No. 24-350

In the Supreme Court of the United States

PORT OF TACOMA; SSA TERMINALS, LLC; AND SSA TERMINALS (TACOMA), LLC,

Petitioners,

v.

PUGET SOUNDKEEPER ALLIANCE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF AMICUS CURIAE WALLENIUS WILHELMSEN OCEAN AS IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

Amicus Wallenius Wilhelmsen Ocean AS (Wallenius Wilhelmsen) provides shipping services worldwide. It operates marine terminals and vehicle and equipment processing centers in 15 states, spread across eight judicial circuits.

Wallenius Wilhelmsen plays a critical role in the global supply chain. The company provides logistics and marine services to the automotive industry and, through its United States-based subsidiary, WWL Vehicle Services Americas, Inc., comprehensive land-based logistics preparing automobiles for consumers. Through another United States-based subsidiary, Keen Transport, Inc., Wallenius Wilhelmsen also provides heavy haul transportation and logistics services for the construction, mining, and agricultural equipment markets. Wallenius Wilhelmsen handles more than three million vehicles annually. By fleet size, it is the world's largest operator of pure car and truck carriers.

Because rain falls on its marine terminal at the Port of Tacoma and eventually discharges to surface waters, Wallenius Wilhelmsen's subsidiary, Wallenius Wilhelmsen Logistics Services, LLC, is required to obtain and comply with a National

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[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from Wallenius Wilhelmsen, its members, or its counsel made any monetary contribution intended to fund the preparation or submission of this brief. As required by Rule 37.2, all counsel of record received timely notice of Wallenius Wilhelmsen's intent to file this amicus brief.

Pollutant Discharge Elimination System (NPDES) permit for that facility. It holds coverage under Washington's Industrial Stormwater General Permit (ISGP), the permit at issue in this case, which implements both the Clean Water Act and state law (Washington's Water Pollution Control Act, ch. 90.48 WASH. REV. CODE).[2]

As one of the 1,200 permittees that must comply with Washington's ISGP, Wallenius Wilhelmsen is subject to the constant threat of citizen suits. The Ninth Circuit's rule magnified that threat by allowing plaintiffs to sue for violations of permit conditions imposed under state laws that are broader in scope than the Clean Water Act. Further, absent this Court's review, Wallenius Wilhelmsen, with operations throughout the United States, faces uncertainty as to whether it can work cooperatively with state regulators over complex, and often ambiguous, permit conditions imposed under various state laws, or whether it instead risks private citizen suits in federal court, unconstrained by political accountability. The Court should grant

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[2] Washington's Department of Ecology acknowledged when it issued the ISGP that the permit limits the discharge of pollutants under the Clean Water Act "and . . . under the authority of Chapter 90.48 [WASH. REV. CODE]." Washington Department of Ecology *Fact Sheet, National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit for Stormwater Discharges Associated with Industrial Activities* (May 1, 2019) at iv (https://ecology.wa.gov/regulations-permits/permits-certifications/stormwater-general-permits/industrial-stormwater-permit).

the Petition and reverse the Ninth Circuit's expansive interpretation of the Act.

SUMMARY OF ARGUMENT

Citizen suits under the Clean Water Act present enormous financial risk to thousands of permittees, including amicus. Plaintiffs may allege violation of any NPDES permit condition, even if the alleged violation caused no harm to water quality. Permittees face sanctions including injunctive relief, attorney fees, and civil penalties up to $66,712 per day per violation. In many states, including Washington, where regulators use administrative penalties to enforce permits, plaintiffs may file citizen suits even after state regulators have taken enforcement action for the same violations.

NPDES permits such as Washington's Industrial Stormwater General Permit are extremely complex. They are based on requirements of both federal and state law, and include both very specific requirements and narrative conditions, compliance with which is a matter of judgment. Citizen suit plaintiffs are free to second-guess permittees and allege that their compliance decisions violate the permit. Because of the huge penalty exposure defendants face, and the high likelihood that plaintiffs will recover their attorney fees, most defendants settle. The Petition therefore addresses a subject important to countless permittees that might otherwise evade review.

The Ninth Circuit's expansive interpretation allows federal courts to impose sanctions based solely on violation of state law, bypassing the limits

otherwise imposed by the state. Moreover, the relief available in a Clean Water Act citizen suit far exceeds that available to state regulators under Washington law. This Court should grant certiorari to restore the federal/state balance intended under the Clean Water Act and to correct the Ninth Circuit's mistaken interpretation that turns the Act into a tool for enforcing state law.

