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PACIFIC LEGAL FOUNDATION

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Holding bureaucrats accountable

At the Supreme Court, PLF is fighting the EPA's scheme to shield its land grab from legal challenges

ONE OF THE Obama Administration's most destructive legacies was the sweeping "Waters of the United States"—or "WOTUS"—rule issued by Obama appointees at the Environmental Protection Agency. It's a coast-to-coast land grab, potentially opening up every pond, puddle, and ravine in the country—along with tens of thousands, if not millions, of landowners—to micromanagement by federal Clean Water Act regulators.

This nearly limitless expansion of federal power over property owners was a violation of explicit constitutional principles, definitive congressional intent, and solid Supreme Court precedent.

But the EPA's disregard for the law didn't stop there. The agency went a step further and defiantly erected barriers to the public's ability to challenge the WOTUS rule in court. In violation of clear provisions in the Clean Water Act, it concocted a scheme to block many victims of the WOTUS rule from suing to vindicate their rights.

Can federal bureaucrats get away with this power play? When a bureaucracy brazenly overreaches, as the EPA has done with the WOTUS rule, can it further subvert the law by insulating itself from legal accountability? Can it impose arbitrary limits on its victims' access to the courts?

Pacific Legal Foundation argues, emphatically, no. Bureaucracies like the EPA are not a law unto themselves. They cannot usurp the role of legislators and rewrite statutory guidelines enacted by Congress. And they cannot circumvent

the law to narrow the public's ability to seek judicial redress of regulatory wrongs.

These issues are front and center in a case the U.S. Supreme Court hears this month—*National Association of Manufacturers (NAM) v. U.S. Department of Defense*. Pacific Legal Foundation is in the thick of the litigation. In our case, which has been combined with *NAM*, we represent property owners from across the country who have challenged the WOTUS rule—and who seek to stop EPA from closing off the right to sue and to hold regulators accountable to the rule of law.

This new challenge joins a long list of PLF cases before the High Court.

We're fighting an Obama-era legacy: A ploy to limit lawsuits against EPA abuses

The issue before the court is the proper place to sue over the WOTUS rule and other Clean Water Act interpretations. We want to open the courthouse doors because—Americans have a vitally important right to challenge government overreach, especially when agencies rewrite laws to suit their fancy.

The Clean Water Act says that a lawsuit against regulations like WOTUS—regulations that define where the Act applies—may be filed in any federal district court. But in a ploy devised during the Obama Administration, EPA bureaucrats seek to negate this provision and severely limit where and when people can challenge agency regulations. If they get away with sabotaging the statute this way, the result will be to weaken all kinds of laws designed to rein in unelected bureaucracies by holding them accountable to courts and the public.

Unfortunately, an appellate court gave the OK to the EPA's scheme to shield itself from lawsuits. Somehow, the Sixth Circuit reasoned that challenges to the WOTUS rule can only be filed in a federal court of appeals, not in trial courts, as the Clean Water Act specifically requires.

Alarmed by this misreading of the law limiting the opportunity to challenge bureaucratic injustice, PLF and our clients asked the Supreme Court to take the case.

The justices agreed to do so, and will hear oral argument on October 11.

Although the Trump Administration is supposed to be rewriting the WOTUS rule, this Supreme Court case over where and how the rule can be challenged remains as urgent as ever. We don't know if the revisions to the rule will go far enough—and if they don't, the doors to the judiciary must be wide open. The right reading of the statute guarantees precisely that, so property owners will have full freedom to protect themselves from federal regulators.

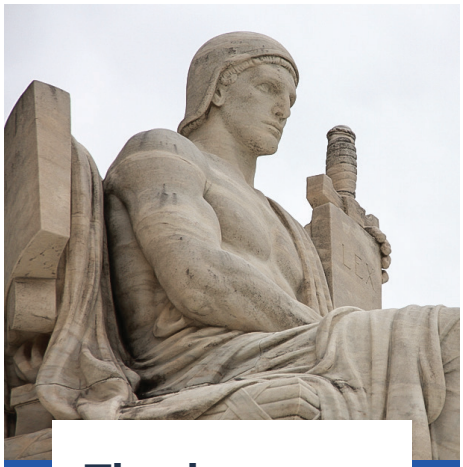
Bureaucrats can't insulate themselves from judicial review

We are asking the Supreme Court to endorse a plain reading of the law, over EPA's self-interested contortion of it. Under a natural reading of the Clean Water Act, affected parties have six years to challenge the WOTUS rule in a district court. But EPA's contrived reading of the statute would close off district courts altogether, and allow a would-be plaintiff just six months to bring a challenge in a federal court of appeals.

That's a huge difference. The shorter time frame harms unknowing landowners who may miss the six-month window. In other words, while federal bureaucrats are expanding their power and control, they are arbitrarily limiting the ability of anyone to oppose them.

There's a greater opportunity to build a set of facts that allows a judge to make an informed ruling by bringing a challenge in a trial court, so it's preferable to suing in appellate court. If landowners have to sue first in a court of appeals, they lose the ability to bring important facts to the court's attention. Multiple trial court decisions from around the country provide differing judicial perspectives that can help appellate judges later on.

Most fundamentally, the law clearly calls for allowing these kinds of suits to begin in trial courts. Agencies should not be permitted to rewrite the law to get the results they want.



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In this, the latest in PLF's long line of cases at the Supreme Court, we are reminding the justices that core principles of accountability in government are at stake. The right of ordinary citizens to go directly to court to challenge executive abuses is too important to be interpreted out of existence by unelected regulators.

To Our Donors

Thank you for empowering us to make these essential arguments to the nation's highest court. It's all part of PLF's vital mission to fight for the rule of law—and defend liberty and justice for all.