



Written by [Joe Wolverton, II, J.D.](#) on May 27, 2023

Supreme Court Opinion in *Sackett v. EPA* Restores Limits on the Power of the Bureaucracy

The Supreme Court [issued an opinion](#) Thursday dealing a blow to the Biden administration's attempts to confiscate millions of acres of land by classifying them as "protected wetlands."

In *Politico's* [story](#) on the case — *Sackett v. EPA* — the decision was derided as a "victory to multiple powerful industries." Maybe. It is definitely a victory, however, for federalism, state sovereignty, enumerated powers, and property rights.

For those unfamiliar with the legislation, the Clean Water Act (CWA), enacted in 1972, has long been hailed as landmark legislation aimed at preserving and protecting valuable water resources.

When viewed through a constitutional lens, however, the act was an immense expansion of federal authority over matters outside of the purview of the powers granted to federal government by the states in the Constitution.

Additionally, the Clean Water Act has been a flashpoint of controversy since its passage, principally due to the vagueness of the statute's language and the nearly unrestrained regulatory authority it purported to give to bureaucrats who are unelected and unaccountable to the American people whose lives, liberty, and property they confiscate, condemn, or destroy.

Federalism is one of the fundamental pillars of upon which the union was founded. This principle is clearly expressed in the Tenth Amendment:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

That single sentence establishes the threshold that any federal act — no matter how well-intentioned or even desirable — must clear. If the Constitution does not contain a grant by the states to the federal government of a power to keep water clean or to protect wetlands or the wildlife that live in them, then the federal government may not do any of those things. Further, if those things are to be done, they remain within the bailiwick of the states. Full stop.

So, with regard to the Clean Water Act, there is no grant of such authority in the Constitution, therefore the legislation does not clear the constitutional hurdle, therefore the situation is, as Alexander Hamilton wrote in *The Federalist* No. 78:

There is no position which depends on clearer principles, than that every act of a delegated



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authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid.

At this point, it is immaterial how vaguely the statute — well, the purported statute, as we’ve just established that it is void and not valid — defines key terms. What is relevant, however, is the authority granted by the act to an army of bureaucrats employed by several executive branch agencies.

The Environmental Protection Agency (EPA), among others, is empowered by the act to enforce many of the act’s provisions. The EPA promulgates regulations that are treated as if they were law by the bureaucrats who write the regulations, as well as by most congressmen, courts, and presidents.

There is, as you might have imagined, a constitutional issue here, too.

Article I, Section 1 of the U.S. Constitution reads, in relevant part:

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Again, this language is very clear. *All* — that means the same thing today as it did in 1787 — laws (the exercise of the “legislative powers”) must originate in Congress or they are not laws at all. They may be something — Hamilton in that same *Federalist* essay called them “usurpations” — but they are not law, and thus they have no binding authority over the states or the people.

It is unconstitutional that an agency whose members are not elected by the people should have its regulations and policies treated as though they were law, and it is unconscionable to have the violation of them be punished as if they were law!

Liberty in the United States today is not under attack from one, single identifiable tyrant, but from hundreds of federal agencies and commissions, each of which is permitted by the president to exercise immense legislative, executive, and judicial power.

Charges of having violated one of the thousands of regulations issued under the (usurped) authority of the Clean Water Act are not heard by impartial judges, but by administrative magistrates working for the bureaucracy itself! That makes agencies such as the EPA the creator, executor, and punisher of the regulations they publish. That’s the very definition of the consolidation of power, which is the definition of tyranny.

Paraphrasing the Baron Montesquieu, James Madison wrote in *The Federalist* No. 47:

The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.

Finally, apart from the accumulation of powers and the unabated and unconstitutional attacks on life, liberty, and property being accomplished by these alphabet agencies, there is another aspect of this growth of government that is anathema to our republican form of government.

One of the royal abuses of power in the “long train” listed by Thomas Jefferson in the Declaration of Independence seems to accurately describe these agencies’ autocratic agenda.

“He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and



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eat out their substance,” Jefferson wrote.

Immediately after the Supreme Court announced its decision in the case of *Sackett v. EPA*, Joe Biden issued the following [statement](#) on the White House website:

The Supreme Court’s disappointing decision in *Sackett v. EPA* will take our country backwards....

Today’s decision upends the legal framework that has protected America’s waters for decades. 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.

Well, Mr. Biden, I’ve got news for you: you put your hand on the Holy Bible and swore an oath to God that you would “preserve, protect, and defend the Constitution,” not the wetlands. In fact, protecting the wetlands would require you to violate the solemn oath you swore to God on Inauguration Day.



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