

The Supreme Court has narrowed the scope of the Clean Water Act

Updated May 25, 2023 4:25 PM ET

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The U.S. Supreme Court on Thursday significantly curtailed the power of the Environmental Protection Agency to regulate the nation's wetlands and waterways. It was the court's second decision in a year limiting the ability of the agency to enact anti-pollution regulations and combat climate change.

The challenge to the regulations was brought by Michael and Chantell Sackett, who bought property to build their dream house about 500 feet away from Idaho's Scenic Priest Lake, a 19-mile stretch of clear water that is fed by mountain streams and bordered by state and national parkland. Three days after the Sacketts started excavating their property, the EPA stopped work on the project because the couple had failed to get a permit for disturbing the wetlands on their land.

Now a conservative Supreme Court majority has used the Sacketts' case to roll back longstanding rules adopted to carry out the 51-year-old Clean Water Act.

While the nine justices agreed that the Sacketts should prevail, they divided 5-to-4 as to how far to go in limiting the EPA's authority.

Narrowing the scope of the law

Writing for the court majority, Justice Samuel Alito said that the navigable waters of the United States regulated by the EPA under the statute do not include many previously regulated wetlands. Rather, he said, the CWA extends to only streams, oceans, rivers and lakes, and those wetlands with a "continuous surface connection to those bodies."

Justice Brett Kavanaugh, joined by the court's three liberal members, disputed Alito's reading of the statute, noting that since 1977 when the CWA was amended to include adjacent wetlands, eight consecutive presidential administrations, Republican and Democratic, have interpreted the law to cover wetlands that the court has now excluded. Kavanaugh said that by narrowing the act to cover only adjoining wetlands, the court's new test will have quote "significant repercussions for water quality and flood control throughout the United States."

In addition to joining Kavanaugh's opinion, the court's liberals signed on to a separate opinion by Justice Elena Kagan. Pointing to the air and water pollution cases, she accused the majority of appointing itself instead of Congress as the national policymaker on the environment.

Reaction to the opinion

President Biden, in a statement, called the decision "disappointing."

It "upends the legal framework that has protected America's waters for decades," he said. "It also defies the science that confirms the critical role of wetlands in safeguarding our nation's streams, rivers, and lakes from chemicals and pollutants that harm the health and wellbeing of children, families, and communities."

Two former EPA chiefs saw Thursday's decision as a major setback for the nation's environment, and its future in combating the effects of climate change. William K. Reilly, who served as EPA administrator in the George H.W. Bush administration, said that while he understands the economic objections of farmers and builders to many wetland regulations, the Supreme Court's decision is "too broad" and will only limit further the already disappearing wetlands that protect many parts of the country from flooding and drought.

Carol Browner, who served as EPA administrator in the Obama administration, echoed those sentiments, calling the decision "a major blow to the landmark Clean Water Act and the federal government's ability to protect our people from pollution and its negative health side effects."

The decision also dismayed environmental groups.

"I don't think it's an overstatement to say it's catastrophic for the Clean Water act," said Jim Murphy of the National Wildlife Federation. Wetlands play an "enormous role in protecting the nation's water," he said. "They're really the kidneys of water systems and they're also the sponges. They absorb a lot of water on the landscape. So they're very important water features and they're very important to the quality of the water that we drink, swim, fish, boat and recreate in."

As in last year's case limiting the EPA's ability to regulate air pollution from power plants, the decision was a major victory for the groups that supported the Sacketts — mining, oil, utilities and, in today's case, agricultural and real estate interests as well.