

21-454 SACKETT V. ENVIRONMENTAL PROTECTION AGENCY

DECISION BELOW: 8 F.4th 1075

LOWER COURT CASE NUMBER: 19-35469

QUESTION PRESENTED:

Petitioners Michael and Chantell Sackett own a vacant lot in a mostly built-out residential subdivision near Priest Lake, Idaho. The lot has no surface water connection to any body of water. In April, 2007, with local permits in hand, the Sacketts began building a family home. But later that year, Respondent Environmental Protection Agency sent them an administrative compliance order determining that their home construction violated the Clean Water Act because their lot contains wetlands that qualify as regulated "navigable waters."

In *Rapanos v. United States*, 547 U.S. 715 (2006), the Court held that the Clean Water Act does not regulate all wetlands, but no opinion explaining why that is so garnered a majority of the Court. A plurality opinion authored by Justice Scalia and joined by three other Justices argued that only those wetlands that have a continuous surface water connection to regulated waters may themselves be regulated. A concurring opinion by Justice Kennedy advanced a different and much broader test, allowing for regulation of wetlands regardless of any surface connection, so long as the wetlands bear an (undefined) "significant nexus" with traditional navigable waters. Below, the Ninth Circuit employed Justice Kennedy's "significant nexus" test to uphold EPA's authority over the Sacketts' homesite.

The question presented is:

Should *Rapanos* be revisited to adopt the plurality's test for wetlands jurisdiction under the Clean Water Act?

THE PETITION FOR WRIT OF CERTIORARI IS GRANTED LIMITED TO THE FOLLOWING QUESTION: WHETHER THE NINTH CIRCUIT SET FORTH THE PROPER TEST FOR DETERMINING WHETHER WETLANDS ARE "WATERS OF THE UNITED STATES" UNDER THE CLEAN WATER ACT, 33 U.S.C. §1362(7).

CERT. GRANTED 1/24/2022