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League of Conservation Voters v. Trump

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League of Conservation Voters v. Trump, 363 F. Supp. 3d 1013 (D. Alaska 2019)

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A consortium of environmental groups brought suit challenging an executive order opening millions of acres of continental shelf lands to oil and gas leasing. The Court held that the President's actions exceeded his statutory authority and intruded on Congress's power under the Property Clause, violating the separation of powers doctrine.

I. INTRODUCTION

League of Conservation Voters v. Trump involved a statutory interpretation of the Outer Continental Shelf Lands Act ("OCSLA"), specifically whether the text of Section 12(a) of OCSLA authorizes the President to revoke a prior withdrawal of unleased Outer Continental Shelf ("OCS") lands from oil and gas leasing.[1]

The United States District Court for the District of Alaska found that the text, structure, and legislative history of OCSLA indicated that Congress intended to delegate to the President only the authority to withdraw OCS lands from leasing, and not the commensurate power to revoke a prior President's withdrawal.[2] Thus, President Trump's executive order revoking a prior withdrawal was unlawful and invalid.[3]

II. FACTUAL AND PROCEDURAL BACKGROUND

In 1953, Congress passed the Outer Continental Shelf Lands Act in order to give the United States jurisdiction over OCS lands and tfacilitate the development of oil and gas extraction leases.[4] OCSLA authorized the Secretary of the Interior to grant and regulate leases for oil and gas extraction on OCS lands.[5] Additionally, Section 12(a) of OCSLA states that "The President of the United States may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf."[6] Pursuant to Section 12(a), President Obama, in 2015 and 2016, issued an executive order and three memoranda withdrawing specific areas of the OCS from leasing.[7] These withdrawals were intended to last for an indefinite period of time, revocable only by an act of

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1. League of Conservation Voters v. Trump, 363 F. Supp. 3d 1013 (D. Alaska 2019).
2. *Id*. at 1030.
3. *Id*.
4. *Id*. at 1016; *see* Outer Continental Shelf Lands Act, 67 Stat. 462 (1953) (codified as 43 U.S.C. § 1341-1356 (2012)).
5. *Id*.
6. *Id*.
7. *Id*.

Congress.[8] President Obama cited concerns over protection of marine mammals and wildlife that are crucial to the subsistence of Alaska Natives as the impetus for the withdrawal.[9] In April 2017, President Trump issued Executive Order 13795 ("Executive Order"),─purporting to reverse President Obama's 2015 and 2016 withdrawals in the Arctic and Atlantic Oceans.[10]

On May 3, 2017, a consortium of Environmental NGOs ("Plaintiffs) sued President Donald Trump, Secretary of Interior Ryan Zinke, and Secretary of Commerce Wilbur Ross ("Defendants") in U.S. District Court alleging Executive Order 1375 exceeded the President's statutory authority under Section 12(a) of OCSLA, and "intruded on Congress's non-delegated exclusive power under the Property Clause, in violation of the doctrine of separation of powers."[11] After the Court denied the defendants' motion to dismiss, the parties filed cross motions for summary judgment.[12]

III. ANALYSIS

The parties presented differing interpretations of the textual meaning of Section 12(a) of OCSLA, as well as the legislative intent and the significance of executive actions taken subsequent to the passage of OCSLA. Plaintiffs argued that the text of Section 12(a) "does not expressly authorize the President to revoke a prior withdrawal, and that in the absence of express delegation of its power under the Property Clause, the authority to revoke prior withdrawals "remains vested solely with Congress."[13]

Defendants argued that Plaintiffs' interpretation of OCSLA would render parts of the statute superfluous, and that Section 12(a)'s "discretionary formulation—authorizing action that 'may' be taken 'from time to time'—carries with it a power to revise action previously taken under the delegated authority."[14] They also argued that Congress's failure to object to several prior modifications or reductions of withdrawals pursuant to Section 12(a) represented acquiescence to the President's unmitigated power to revoke.[15]

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8. *Id*. at 1022.
9. League of Conservation Voters v. Trump, 303 F. Supp. 3d 985, 990 (D. Alaska 2018).
10. Implementing an America-First Offshore Energy Strategy, Exec. Order No. 13795, 82 Fed. Reg. 20815, §§ 4(c), 5 (Apr. 28, 2017).
11. *Id*. at 991.
12. *League of Conservation Voters*, 363 F. Supp. 3d at 1017.
13. *Id*. at 1021.
14. *Id*. at 1020.
15. *Id*. at 1030.

