NO. 25-700

In the
Supreme Court of the United States

Joan V. Bayley, et al.,
Petitioners,

v.

United States of America,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Petition for Rehearing

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INTRODUCTION

Petitioners' Petition for Writ of Certiorari was filed on December 1, 2025, and denied on February 23, 2026. Petitioners herein request a rehearing under Supreme Court Rule 44.2 based on Petitioners' not-yet-presented argument that Respondent's actions against Petitioners violate the major questions doctrine as recently discussed by a plurality of this Court in *Learning Resources, Inc. v. Trump,* 607 U.S. ___ (2026) *("Learning Resources")*.

ARGUMENT

Petitioners request the Court reverse its denial of their Petition on the substantive grounds not previously presented arising from February 20, 2026's published plurality opinion in *"Learning Resources."* This opinion, rendered by Chief Justice Roberts with Justices Gorsuch and Barrett joining the plurality, establishes there is no exception to the major questions doctrine. As explained in *Learning Resources*, at 3,

> The Court has long expressed *"reluctan[ce] to read into ambiguous statutory text" extraordinary delegations of Congress's powers*… In several cases described as involving "major questions," the Court has reasoned that "both separation of powers principles and a practical understanding of legislative intent" suggest *Congress would not have delegated "highly consequential power" through ambiguous language* (internal citation omitted).

Applying *Learning Resources* to the instant case, Congress would not have, through ambiguous language, delegated to the Environmental Protection Agency ("EPA") and U.S. Army Corps of Engineers ("USACE") the highly consequential power to define "waters of the United States" ("WOTUS"). [1] There is no exception to the major questions doctrine that would support Respondent having the unbridled authority to define the term WOTUS in a manner that would empower Respondent to:

a) usurp the state of Washington's Tenth amendment powers, as preserved with a clear statement in 33 U.S.C. § 1251(b), which authorized Petitioners' bulkhead activities and caused the release and relinquishment of Respondent's claims against Petitioners under 43 U.S.C. § 1311(b)(2);

b) reclaim and regulate a state's defined uplands,[2] waters and natural resources, despite these matters being previously relinquished to the states and present property owners by Congress through its Submerged Lands Act ("SLA");[3] and

c) infringe upon property owners' Fifth Amendment rights (the right to own property and to

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[1] Clean Water Act Section 502(7) and 33 U.S.C. § 1362(7).

[2] Respondent and the lower courts treated Petitioners' uplands as adjacent wetlands abutting waters, disregarding *Sackett.* See Petition at 11, 14, and *Amici Curiae* at 9-10, 21-23.

[3] See *Sturgeon v. Frost*, 587 U.S. 28 (2019), which upheld the SLA, and explains the need for "cooperative agreements," such as the Coastal Zone Management Act ("CMZA").

restore, preserve, and enhance that property).[4]

If Respondent cannot satisfy the major questions test then, by rendering its own definition of the ambiguous term WOTUS, it lacked the highly consequential power to usurp State authorizations of Petitioners' activities, reclaim Petitioners' uplands and State waters, and penalize Petitioners for exercising their constitutional rights,[5] thus making the complaint moot.

In *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2273 (2024), the Court opined, "But courts need not and under the APA may not defer to an agency interpretation of the law simply because a

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[4] 43 U.S.C. § 1313(a) requires Respondent to acquire lawful title of the bulkhead site from Petitioners prior to having right to regulate it under the CWA, assess CWA penalties against the property owner, and require mitigation payments for Petitioners exercising their constitutional rights. Anything else, even under the color of the CWA, is a *takings* violation under the Fifth Amendment. See *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021), *Kohl v. United States*, 91 U.S. 367 (1875), *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), *Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013), *Sheetz v. County of El Dorado*, 601 U.S. 267 (2024). And it is also a deprivation of Petitioners' right to equal protection, an implied right under the Due Process Clause. See *Boling v. Sharpe*, 347 U.S. 497, 499-500, 74 S. Ct. 693, 98 L.ED. 884 (1954); *Davis v. Passman*, 442 U. S. 228, 236, 99 S.Ct. 2264 (1979).

