on October 14, 2011. I further certify that I will serve by first class mail, all attorneys of record in this case who are not registered CM/ECF users. All others will be served by the appellate CM/ECF system.

/s Anna M. Seidman
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