

Court backs Idaho couple in battle with EPA

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The Washington Times

Wednesday, March 21, 2012

An Idaho couple facing ruinous fines for attempting to build a home on private property that the federal government considered protected wetlands may challenge an order from the Environmental Protection Agency, the Supreme Court ruled Wednesday in a unanimous decision.

The case was considered the most significant property rights case on the high court's docket this year, with the potential to change the balance of power between landowners and the EPA in disputes over land use, development and the enforcement of environmental regulations.

Critics called the EPA action a clear example of overreach, as the property in question was a small vacant lot in the middle of an established residential subdivision in the Idaho Panhandle. The government argued that allowing EPA compliance orders to be challenged in court could severely delay actions needed to prevent imminent ecological disasters.

Justice Antonin Scalia, writing for the court, said that Michael and Chantell Sackett are entitled to appeal the EPA order, rejecting the agency's argument that allowing landowners timely challenges to its decisions would undermine its ability to protect sensitive wetlands.

"The [law's] presumption of judicial review is a repudiation of the principle that efficiency of regulation conquers all," Mr. Scalia said in the decision. "And there is no reason to think that the Clean Water Act was uniquely designed to enable the strong-arming of regulated parties into 'voluntary compliance' without the opportunity for judicial review - even judicial review of the question whether the regulated party is within the EPA's jurisdiction."

The EPA issues nearly 3,000 administrative compliance orders a year that call on suspected violators of environmental laws to stop what they're doing and repair the harm they've caused. Major business groups, homebuilders, road builders and agricultural interests all came out against the EPA in the case.

Mr. Sackett said the Supreme Court ruling affirmed his belief that "the EPA is not a law unto itself."

"The EPA used bullying and threats of terrifying fines, and has made our life hell for the past five years," Mr. Sackett said in a statement. "As this nightmare went on, we rubbed our eyes and started to wonder if we were living in some totalitarian country. Now the Supreme Court has come to our rescue and reminded the EPA - and everyone - that this is still America."

Congressional Republicans, who had rallied to the Sacketts' cause, called the Supreme Court ruling a clear rebuke to President Obama and his environmental agenda.

"This decision delivers a devastating blow to the Obama administration's 'War on Western Jobs,'" said Sen. John Barrasso, Wyoming Republican and chairman of the Senate Western Caucus. "This victory by one Western couple against a massive Washington bureaucracy will inspire others to challenge this administration's regulatory overreach."

Building on a 'wetland'

The case stemmed from the couple's purchase of a 0.63-acre lot for \$23,000 near Priest Lake, Idaho, in 2005. The Sacketts had begun to lay gravel on the land, located in a residential neighborhood, when they were hit by an EPA compliance order informing them that the property had been designated a wetland under the Clean Water Act.

The Sacketts were ordered to stop grading their property and were told that they would face fines of up to \$75,000 per day if they did not return the parcel to its original state. When the Sacketts attempted to contest the order, the agency denied their request for a hearing.

Justice Scalia noted that the Sacketts' property bore little resemblance to any popular conception of a wetland, protected or not.

Reading a summary of his opinion in court, he noted that the Sacketts have never "seen a ship or other vessel cross their yard."

The 9th U.S. Circuit Court of Appeals, which rejected the couple's appeal in September, said the Sacketts had other avenues of relief, such as undergoing a wetlands permitting process - the cost of which would be as much as 12 times the value of the land.

The government also argued that couple had the option of engaging in "informal discussion of the terms and requirements" of the EPA order, including "any allegations - believe[d] to be inaccurate."

Such an option hardly constitutes adequate recourse, Justice Scalia wrote.

"The mere possibility that an agency might reconsider in light of 'informal discussion' and invited contentions of inaccuracy does not suffice to make an otherwise final agency action nonfinal," he wrote in his 16-page opinion.

The Pacific Legal Foundation in Sacramento, which represented the Sacketts without charge, called it "a precedent-setting victory for the rights of all property owners."

"This is a great day for Mike and Chantell Sackett, because it confirms that EPA can't deny them access to justice," said the foundation's principal attorney, Damien Schiff, who represented the couple in court. "EPA can't repeal the Sacketts' fundamental right to their day in court."

The Supreme Court's ruling makes it clear that "EPA bureaucrats are answerable to the law and the courts just like the rest of us," Mr. Schiff said in a statement.

Green fears

Several environmental groups opposed the Sacketts' challenge, arguing that a ruling in the couple's favor would make it more difficult to protect wetlands and noting that the lawsuit was supported by industry groups such as the American Petroleum Institute.

Larry Levine, senior attorney with for the Natural Resources Defense Council, said in a January blog post that a ruling in favor of the Sacketts would "make it harder for the EPA to take action to promptly correct ongoing environmental harms."

The EPA will be "bogged down in court, using limited resources to fight lawsuits instead of enforcing the Clean Water Act," Mr. Levine predicted. "Or, more likely, EPA will cut down on the use of such orders to avoid getting bogged down in court."

Justice Samuel Anthony Alito Jr. added in a concurring opinion that Congress needs to clarify confusion over the scope of the Clean Water Act. He said the opinion issued Wednesday is "better than nothing, but only clarification of the reach of the Clean Water Act can rectify the underlying problem."

While agreeing with the decision, Justice Ruth Bader Ginsburg said in her own opinion that she agreed only with the narrower finding that the Sacketts have the right to contest the EPA finding that their property is subject to the Clean Water Act. The court did not decide larger issues, Justice Ginsburg said.

Rep. Raul R. Labrador, the Idaho Republican who represents the Priest Lake area, congratulated the Sacketts for their "unwavering courage and selfless sacrifice."

"The federal government is an intimidating force against ordinary citizens, and standing up to its bureaucracy requires extraordinary bravery," Mr. Labrador said in a statement. "The EPA is one of the many federal government agencies whose overreach jeopardizes our civil liberties and obstructs our pursuit of prosperity."

- *This article is based in part on wire service reports.*

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