[5] In a key excerpt from the opinion, Justice Potter Stewart stated, "And our decisions have made clear that a person faced with such an *unconstitutional licensing law may ignore it and engage with impunity in the exercise of the right of [enjoyment and protection of private property]* for which the law purports to require a license." See *Shuttlesworth v. Birmingham*, 394 U.S. 147 (1969).

statute is ambiguous." In the instant matter, this Court should not accept Respondent's interpretation of WOTUS just because the definition in the statute is ambiguous. Moreover, the plurality in *Learning Resources* noted, "We have long expressed 'reluctan[ce] to read into ambiguous statutory text' extraordinary delegations of Congress's powers." *Learning Resources*, at 7.

Fifty years after the Clean Water Act ("CWA") was enacted, the justices of this very Court during oral arguments in *Sackett v. Environmental Protection Agency*, 598 U.S. 651 (2023) *("Sackett")* repeatedly posed questions regarding the meaning of WOTUS. Respondent could never provide a coherent answer. Per the oral argument transcripts in *Sackett*, at 67, Chief Justice Roberts asked, "Have they tried to reduce it to a vague rule?" Respondent answered, "Yeah." At 86, Justice Gorsuch then inquired, "So, if the federal government doesn't know [the limits of CWA jurisdiction], how is a person subject to criminal time in federal prison supposed to know?" At 107 Justice Alito said, "Your argument is… Congress did something that has major importance. And also the fact that there may be a vagueness problem."

In *Sackett*, the Court wrote, "*Yet the meaning of "waters of the United States" under the EPA's interpretation remains "hopelessly indeterminate*." *Sackett*, 566 U. S., at 133 (ALITO, J., concurring); accord, *Hawkes Co.*, 578 U. S., at 602 (opinion of Kennedy, J.)." Applying the major questions test to the CWA, widely regarded as one of the most significant pieces of legislation enacted by Congress, one can conclude that Respondent did not have the highly consequential power to define the ambiguous

term WOTUS in a manner that would authorize Respondent to seek injunctive relief against Petitioners for alleged and vague aquatic environmental injuries.

If Respondent wielded such power, it would result in landowners who may otherwise be compliant with state permits, including federally approved state CZMA programs, being subjected to hundreds of thousands in CWA penalties, as occurred with Petitioners, based upon the interpretation of vague statutory language. Petitioners respectfully submit the Court should refrain from reading such authority into the CWA. Afterall, as noted by the plurality, "*There is no major questions exception to the major questions doctrine*." *Learning Resources*, at 13.

Concurring with the majority in *Learning Resources*, Justice Gorsuch wrote, at 8, "The major questions doctrine teaches that, to sustain a claim that Congress has granted them an extraordinary power, executive officials must identify clear authority for that power." He then opined at 25, "I am certain of one thing: Our cases hold a clear statement is required to support a claim to an extraordinary delegated power."

Applying the major questions test to the instant matter is of vast national economic, political and constitutional importance given the far-reaching implications of the CWA. Petitioners assert that Respondent has not identified any such clear statement supporting its claim that it has the highly consequential CWA power to determine what constitutes navigable waters within the states' primary jurisdiction. By impermissibly exercising

such authority, Respondent has purported to invalidate the Tenth Amendment, state CZMA programs, and 33 U.S.C. § 1251(b); reclaimed and purported to regulate what was released and relinquished by Congress to the states and property owners in the SLA; and penalized property owners who exercise their Fifth Amendment property rights. Without this claimed highly consequential power, Respondent's complaint would be moot. Because Respondent cannot satisfy the major questions test as applied in *Learning Resources*, this Court should consider granting this Petition for Rehearing.

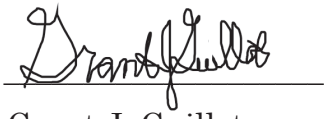
CONCLUSION

Per *Learning Resources*, because "there is no major questions exception to the major questions doctrine," and Respondent has failed to identify clear authority for it to define WOTUS in a manner that expands its CWA powers, the complaint against Petitioners' state-permitted activities is moot. Petitioners believe this Petition for Rehearing, given the magnitude of Respondent's constitutional injustices in this instant case under the color of the CWA, is a timely vehicle for this Court to examine the application of the major questions doctrine to EPA's and USACE's claimed highly consequential CWA power.

If the Court's writ denial in this matter is reversed and accepted for review, Petitioners' enjoyment of their constitutional rights to perform routine maintenance on their private property by following state authority may finally be vindicated.

CERTIFICATE OF PETITIONER

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.



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