

Wiley Files Amicus Brief for Sackett v. Environmental Protection Agency on Clean Water Act Authority

April 19, 2022

Wiley, a preeminent Washington, DC law firm, recently filed an amicus brief in the U.S. Supreme Court on behalf of U.S. Senator Shelley Moore Capito (R-W.Va.), Ranking Member of the Senate Environment and Public Works (EPW) Committee, and Congressman Sam Graves (R-Mo.), Ranking Member of the House Transportation and Infrastructure Committee, and a coalition of 199 other members of Congress (See press release). The brief supports the petitioners in the pending United States Supreme Court case *Sackett v.*

Environmental Protection Agency. The brief argues that the Court should adopt a clearly administrable rule for what constitutes “waters of the United States” under the Clean Water Act (CWA), consistent with the statute’s history and text, that would protect the environment while also respecting and empowering farmers, small businesses, and property owners.

“Congress made clear its intent in legislative text, structure, and history to establish a limited federal regulatory presence in cooperation with the States. In the CWA, Congress selected language that, from practically the Founding, was understood both to exercise limited jurisdiction and to preserve the States’ traditional role as the principal regulators of local waters and lands. But this intent has now been turned on its head. Through the ‘significant nexus’ test, the EPA and Corps can instead use any ecological connection between land and nearby water as a pretext for intrusive central planning. This case presents an opportunity for the Court to finally put the genie back in the bottle and endorse the functionally equivalent test proposed by Justice Scalia. Only then will Congress’s dual purposes

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of cooperative federalism and environmental protection in the CWA be fully vindicated,” the brief states.

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