



Supreme Court Says That Challenges to "Waters of the United States" Rule Must Be Filed in Federal District Court

National Association of Manufacturers v. Department of Defense, No. 16-299

Decided January 22, 2018

Today, the Supreme Court unanimously held that challenges to an agency rule defining the "waters of the United States" under the Clean Water Act must be filed in federal district court, not in the federal courts of appeals.

Background:

The Clean Water Act grants federal courts of appeals exclusive jurisdiction over challenges to certain EPA actions. Other EPA actions may be challenged only in federal district court. After the EPA and the Army Corps of Engineers jointly issued a rule purporting to define the "waters of the United States," a trade association challenged the rule in federal district court.

Issue:

Whether challenges to the "Waters of the United States" rule must be filed in federal district court or a federal court of appeals.

Court's Holding:

The rule may be challenged only in district court.

"Rather than confront [the] statutory text, the Government asks us to ignore it altogether."

Justice Sotomayor,
writing for the unanimous Court

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What It Means:

- The "Waters of the United States" rule has been the subject of many challenges from parties who argue that the government defines "waters of the United States" too broadly. Challengers typically seek rigorous scrutiny in the district courts, while the government tries to limit these challenges to deferential review in a single court of appeals.
- The Supreme Court's ruling means that challengers have 6 years to sue in the district courts under the Administrative Procedure Act (APA). District courts will resolve challenges using APA standards subject to appellate review, with the possibility of differing decisions from different district courts.
- The Trump Administration is proposing a new definition of "waters of the United States." The Supreme Court's ruling would govern any challenges to that new rule as well.
- This case continues the Supreme Court's trend of rejecting the federal government's views on issues concerning "waters of the United States." The Court rejected the government's arguments about *when* agency actions may be challenged in *United States Army Corps of Engineers v. Hawkes Co., Inc.* (2016).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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