ARGUMENT

A. Clean Water Act Citizen Suits Present Enormous Financial Risks to NPDES Permit Holders

The Clean Water Act authorizes citizens to commence a civil action against any person alleged to be in violation of "an effluent standard or limitation under this chapter," which includes a "permit or condition of a permit issued under section 1342 of this title." 33 U.S.C. § 1365(a), (f). Permits issued under Section 1342 are NPDES permits.

A citizen suit defendant is "in violation" if the violation is ongoing or if there is a "reasonable likelihood" that violations will continue. *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 57 (1987). The defendant bears a "heavy burden of persuading" the court that alleged violations cannot reasonably be expected to recur. *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000). It must be "absolutely clear" that such violations cannot be expected to recur, *Gwaltney*, 484 U.S. at 66, a standard that can be extremely difficult to meet.

The citizen suit provision allows plaintiffs to hold defendants liable for the violation of any permit condition, no matter how insignificant. This includes not only violations of numeric limits on the concentration or quantity of pollutants discharged, but violations of requirements such as sampling, reporting, and recordkeeping. *E.g., Puget Soundkeeper All. v. Rainier Petroleum Corp.*, 138 F. Supp. 3d 1170 (W.D. Wash. 2015). Liability under the Clean Water Act is strict. *E.g., United States v. Bailey*, 571 F.3d 791, 805 (8th Cir. 2009). Even de minimis violations can give rise to liability, *Sierra Club v. Union Oil Co.*, 813 F.2d 1480, 1491-92 (9th Cir. 1987), *vacated*, 485 U.S. 931 (1988), *reinstated with amendment*, 853 F.2d 667 (9th Cir. 1988), and a plaintiff need not prove that a violation harmed waters of the United States. *United States v. Hubenka*, 438 F.3d 1026, 1035 (10th Cir. 2006).

Citizen suit plaintiffs may seek three forms of relief: monetary penalties, injunctions, and attorney fees. 33 U.S.C. § 1365(a) (district courts have jurisdiction to enforce effluent standards or limitations and may "apply any appropriate civil penalties under section 1319(d) of this title") and 33 U.S.C. § 1365(d) (district court may award costs of litigation, including reasonable attorney and expert witness fees, to any prevailing or substantially prevailing party). Congress originally authorized civil penalties up to $25,000 per day per violation. 33 U.S.C. § 1319(d). However, under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, that

amount has more than doubled, to $66,712 per day. 40 C.F.R. § 19.4.

If a district court concludes that a violation occurred, a penalty is mandatory. *E.g., Natural Res. Def. Council v. Southwest Marine, Inc.*, 236 F.3rd 985, 1001 (9th Cir. 2000). Judges have broad discretion when setting penalty amounts. *E.g., United States v. Smithfield Foods, Inc.*, 191 F.3d 516, 529 (4th Cir. 1999). They may impose penalties for violations that occurred up to five years before the citizen suit plaintiff provided notice of its intent to sue. 28 U.S.C. § 2462; *Sierra Club v. Chevron U.S.A., Inc.*, 834 F.2d 1517, 1520-22 (9th Cir. 1987) (although the Clean Water Act contains no statute of limitations, 28 U.S.C. § 2462 is a "relevant" federal statute of limitations that applies to claims brought under the Act).

Thus, if violations are established in a case that proceeds to trial two years after the complaint is filed, a defendant may face penalties for up to 2,615 days: the five years preceding issuance of the notice of intent, the 60 days between issuance of the notice and the commencement of suit, and the two years following commencement. At a maximum daily penalty of $66,712, the defendant would risk a total penalty of nearly $175 million.

That amount is for violating a single permit condition throughout the limitations period. However, citizen suit plaintiffs typically allege violations of many permit conditions. If a plaintiff alleged violations of just ten permit conditions, a defendant's total penalty exposure could exceed one billion dollars.

