Case Name and Number: *Sackett* v. *Environmental Protection Agency*, No. 21-454

Introduction: Today, in a majority opinion joined by five Justices, the Supreme Court adopted a narrow reading of the EPA's regulatory authority under the Clean Water Act. Rejecting the EPA's much more expansive "significant nexus" test, the majority held that wetlands under the Clean Water Act must be indistinguishably part of "waters of the United States" in their own right, and "waters" are only those "relatively permanent, standing, or continuously flowing bodies of water" such as "streams, oceans, rivers, and lakes." In a concurring opinion, Justices Thomas and Gorsuch would have narrowed the reach of the Clean Water Act even further. Justices Sotomayor, Kagan, Kavanaugh, and Jackson concurred in the judgment, advocating a somewhat broader test than the majority but not as broad as the EPA's preferred test.

Background: The Clean Water Act prohibits discharging pollutants without a permit into "navigable waters," and defines that term as "waters of the United States," including wetlands "adjacent" to those waters. In this case, the Sacketts challenged the EPA's determination that wetlands on their property qualified as "adjacent" wetlands and therefore "waters of the United States" under the Clean Water Act. The district court granted summary judgment for the EPA, and the Ninth Circuit affirmed, on the basis that there was a "significant nexus" between the Sacketts' wetlands and waters covered by the Clean Water Act.

Issue: Whether a wetland is "adjacent" to waters of the United States, under the Clean Water Act, whenever it has a significant nexus with those nearby waters.

Court's Holding: In an opinion by Justice Alito, the Supreme Court significantly limited the EPA's jurisdiction under the Clean Water Act. The Court rejected the EPA's broad "significant nexus" test as inconsistent with the text and structure of the Clean Water Act. Instead, agreeing with the 2016 plurality decision in *Rapanos* v. *United States*, the Court held that the Clean Water Act's use of "waters" in "waters of the United States" limited the reach of federal jurisdiction to "only those relatively permanent, standing or continuously flowing bodies of water 'forming geographic[al] features' that are described in ordinary parlance as 'streams, oceans, rivers, and lakes.'" And as to wetlands, the Court held that "wetlands must qualify as 'waters of the United States' in their own right"—meaning that they must be indistinguishably part of a body of water that itself constitutes "waters" under the Act. As a result, wetlands like the Sacketts' that are "separate from traditional navigable waters cannot be considered part of those waters, even if they are located nearby."

Justice Thomas authored a concurrence, in which Justice Gorsuch joined, advocating an even narrower understanding of the "navigable" waters to which the Clean Water Act applies.

Justice Kagan, joined by Justices Sotomayor and Jackson, authored an opinion concurring in the judgment. Justice Kavanaugh, joined by Justices Sotomayor, Kagan, and Jackson also authored an opinion concurring in the judgment. Both rejected the EPA's significant nexus test. But they would have adopted a test slightly broader than the majority's, to include wetlands separated from nearby covered waters only by a natural or manmade barrier such as a dike, river berm, or beach dune.

Mayer Brown filed an *amicus* brief in support of the Sacketts on behalf of fourteen national agricultural organizations, arguing against expansive and ambiguous agency definitions of waters of the United States.

Read the opinion here.