

# Environmentalists show true colors

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By Terry A. Hurlbut

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Environmentalists across America are howling with outrage because an elderly couple may at last build on land they own. That, at least, is the impression they give, in light of the United States Supreme Court's decision in the case. And when they take such a stance, they reveal what they really want to accomplish: *rewilding*. They know the American people will no longer sympathize. But they have no respect for any position but their own, nor for anyone's rights. Only an adoption of the failed United Nations Convention on Biological Diversity will satisfy them.

## What got the environmentalists in an uproar

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The case that started the caterwauling, that continues to time of posting, is *Sackett et ux. v. EPA et al.* (598 U.S. \_\_\_\_\_ (2023).) Michael and Chantell Sackett, about eighteen years ago, bought into a new subdivision near Priest Lake, Idaho. They started backfilling their new lot, intending to build a home on it. But the Environmental Protection Agency (EPA) forbade them. Across a thirty-foot-wide road from their land lay a ditch draining into a creek that itself runs into Priest Lake. "Wetlands!" declared the EPA. "Pollutant discharge!"

No, said the Supreme Court, after a tangled trail of deliberately delayed administrative action, and then a first-class rewilding campaign – at Federal taxpayers' expense. All of which had already drawn the sanction of the Court. And now at last the Court decided the case on its merits.

*Not one Justice of the Supreme Court could invent any rationale* to justify what the EPA tried to do: order the Sacketts to rewild their site. But the Justices differed markedly on where to draw the line in future cases involving waterways and wetlands. Justice Samuel A. Alito offered the opinion that wetlands, in order to deserve protection, must be contiguous on the surface with a navigable water (or a tributary, lake, or other body of water feeding into it), with no clear line to tell where the wetland left off and the larger body of water began. Someone's soggy backyard would no longer qualify.

## How the Court sorted itself out

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Justice Alito got four of his colleagues to join his opinion, so that opinion carries the day. (Justice Thomas would have gone further, as his concurrence makes clear.) But Justices Brett Kavanaugh and Elena Kagan both wrote "concurrences in the judgment" clearly indicating they would have liked to protect wetlands a stone's throw away and *not* necessarily blending or running into a navigable water. The only reason none of them wrote *dissents* is that they knew the Sacketts' land was more than a stone's throw away even from

the ditch on the other side of the road. (No one alleged that the land lay over an underground stream or communicating groundwater or any such thing.) The key word on which those four Justices choked, was *adjacent*, which *literally* means a stone's throw away. (From the Latin *ad-* to, toward, and *jacio* I throw.)

Elena Kagan made matters worse by invoking her own fevered dissent in *West Virginia v. EPA*, 597 U.S. \_\_\_\_ (2022). She accused her conservative colleagues of making themselves the “national decision-maker[s] on environmental policy.” But she couldn't have chosen a worse case. By putting fossil-fuel use in the same category as a couple building a retirement home, she clearly took the side of the rewilders. Never mind that she still would have let that couple build!

The environmentalists seized on the strict construction of Justice Alito of the term *wetland*. They then concocted the most breathtakingly absurd interpretation possible on the decision.

## Examples of the complaints by the environmentalists

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Annie Snider, writing at Politico.com, gave a somewhat measured description – though not very measured. While the Sacketts watched and wondered whether they would even get their money back, Donald Trump had rolled back many of the new regulations the EPA had written during the Obama years. President Biden canceled the rollback. Now he (or his handlers) must go back to the drawing board, in light of Sam Alito's new standard.

So Ms. Snider said the Court “deal[t] a major blow to President Joe Biden's efforts to restore protections to millions of acres of wetlands.” Worse, she said the Court gave the victory to the “homebuilding and oil and gas” industries. Somehow a decision that the EPA was unlawfully bullying an elderly couple who wanted to build a retirement home, now became a decision to help greedy, smelly, disgusting providers of the very energy environmentalists most wish to curtail. Conflating homebuilding with oil and gas drilling was a stroke of histrionic genius. (And *one* couple building *one* house near a lake are not housing development declarants!)