A defendant's exposure in a citizen suit also includes the plaintiff's litigation expenses. In the Ninth Circuit, fee awards to plaintiffs are "'the rule rather than the exception.'" *St. John's Organic Farm v. Gem Cnty. Mosquito Abatement Dist.*, 574 F.3d 1054, 1062 (9th Cir. 2009) (quoting *Ackerley Commc'ns, Inc. v. City of Salem*, 752 F.2d 1394, 1396 (9th Cir. 1985)). Although the Act provides that the prevailing party is entitled to claim such expenses, a prevailing defendant cannot recover from the plaintiff unless the action was "frivolous, unreasonable, or groundless." *Akiak Native Cmty. v. EPA*, 625 F.3d 1162, 1166 (9th Cir. 2010) (quoting *Christiansburg Garment Co. v. EEO*C, 434 U.S. 412, 421 (1978)). Therefore, a permittee that prevails in a citizen suit is very likely to pay its own litigation expenses.

Finally, despite this Court's statement that the Clean Water Act allows citizens to step in when government regulators "cannot or will not command compliance," *Gwaltney,* 484 U.S. at 62, citizen suits can be brought even after a state has taken enforcement action. The Clean Water Act bars citizen suits if a state is "diligently prosecuting" the same violations. But actions Washington and other states take to enforce permits such as the ISGP do not constitute "diligent prosecution."

Washington's Department of Ecology typically uses an administrative process to assess penalties. Civil penalties for the violation of any wastewater discharge permit, including a combined NPDES/state waste discharge permit, "shall be imposed by a notice in writing" from the

department. WASH. REV. CODE § 43.21B.300(1). Penalties issued under this state law are not considered diligent prosecution under 33 U.S.C. § 1365(b)(1)(B) because they are not prosecuted "in a court," as required by that statute. *Sierra Club*, 834 F.2d at 1525 (citizen suit is not precluded by nonjudicial enforcement action by California's Regional Water Quality Control Board, an administrative agency).[3]

Nor are such penalties deemed diligent prosecution under 33 U.S.C. § 1319(g)(6), because it bars citizen suits only for violations that a state is diligently prosecuting "under a State law *comparable* to this subsection" or for which the violator "has paid a penalty assessed under this subsection, or such *comparable* State law." 33 U.S.C. § 1319(g)(6)(A)(ii), (iii) (emphasis added). To be "comparable," the state law must require public notice and comment procedures like those set forth in 33 U.S.C. § 1319(g). *Citizens for a Better Env't-California v. Union Oil Co.*, 83 F.3d 1111, 1118 (9th Cir. 1996). Washington law does not "'contain mandatory safeguards of public participation and notice comparable to § 1319(g).'" *Wild Fish Conservancy v. Cooke Aquaculture Pacific, LLC*, No. C17-1708-JCC, 2019 U.S. Dist. LEXIS 107054, *31 (W.D. Wash. June 26, 2019) (quoting *Waste Action Project v. Atlas Foundry & Mach. Co.*, No. C97-5082-JCC, 1998 WL 210846, *6 (W.D. Wash. Mar. 5, 1998)).

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[3] The Department of Ecology has authority to bring actions in court to enforce wastewater permits, WASH. REV. CODE § 90.48.037, but it very rarely exercises that authority.

Consequently, an administrative penalty issued by the Department of Ecology to enforce a permit condition will not bar a citizen suit to enforce the same condition. As a result, permittees may be subject to successive enforcement actions for the same alleged violation—first by the state, under state law, and then by a citizen plaintiff under 33 U.S.C. § 1365. The Ninth Circuit's rule compounds this problem by allowing the duplicative enforcement to extend to permit conditions based on state law that are broader in scope than federal law.

B. Permittees Such as Amicus Must Comply with Complex Requirements That Implement Both the Clean Water Act and Additional State Laws

Washington's ISGP is a complex document imposing a very long list of requirements arising under both the Clean Water Act and state law. They include a mixture of vague narrative conditions and highly specific and detailed requirements. The permit itself is nearly 70 pages long. It requires compliance with thousands more pages of state manuals and regulations,[4] as well as federal regulations.[5]

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[4] For example, the ISGP prohibits the permittee from causing or contributing to violations of state standards contained in WASH. ADMIN. CODE § 173-200, 173-201A, and 173-204. 3-ER-365-66 (ISGP Conditions S10.A and S12).

