The Supreme Court heard oral argument in *Kisor v. Wilkie* today, and it looks like at least one of the justices took MSLF’s brief to heart. *Kisor* deals with the question of how much, if any, deference courts should give to regulatory agency interpretations of their own regulations.

James Kisor, the plaintiff in the case, is a Vietnam veteran suffering from service-related PTSD who was denied benefits by the VA because of the agency’s strained interpretation of the meaning of the term “relevant evidence.” When he sued over the denial of benefits, both the trial court and the appeals court said they were required to follow the VA’s interpretation, regardless of whether they thought, in their independent legal judgment, that interpretation was a particularly reasonable one or not. And under the Supreme Court’s unfortunate “Auer deference” doctrine (named after *Auer v. Robbins*, the 1997 case giving the doctrine its name) that is exactly what lower courts are required to do.

Mountain States Legal Foundation (MSLF) led an *amicus curiae* (“friend of the court”) brief in the Supreme Court in support of Mr. Kisor on behalf of retired Sergeant Major Jeff Howard, a decorated army veteran who, after retiring from the military, spent the next twelve years volunteering his time as a Veterans Service Officer, assisting fellow veterans apply for VA benefits.

In the brief, we told SGM Howard’s story and described the struggles he faced trying to unravel the complex, byzantine, and rapidly changing series of regulations necessary to get his veterans the medical care they deserved.

We also explained how Auer deference—a doctrine that allows government bureaucrats to effectively write, enforce, and interpret their own rules in violation of the Constitution’s careful separation of powers—makes it practically impossible for ordinary Americans to know ahead of time what the law actually means.

And it looks like Justice Gorsuch has been listening! During a line of questioning directed at the government’s lawyer, the justice brought up a central argument in our brief, reminding the government that the veterans who actually have to work with the VA on a regular basis say that Auer deference “provides highly unstable rules that they have to guess at all the time,” and further stating that he doubted the sincerity of the government’s concern for the private interests of those it regulates, when the regulated people themselves are almost entirely opposed to the government’s position.
While we won’t know the outcome of this case until the Supreme Court releases its opinions for the term later this Spring, it’s heartening to see that at least one of the justices recognizes the clear harm Auer deference inflicts on the ordinary people who have to deal with agencies every day, and is unwilling to uncritically take government claims of good faith at face value.

Only time will tell whether MSLF and Neil Gorsuch will be able to convince the rest of the Court that Auer needs to go, but we’re off to a good start.
Just like officials in New York City, Federal courts all over the country are ignoring the Second Amendment directives handed down by the Supreme Court.

**MAY 31, 2019**

---

**Fight Escalates Over Race-Based Hiring Program at the FAA**

The job of an air traffic controller is among the most challenging and important jobs in the nation. It requires intelligence, skill, and aptitude. The critical decisions made by air traffic controllers directly impact the safety of millions of air travelers. People who do this vital job hold people's lives in their hands.

**FEB 9, 2019**

---

**MSLF in Outdoor Life Magazine**

MSLF attorney Cody Wisniewski was quoted this week in Outdoor Life magazine in a story highlighting the first big Second Amendment case to go before the Supreme Court since 2010.

**MAY 7, 2019**
Join the Fight

Since 1977, MSLF has fought to protect private property rights, individual liberties, and economic freedom. MSLF is a nonprofit public interest legal foundation. We represent clients pro bono and receive no government funding. Make your 100% tax deductible contribution today and join the fight.

DONATE NOW →

NEWS UPDATES

Victory! The Supreme Court Upholds the Constitutionality of Cross-Shaped War Memorials
JUN 20, 2019

Lower Courts and New York City Officials are Rebelling against Supreme Court on Second Amendment Rights
MAY 31, 2019

Cory Booker's Unsafe Gun Control Ideas
MAY 30, 2019

SEE ALL NEWS

WORK
Cases
News & Updates
Press Releases
Mountain States Legal Foundation (MSLF) is a nonprofit, public interest legal foundation dedicated to individual liberty, the right to own and use property, limited and ethical government and free enterprise system. It is an Internal Revenue Code 501(c)(3) entity incorporated in the State of Colorado. Tax ID# 84-0736725