A. *Text of Section 12(a) of OCSLA*

The text of Section 12(a) of OCLSA reads, in relevant part: "The President of the United States may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf."[16] The Defendants argued that the phrase "from time to time" conferred upon the President the power to revoke prior withdrawals, and cited an assortment of non-binding authority in support of their claim.[17] In particular, Defendants relied on *State v. McBride*, a 1902 Washington Supreme Court decision concerning a Washington state constitutional provision which empowered the legislature to, "from time to time," increase the number of judges sitting on its supreme court.[18] In *McBride*, the Washington legislature passed a law temporarily increasing the number of judges to seven, with the number decreasing back to five in one year's time.[19] A citizen sued, arguing that the Washington Constitution only gave the legislature authority to increase the number of judges.

The Washington Supreme Court disagreed, holding that if the legislature has the power to increase the number of judges at its sole discretion, "it follows that a decrease may be had to this minimum when necessity or occasion requires, of which necessity or occasion the legislature is the exclusive judge."[20] The *McBride* Court also noted that the fact that the Washington Constitution placed a minimum limit and permitted an increase in the number of judges "is a strong inference that the increased number may be reduced to the minimum."[21]

The Court distinguished *McBride* from the case at hand. For one, the President is not the "exclusive judge" of which OCS lands are available for lease, as the Washington state legislature was with regard to the number of judges on their supreme court.[22] Second, unlike the minimum number of judges set forth in the Washington Constitution, "no such minimum limit exists in Section 12(a) with respect to the lands available for leasing in the OCS."[23]

The Court proceeded to make several observations about the text of Section 12(a). First, Section 12(a) makes no mention of Presidential authority to revoke a previous withdrawal of OCS lands from disposition, and the Court noted that "[C]ongress appears to have expressed one concept—withdrawal—and excluded the converse—revocation."[24] Furthermore, the Court found that the phrase "from time to time" appeared to merely give the President discretion to withdraw lands at any time, with

16. 43 U.S.C. § 1341(a) (2012).
17. *League of Conservation Voters*, 363 F. Supp. 3d at 1022.
18. *Id.* at 1022–23 (quoting State ex rel. Murphy v. McBride, 70 P. 25, 26–27 (Wash. 1902).
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.* at 1023.
23. *Id.*
24. *Id.*

the duration of any given withdrawal also at the President's discretion.[25] However, the Court also noted that "the phrase could be interpreted more broadly to accord to each President the authority to revoke or modify any prior withdrawal."[26] In light of this ambiguity, the Court undertook an analysis of the context and legislative history of OCSLA to ascertain the intentions of Congress with respect to Section 12(a).

B. Structure and Legislative History of OCSLA

As a matter of statutory interpretation, a statute should be read as a whole, and to the extent possible, should be interpreted to "give effect to all provisions, so that no part will be inoperative or superfluous, void, or insignificant."[27] Section 8 of OCSLA gives the Secretary of the Interior the power to lease OCS lands, "in order to meet the urgent need for further exploration and development of the oil and gas deposits."[28] Section 12, however, is "entirely protective" in nature, dealing with restrictions on the uses of OCS lands.[29] The Court held that "OCSLA's structure promotes the view that Section 12(a) did not grant revocation authority to the President," because interpreting Section 8 to promote "expeditious leasing" while reading Section 12(a) as merely granting the President authority to ban leasing in certain areas gives fuller effect to the differing roles of all OCSLA's sections.[30]

The parties also presented differing interpretations of the legislative history of Section 12(a). The Defendants referenced a Senate report in which the Committee on Interior and Consular Affairs said, "it was vesting withdrawal authority comparable to that which is vested in [the President] with respect to federally owned lands on the uplands."[31] According to the Defendants, since the President has the power to revoke withdrawals on the uplands, "Section 12(a) should be interpreted to do the same."[32]