[5] For example, the ISGP requires compliance with 40 C.F.R. Part 136, 40 C.F.R. § 122.41, and 40 C.F.R. § 122.42. 3-ER-343, 369 (ISGP Conditions S4.C and G11). It also prohibits the permittee from causing or contributing to violations of

For example, the ISGP requires permittees to prepare and implement a Stormwater Pollution Prevention Plan (SWPPP), a document that frequently runs hundreds of pages. The SWPPP must identify a wide variety of "best management practices," including treatment systems, operating procedures, and practices to control runoff, spills, and leaks. These practices must meet several objectives, including providing all known, available, and reasonable methods of prevention, control, and treatment of stormwater pollution, as required under Washington law. 3-ER-332, 376 (ISGP Condition S3.A.1.a. and ISGP Appendix 2 [definition of "best management practices"]). The SWPPP also must ensure that the permittee's discharge does not cause or contribute to a violation of state water quality standards, and that it complies with applicable federal technology-based treatment requirements. 3-ER-332 (ISGP Condition S3.A.1.b and c). It is the permittee's responsibility to review the state Department of Ecology's voluminous Stormwater Management Manual and select best management practices that will ensure compliance with each of these narrative standards.[6]

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standards contained in 40 C.F.R. § 131.45. 3-ER-365-66 (ISGP Conditions S10.A).

[6] The 2024 edition of the Stormwater Management Manual for Western Washington is 1,350 pages long. https://fortress.wa.gov/ecy/ezshare/wq/SWMMs/2024SWMMWW/Content/Resources/DocsForDownload/2024SWMMWW_6-14-24.pdf. The 2024 edition of the Stormwater Management Manual for Eastern Washington is 1,368 pages long. https://fortress.wa.gov/ecy/ezshare/wq/SWMMs/2024SWMME

Each permittee's SWPPP also must meet numerous highly specific requirements. For example, it must contain a site map depicting the location of fourteen discrete features at the facility, as well as identifying the distance between them and the size of the property. 3-ER-333-34 (ISGP Condition S3.B.1). The SWPPP must include a sampling plan addressing thirteen separate elements. 3-ER-340 (ISGP Condition S3.B.5). It also must contain a detailed facility assessment consisting of a description of the facility; an inventory of activities, equipment, and materials that contribute or have the potential to contribute pollutants to stormwater; a Spill Prevention and Emergency Cleanup Plan; a plan to train employees; and procedures to ensure compliance with inspection and recordkeeping requirements. 3-ER-334-35, 337-38 (ISGP Conditions S3.B.2, S3.B.4.b.i.5, and S3.B.4.b.i.6).

The ISGP also requires permittees to collect samples of stormwater and ensure they are analyzed by accredited laboratories using specific analytical methods; inspect the facility and correct deficiencies; prepare, submit, and retain various reports; and pay permit fees. The ISGP establishes numeric levels for pollutants in stormwater discharges. Some of the levels are effluent limits, exceedance of which constitutes a permit violation. Others are "benchmarks," defined as a "pollutant concentration used as a permit threshold, below which a pollutant is considered unlikely to cause a

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W/Content/Resources/DocsForDownload/2024SWMMEW_6-14-24.pdf.

water quality violation, and above which it may. When pollutant concentrations exceed benchmarks, corrective action requirements take effect." 3-ER-376 (ISGP Appendix 2). These requirements include reviewing the SWPPP to ensure that it "fully complies" with the permit and revising it to include extra best management practices. Additional requirements apply to facilities that discharge stormwater to waterbodies that are "impaired" for purposes of 33 U.S.C. § 1313(d).

Even for companies committed to full compliance with the ISGP, like amicus, it is challenging to meet every requirement of the permit consistently. The Department of Ecology may exercise its enforcement discretion with respect to inadvertent or inconsequential noncompliance. But under the Ninth Circuit's rule, *any* noncompliance forms the basis of a citizen suit.

The ISGP is a "general" permit; that is, a permit issued to provide coverage for an entire category of dischargers. WASH. ADMIN. CODE § 173-226-030(13). General permits ease the burden on regulators that issue permits to thousands of dischargers. But a permit issued to so many different facilities cannot be as precise as one issued to a single facility. Washington's Department of Ecology might never visit a facility holding coverage under the ISGP, and therefore could not undertake the in-depth facility evaluation that allows it to write specific conditions in individual permits. Conditions of general permits such as the ISGP often are expressed in narrative terms, requiring the permittee to determine exactly what it must do to maintain compliance.

