



Written by [Raven Clabough](#) on January 10, 2012

Supreme Court Justices Slam EPA Over Treatment of Idaho Couple

During Supreme Court arguments, the couple explained that they had no reason to suspect there were wetlands on their property. In 2005, they purchased the land for \$23,000 and two years later planned to build a three-bedroom home on it. Workers spent three days filling in just under a half-acre of land with dirt and rocks in preparation for building.



It was at that point that three EPA officials showed up and asserted that the property was protected wetlands. They then ordered the workers to stop when they discovered that the Sacketts had no permit. Six months later, the EPA sent the order that led to the court case. Before the case reached the Supreme Court, lower courts had told the Sacketts that they could not challenge the EPA's order.

A wetlands biologist did in fact advise the Sacketts in 2007 that their property was a wetlands and that there were wetlands on three sides of their land; however, another wetlands consultant told them in 2010 that the first assessment was wrong.

Justice Department lawyer Malcolm Stewart asserted that if the Sacketts "had wanted a judicial resolution of the coverage question without subjecting themselves to potential penalties, they could have filed a permit application before discharging, they could have gotten review there. All we're saying is they can't discharge fill, wait to see whether EPA notices, and then insist upon immediate judicial review if EPA notices and objects."

But EPA critics assert that the agency has too many regulations and too much bureaucratic red tape put in place without any real authority.

The Blaze provides some background:

The EPA issues nearly 3,000 administrative compliance orders a year that call on alleged violators of environmental laws to stop what they're doing and repair the harm they've caused. Major business groups, homebuilders, road builders and agricultural interests all have joined the Sacketts in urging the court to make it easier to contest EPA compliance orders issued under several environmental laws.

Several conservative Supreme Court Justices blasted the Environmental Protection Agency for what they deemed overreach in the Sackett case.

Justice Antonin Scalia criticized the EPA's "high-handedness" when it comes to dealing with private



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property, and Samuel Alito called the agency's actions "outrageous," charging that "this kind of thing can't happen in the United States." Alito was particularly incensed by the fact that the Sacketts had to wait to be sued by the EPA before they could even challenge the agency regarding the wetlands on their property. He observed,

You think maybe there is a little drainage problem in part of your lot, so you start to build the house and then you get an order from the EPA which says: "You have filled in wetlands, so you can't build your house; remove the fill, put in all kinds of plants; and now you have to let us on your premises whenever we want to. You have to turn over to us all sorts of documents, and for every day that you don't do all this you are accumulating a potential fine of \$75,000. And by the way, there is no way you can go to court to challenge our determination that this is a wetlands until such time as we choose to sue you."

Justice John Roberts bemoaned the fact that most people would be hesitant to even challenge the agency's determination because of the potential fines associated with it. "Because of the administrative compliance order, you're really never going to be put to the test, because most land owners aren't going to say, 'I'm going to risk the \$37,000 a day,'" he insisted. "All EPA has to do is make whatever finding it wants, and realize that in 99 percent of the cases, it's never going to be put to the test."

Justice Anthony Kennedy voiced the opinion that he was unsure just how far the Supreme Court could go in its ruling, because those who do not comply with the directions of government agencies often receive citations. "Health inspectors go into restaurants all the time and say: 'Unless you fix this, I'm going to give you a citation.' Fire inspectors, the same thing," he noted.

The Sacketts indicate that they are not trying to take away the EPA's power. Instead, their lawyer Damien Schiff asserts, "Let EPA administer the act and issue compliance orders. But let's also give homeowners a fair shake, too. Let them have their day in court to contest what the agency has done."

At issue is whether the EPA is acting outside the bounds of its authority. However, government agencies for years have increased their authority through the process of regulations. Conservative writer Mark Steyn explains:

For more and more Americans, law has been supplanted by "regulation" — a governing set of rules not legislated by representatives accountable to the people, but invented by an activist bureaucracy, much of which is well to the left of either political party. As the newspapers blandly reported in 2010, the bureaucrats weren't terribly bothered about whether Congress would pass a cap-and-trade mega-bill into law because, if faint-hearted Dems lose their nerve, the EPA will just "raise" "standards" all by itself.

Because the bureaucrats who operate these agencies are appointed, not voted on by the American people, citizens find themselves in a quagmire when told to comply with the rules imposed by these unelected officials.

Critics note that the EPA's heavy-handed influence is not limited to just the building of homes. They point out that because EPA regulations have blocked the building of new coal mining plants and caused many existing ones to shut their doors, the agency is nearly putting the coal industry out of business.

The EPA acquired a great deal of authority under the Clean Air Act, which permits it to regulate greenhouse gases. The agency posted a statement on its website last year indicating that it would introduce new standards and move unilaterally to clamp down on greenhouse emissions from power plants and oil refineries. EPA administrator Lisa Jackson asserts that the plans are meant to cope with



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so-called climate change: “We are following through on our commitment to proceed in a measured and careful way to reduce GHG pollution that threatens the health and welfare of Americans.”

Meanwhile, as the EPA’s regulations are strangling other industries, the size and scope of the agency burgeons as a result of its regulatory overreach. The EPA has stated that in order to carry out all the terms of the Clean Air Act, it would have to hire 230,000 more federal bureaucrats.



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