



Written by [William F. Jasper](#) on March 22, 2012

## Supreme Court Ruling: Victory for Property Owners, Defeat for EPA

But that was the potential cost facing Idaho couple Mike and Chantelle Sackett (left), who ran into the iron fist of the Environmental Protection Agency (EPA) when they began building their home in 2007 on a two-thirds acre parcel in a residential neighborhood of Priest Lake. Like their neighbors who had already built homes next door, the Sacketts got their permits from the county and began laying gravel and preparing the ground for building. That's when the EPA came in and, without hearings or notice, declared that the property is "wetlands" and ordered the Sacketts to restore it to the EPA bureaucracy's satisfaction.



The Sacketts, having good reasons to believe their property is not a wetlands, were determined to contest the EPA order. However, the EPA denied their request for a hearing. They sought judicial relief, but the U.S. Ninth Circuit Court of Appeals sided with the EPA, ruling that the Sacketts had no right to immediate judicial review of the matter. The Ninth Circuit held that the couple would first have to go through the EPA's years-long wetlands permit process, which would end up costing the property owners many times the value of their land!

Represented by attorneys with the Pacific Legal Foundation, the Sacketts took their case to the Supreme Court of the United States. As *The New American* [reported](#) earlier, in January, the EPA bureaucrats faced an aggressive grilling from Supreme Court justices, who criticized the agency's "high-handedness" and regulatory overreach.

On March 21, Justice Antonin Scalia delivered the Court's [unanimous opinion](#), which has been hailed as a historic victory for property owners and a stinging rebuke to federal regulators. The Court's decision does not end the EPA "wetlands" nightmare for the Sacketts; it merely rules that the EPA goblin may not continue terrorizing them with threats of financial ruin while denying the Sacketts their "due process" right to challenge the agency's compliance order in court.

The Sacketts had attempted to use provisions of the Administrative Procedures Act (APA) to challenge the EPA's wetlands designation. They hired scientists who confirmed that their property in an already-developed neighborhood is not a wetland. But they could not get their day in court because the federal government claimed that the Clean Water Act exempted the EPA from the APA's judicial review process.

Justice Scalia, writing for the Court, slapped down that argument, stating, "[T]here 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." In the closing paragraph of his 10-



page opinion, Justice Scalia writes:

Finally, the Government notes that Congress passed the Clean Water Act in large part to respond to the inefficiency of then-existing remedies for water pollution. Compliance orders, as noted above, can obtain quick remediation through voluntary compliance. The Government warns that the EPA is less likely to use the orders if they are subject to judicial review. That may be true — but it will be true for all agency actions subjected to judicial review. The APA's presumption of judicial review is a repudiation of the principle that efficiency of regulation conquers all. 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. Compliance orders will remain an effective means of securing prompt voluntary compliance in those many cases where there is no substantial basis to question their validity.

Damien M. Schiff, the principal attorney for the Pacific Legal Foundation (PLF) representing the Sackett family, hailed the decision as a resounding victory. "EPA is not above the law," said Schiff. "That's the bottom line with today's ruling. This is a great day for Mike and Chantell Sackett, because it confirms that EPA can't deny them access to justice. EPA can't repeal the Sacketts' fundamental right to their day in court. And for that reason, it is a great day for all Americans, for all property owners, and for the rule of law. The justices have made it clear that EPA bureaucrats are answerable to the law and the courts just like the rest of us. EPA can't try to micromanage people and their property — it can't order property owners to dance like marionettes — while denying them any meaningful right to appeal to the courts. It can't threaten property owners with financial ruin and not have to justify its threats to a judge. And it can't issue lazy, drive-by 'wetlands' edicts about private property. It will have to put in some honest work and use credible science, because the regulators must be able to justify their wetlands orders in a court of law."

Anticipating the arguments by environmental activists that the ruling would cripple efforts to stop pollution, Schiff pointed out that it does nothing of the sort. In the PLF's press release following the Court decision, he said:

Rest assured, while today's ruling strengthens everyone's individual rights and property rights, and everyone's access to justice, it does not weaken legitimate environmental protection one iota. Regulators will simply have to be professional and thorough, not careless and slipshod, when they issue wetlands orders. In the case of urgent pollution threats, EPA will still have the power, as it does now, to seek an immediate court injunction. But when there is no emergency, EPA can't start ordering property owners around — and threatening them with tens of millions of dollars in fines, as with the Sacketts — without first doing some genuine due diligence. EPA will have to be prepared to show a reviewing court that its wetlands regulations are really necessary — not just a power trip.

Mike and Chantelle Sackett were obviously pleased that the Court ruling at least has ended the regulatory limbo phase of their nearly five-year ordeal. "We are very thankful to the Supreme Court for affirming that we have rights, and that the EPA is not a law unto itself and that the EPA is not beyond the control of the courts and the Constitution," said Mike Sackett. "The EPA used bullying and threats of terrifying fines, and has made our life hell for the past five years. It said we could not go to court and challenge their bogus claim that our small lot had 'wetlands' on it. As this nightmare went on, we rubbed our eyes and started to wonder if we were living in some totalitarian country. Now, the Supreme



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Court has come to our rescue, and reminded the EPA — and everyone — that this is still America, and Americans still have rights under the Constitution. We want to thank Pacific Legal Foundation for defending us, without charge! Without Pacific Legal Foundation, this day would have not come, and this Court ruling that vindicated the rights of all Americans against bureaucratic bullying, would not have happened.”

*Photo of Mike and Chantelle Sackett in front of Supreme Court building: AP images*

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