For example, rather than requiring permittees to install a specific technology to control pollutants in their stormwater discharge, as individual permits would, the ISGP requires each permittee to develop and then to implement its own control plan—the SWPPP discussed above. And since compliance with this requirement requires the exercise of the permittee's judgment, a citizen suit plaintiff can easily allege that the practices chosen in the SWPPP are inadequate—and therefore a violation of the ISGP.

The specific permit condition addressed by the lower courts in this case—describing the ISGP's geographic scope at transportation facilities—illustrates the ambiguities faced by permittees. Five tribunals—three federal courts, a state court, and the state Pollution Control Hearings Board (PCHB), a quasi-judicial body that reviews decisions made by the Department of Ecology—have considered whether the ISGP applied to the entire footprint of a transportation facility or only those areas where vehicle maintenance, equipment cleaning, or airport deicing took place. Three concluded that the ISGP covered the entire footprint, and the other two concluded that it covered only the areas where those activities occurred.

The PCHB found that "Ecology's claim that the 2020 ISGP covers the entire transportation facility is without support from the plain language of the permit." Pet. App. 17a (quoting *Puget Soundkeeper All. v. Department of Ecology*, PCHB No. 19-089c, 2021 WL 1163243, *9 (Mar. 23, 2021)). The

Washington court of appeals reversed, ruling that the permit applied to the entire transportation facility. Pet. App. 18a (citing *Puget Soundkeeper All. v. Pollution Control Hearings Bd.*, 545 P.3d 333, 346 (Wash. App. 2004), *rev. denied* 554 P.3d 1222 (Wash. 2024)). Similarly, the district court in this matter determined that the "plain language of the ISGP" did not cover the entire transportation facility, but only that portion where vehicle maintenance, equipment cleaning, or airport deicing took place, Pet. App. 43a-45a, while the Ninth Circuit reached the opposite conclusion. Pet. App. 8a-10a. And in an unrelated case, a district court, while finding the permit language "ambiguous," determined that Ecology intended to expand coverage under the ISGP to include the entire facility. *Puget Soundkeeper All. v. BNSF Ry. Co.*, C09-1087-JCC, 2011 WL 13233168, *1-2 (W.D. Wash. Apr. 11, 2011).

If judges trained to interpret legal documents reach different conclusions about the geographic scope of coverage under the ISGP, certainly permittees can be expected to do so, too. The prospect of a citizen suit if they guess wrong is alarming.

Given the ease with which plaintiffs may bring citizen suits, the ambiguities contained in the ISGP, the enormous penalty exposure in a citizen suit, the near certainty of an attorney fee award in favor of the plaintiff, and the inherent risks of litigation, defendants usually settle these cases, which therefore evade review. This case is a rare example

of one that did not settle, and it presents a clear opportunity to address the Question Presented.

C. The Ninth Circuit's Expansion of Citizen Suits Should Be Reviewed Because It Exposes Thousands of Permittees to Federal Citizen Suit Enforcement of State Law Requirements While Bypassing State Law Limits on Enforcement

The Question Presented focuses on the critical balance of state and federal authorities. This Court, in other contexts, has recognized the paramount interest of states in the integrity of their own chosen processes for applying and enforcing state law. As the Court has observed, "[t]he federal balance is well served when the several states define and elaborate their own laws through their own courts and administrative processes and without undue interference from the federal judiciary." *Arkansas v. Farm Credit Servs.*, 520 U.S. 821, 826 (1997) (applying the federal Tax Injunction Act). The Ninth Circuit's rule allows citizen suits to bypass the enforcement tools selected by the state. Moreover, under the Ninth Circuit's interpretation the relief available to citizen suit plaintiffs under the Clean Water Act exceeds the enforcement powers of state agencies responsible for overseeing compliance with water quality permits. This impact on state law makes the Question Presented extraordinarily important to anyone subject to an NPDES permit that includes conditions based on state laws that are broader in scope than the Clean Water Act.