Senator Martin Heinrich (D-N.M.) said worse. “Radical conservative majority!” he cried. “Americans want climate action, not polluted waters!” Meaning he, and other environmentalists, want rewilding. As *The Center Square* pointed out, even Justice Kagan, for all her fevered advocacy for strict “protection of the environment,” did not think the EPA acted properly in their treatment of the Sacketts.

## A second look at Robert F. Kennedy, Jr.

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But *Children's Health Defense*, the newsletter Robert F. Kennedy Jr. founded, made the worst mistake. Of all the outsourced content providers they could have chosen for their most recent issue, they chose *Common Dreams*. Which is a leftist, even a Communist, rag,

famous for carrying Richard A. Cloward and Frances Fox Piven's original "Weight of the Poor" [essay](#) that gave us the [Cloward-Piven Strategy](#). The headline for their [article](#) said it all: "Big win for polluters!" They even illustrated their article with exactly the sort of wetland Sam Alito's new standard would still protect! No one can imagine the Sacketts or anyone else wanting to build on a site like that. Speaking of whom, *Common Dreams* implied the Supreme Court shouldn't even have heard the case. *They would have told the Sacketts tough luck, you may not build here, suck it up and go away!*

These tweets give prize examples of the attitude of environmentalists toward anyone just trying to live:

Sackett v. EPA is threatening to gut the Clean Water Act. With the future of clean water on the line, help us tell EPA Administrator Regan to accelerate the agency's regulatory work to protect our water. <https://t.co/2XkRtCya8V>

— Earthjustice (@Earthjustice) [October 2, 2022](#)

Five members of the Supreme Court dealt a crushing blow to the Clean Water Act, rewriting the word "adjacent" in the law to mean "adjoining," thus leaving unprotected from pollution, and EPA oversight, vast swaths of wetlands. <https://t.co/EGbNHDDJG4>

Justice Elena Kagan: <pic.twitter.com/n9XbH8mfWK>

— Cristian Farias (@cristianafarias) [May 25, 2023](#)

The court, in an opinion by Justice Samuel Alito, made up an entirely new test, not in the statute, to determine what counts as "waters of the United States." According to him, waters must have a "continuous surface connection" to be regulated.

Not the law Congress passed.

— Cristian Farias (@cristianafarias) [May 25, 2023](#)

"If you've lately swum in a lake, happily drunk a glass of water straight from the tap, or sat down to a good fish dinner, you can appreciate what the law has accomplished," wrote Kagan.

— Cristian Farias (@cristianafarias) [May 25, 2023](#)

BREAKING: The U.S. Supreme Court just ruled in favor of corporate polluters over protecting communities & [#cleanwater](#), ignoring decades of legal precedent, science, & Clean Water Act protections. SCOTUS failed us. [@POTUS](#) & Congress must step in to protect our nation's...

— Waterkeeper Alliance (@Waterkeeper) [May 25, 2023](#)

NEW: The Supreme Court just gutted the Clean Water Act, leaving communities, health, and ecosystems vulnerable.

Big polluters celebrate while water protections crumble.

If we're going to tackle the climate crisis, we must expand the court!

[pic.twitter.com/ecSCcU6xW0](https://pic.twitter.com/ecSCcU6xW0)

— Sunrise Movement 🌅 (@sunrisemvmt) May 25, 2023

Robert F. Kennedy, Jr. took a leave of absence from *Children's Health Defense* to seek the Democratic nomination for President. But if republishing this article is a fair sample of his sentiment, then *CNAV* could never vote for him. If he wants *CNAV's* endorsement, he must show that he differs from Biden in more particulars than Kennedy's opposition to SARS-CoV-2 and other vaccines.

## Analysis

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The attitudes the environmentalists express, tells you what they want: to allow no one to build their own homes. Not on what some deskbound bureaucrat calls a wetland, and not *anywhere*. They want humanity to jam itself into a handful of very large, dense cities, located mainly on the Pacific and New England coasts and perhaps on the Great Lakes. Everywhere else would undergo rewilding – reversion to how the land stood before any human walked it.



This goes to what *CNAV* said late last year: America is in a war for its soul.

That war could end with America limited to thin strips of land along the coasts (excluding the Southeast) and maybe bordering the Great Lakes. Or it will end with a repudiation of the kind of environmentalism on display today. No other outcome is possible.