In contrast, the Plaintiffs cited several statutes similar to OCSLA to stand for the proposition that when Congress has intended to delegate authority to withdraw public land from disposition along with the power to revoke such withdrawals, it has done so clearly and unequivocally.[33] For example, the Picket Act of 1910 not only gave the President the authority to "temporarily withdraw" public lands, but expressly said that such withdrawals would be effective "until revoked by the President or by

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25. *Id*.
26. *Id.*
27. *Id.* at 1025 (quoting Rubin v. Islamic Republic of Iran, 138 S. Ct. 816, 824 (2018).
28. *Id*. at 1024 (quoting 43 U.S.C. § 1337 (2012)).
29. *Id.*
30. *Id*.
31. *Id*. at 1025 (quoting S. Rep. No. 83-411, at 26 (1953).
32. *Id.* at 1026.
33. *Id*.

an Act of Congress."[34] Similarly, a 1935 act "concerning use of the Rio Grande" explicitly conferred both the power to withdraw and to revoke.[35] The Court compared these to statutes passed prior to OCSLA where Congress delegated to the President only the power to set aside lands, not to revoke.[36] The Antiquities Act of 1906 and the Forest Reserve Act of 1891 both authorized the reservation of public lands, with no mention of revocation.[37] The Court found this highly persuasive, holding that "had Congress intended to grant the President revocation authority, it could have done so explicitly, as it had previously done in several (but not all) of its previously enacted uplands laws."[38] They reasoned that the lack of revocation authority in Section 12(a) was therefore "likely purposeful."[39]

Finally, the Court assessed Plaintiffs' argument that prior Attorneys General opinions have interpreted statutes similar to OCSLA as not providing the President with the power to revoke reservations, and that "[w]hen it chooses the wording of a statute, Congress is presumptively aware of Executive Branch interpretations of similar language in parallel statutes."[40] An 1848 opinion by the Attorney General said that "if lands have been once set apart by the President in an order for military purposes, they cannot again be restored to the condition of public lands, or sold as such, except by an authority of Congress."[41] Accordingly, the Court agreed that in the past, when Congress wanted the Executive to have revocation authority, it has delegated that power explicitly. Therefore, "Congress intended to authorize the President only to withdraw OCS lands from leasing in Section 12(a) of OCSLA, and did not authorize the President to revoke a prior withdrawal."[42]

C. Acquiescence

Lastly, the Court considered Defendants' argument that in the past, Congress has not objected to presidential modifications or reductions of prior withdrawals, and therefore "Congress has acquiesced to the President's authority to revoke under the statute."[43] Since the passage of OCSLA, there have been just twelve actions taken pursuant to Section 12(a). According to the Defendants, five of those actions involved modifications while two were reductions of prior withdrawals.[44]

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34. *Id*. (quoting Picket Act of 1910, 36 Stat. 847 (1910), *repealed by* 90 Stat. 2792 (1976)).
35. *Id*.
36. *Id*. at 1027.
37. *Id.*
38. *Id*.
39. *Id*.
40. *Id*.
41. *Id*. (quoting Camp Wright, California, 16 Op. Att'y Gen. 121, 123 (Aug. 10, 1878)).
42. *Id*. at 1028.
43. *Id*. at 1030.
44. *Id*.

The Court was not convinced, saying that "Congress's decisions not to challenge the small number of prior revocations falls far short of the high bar required to constitute acquiescence."[45] Too little information existed surrounding the reasons for Congress's "limited inaction," and so was insufficient to overcome the Court's findings regarding the text and legislative background of Section 12(a).[46]

IV. CONCLUSION

Based on the text, structure, and legislative history of Section 12(a), the Court held President Trump's Executive Order to be unlawful and invalid.[47] Therefore, the previous withdrawals issued by President Obama "will remain in full force and effect unless and until revoked by Congress."[48] Additionally, the power to revoke any future reservations under Section 12(a) of OCSLA remains vested solely with Congress. This is significant not only for the preservation of the 128 million acres preserved by the Obama Section 12(a) withdrawals, but also for similar future or past withdrawals under OCSLA or made pursuant to similar statutes such as the Antiquities Act of 1906.

45. *Id*.
46. *Id*.
47. *Id*.
48. *Id*. at 1031.