Although the numerous state law requirements embedded in Washington's Industrial Stormwater General Permit are complex, and often involve subjective judgments about stormwater management, state law limits enforcement and penalties in ways that help regulated parties comply. For example, both the legislative and executive branches have encouraged state agencies to provide technical assistance to regulated entities before taking enforcement action. In 1994, then-Governor Mike Lowry adopted an executive order directing state regulatory agencies to promote compliance through technical assistance. Executive Order 94-07 (June 6, 1994) (https://governor.wa.gov/sites/default/files/exe_order/eo_94-07.pdf). The following year, Washington's Legislature enacted the Regulatory Reform Act, which provides, in relevant part:

> The legislature finds that, due to the volume and complexity of laws and rules it is appropriate for regulatory agencies to adopt programs and policies that encourage voluntary compliance by those affected by specific rules. The legislature recognizes that a cooperative partnership between agencies and regulated parties that emphasizes education and assistance before the imposition of penalties will achieve greater compliance with laws and rules and that most individuals and businesses who are subject to regulation will attempt to comply with the law, particularly if they are given sufficient information.

WASH. REV. CODE § 43.05.005. The Act *requires* that the owner and operator of a regulated facility "be given a reasonable period of time to correct violations identified during a technical assistance visit before any civil penalty provided by law is imposed for those violations." WASH. REV. CODE § 43.05.040(1).

Not only does Washington law promote technical assistance and cooperation from the enforcement agency, but the penalties that can be imposed under Washington's Water Pollution Control Act for violating a permit are significantly lower than under the Clean Water Act. Washington limits the maximum daily penalty to $10,000, or less than one-sixth the penalty available in a Clean Water Act citizen suit. WASH. REV. CODE § 90.48.144(3). In addition, the statute of limitations for penalties based on the violation of a state water quality permit is two years, *U.S. Oil & Refin. Co. v. State of Washington*, 633 P.2d 1329 (Wash. 1981), compared to five years under the Clean Water Act. Washington law does not allow a prevailing party in an environmental enforcement action to recover attorney fees. Nor does it allow citizen suits.

The Ninth Circuit rule allows citizen suit plaintiffs to bypass a state's choices for enforcement of its own laws. Instead of first providing technical assistance to a permittee who might have violated the permit, a citizen suit plaintiff in the Ninth Circuit may simply file a complaint 60 days after sending notice of its intent to sue. Instead of facing a maximum penalty of $10,000 per day for each violation of a permit condition based on state law, a

citizen suit defendant may be ordered to pay up to $66,712 per violation per day. Instead of recovering penalties for violations occurring no more than two years prior, citizen suit plaintiffs may recover penalties for violations occurring up to five years before the notice of intent was sent. And instead of all parties bearing their own litigation expenses in a state administrative hearing, citizen suit defendants are almost certain to have to pay the plaintiff's federal court litigation expenses.

The Ninth Circuit's rule further disrupts the federal-state balance that Congress selected because it allows citizen suit plaintiffs to enforce permit conditions that EPA itself is not allowed to enforce. Pet. 25-26 (state-law requirements that are broader in scope than the Clean Water Act are not federally enforceable, citing 40 C.F.R. § 123.1(i)(2)). Moreover, in the Ninth Circuit such plaintiffs can obtain significantly greater relief by enforcing state law requirements in federal court than the state would receive from enforcing its own permits under state law.

It is a "well-established principle that 'it is incumbent upon the federal courts to be certain of Congress' intent before finding that federal law overrides' the 'usual constitutional balance of federal and state powers,'" *Bond v. United States*, 572 U.S. 844, 858 (2014) (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991), requiring a "clear indication" from Congress to intrude on the police power of the states. *Id*. at 860. This Court recently affirmed that it "'require[s] Congress to enact exceedingly clear language if it wishes to

significantly alter the balance between federal and state power and the power of the Government over private property.'" *Sackett v. EPA*, 598 U.S. 651, 679 (2023) (quoting *United States Forest Serv. v. Cowpasture River Preserv. Ass'n*, 590 U.S. 604, 621-22 (2020)). This case directly implicates these important concerns because the Ninth Circuit's interpretation grants to citizen suit plaintiffs powers that exceed those of state and federal regulators and, in doing so, bypass important state limits on enforcement of state law requirements.

States in the circuit have no power to prevent their state law-based permit conditions from being enforced in a citizen suit in ways that Congress never authorized or intended. These results flow from the Ninth Circuit's interpretation of the Clean Water Act, and they can be addressed only by this Court's review.

CONCLUSION

The petition should be granted and the decision below should be reversed.

RESPECTFULLY SUBMITTED this 28th day of October, 2024.

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