



NATIONAL CAMPAIGN TO **RESTORE CIVIL RIGHTS**

ENVIRONMENTAL PROTECTION

Rulings in the federal courts concerning environmental protection can have incredibly wide-reaching impacts. The ultimate consequences of the decisions our courts make about the air we breathe, the water we drink, and our systems of nature affect us all.

In order to protect our environment and the American people, the federal government enacted several crucial safeguards: the National Environmental Policy Act, the Endangered Species Act, the Clean Air Act, and the Clean Water Act. These laws constitute some of our most important defenses against environmental destruction. In recent years, however, polluters and some of our political leaders have initiated concerted efforts to undermine and circumvent these safeguards. They are even making arguments in court saying that the federal government doesn't have to pass these laws! Federal court judges are called upon to make decisions about these issues, and the rulings they make will influence the future of our country's environment. As special-interest and big business groups continue their efforts to roll back laws that protect the environment, what kind of judges sit on federal courts becomes more and more important.

In 2004, in *Department of Transportation v. Public Citizen*, the Supreme Court considered a dispute dating back to 1982, when, due to overwhelming environmental and public health concerns, our federal government prohibited Mexican trucks from traveling more than 20 miles into this country. President Bush lifted that ban in 2001, and let the trucks roll in. Public interest and labor groups sued the Department of Transportation (DOT) for violating key environmental laws but the Supreme Court found that these laws did not need to be enforced, and ruled that the trucks can keep rolling in. The decision's immediate environmental and public health implications might be very harmful, but the precedent it sets is disastrous: environmental law is being ignored.

Not all rulings are detrimental, however, and some decisions show the power of the courts to uphold environmental laws that have come under political assault. The New Source Review (NSR) rules of the Clean Air Act require the owners of large industrial facilities to adopt certain pollution control measures when they build new facilities or modify old ones. Although these rules have prevented the emission of at least 300 million tons of pollution, the Environmental Protection Agency (EPA) under the current administration enacted a number of loophole exemptions that effectively crippled the NSR in 2002. So, the State of New York and a host of cities, towns, environmental groups, and other states filed suit against the EPA claiming that the exemptions violated the laws set forth by the Clean Air Act. Ruling in favor of New York and its co-plaintiffs, a federal court of appeals in 1998 helped to ensure that the new facilities would have to comply with Clean Air Act standards.

April 2007 brought another especially exciting victory for the environment. There is tremendous concern these days about global warming, both within the United States and around the world. In the first ever Supreme Court ruling on climate change, *Massachusetts v. EPA*, it was decided that

the EPA does indeed have the authority to regulate greenhouse gas emissions in new cars. We as Americans can be hopeful that this decision is the beginning of a period of greater awareness of the consequences of our actions on our prized environmental resources.

However, many of our key laws protecting the environment remain at risk. In *Rancho Viejo v. Norton* (2003), Chief Justice John Roberts (when he served on an appeals court) wrote an opinion that, had he been in the majority, would have overturned the Endangered Species Act. In this case, Rancho Viejo, a California real-estate developer, wanted to build a 202-acre housing project. The United States Fish and Wildlife Service determined that this massive construction plan would wipe out an endangered species (the arroyo southwestern toad), and proposed an alternative plan. The developer refused and instead sued, trying to claim that the Endangered Species Act was unconstitutional. The developer lost the case. This case wasn't so much about a lowly toad, as it was about whether Congress has the power to pass and enforce laws that provide oversight and protection of our environment, and not letting big developers do whatever they want unchecked.

The current Supreme Court agreed to hear two cases that seek to redefine these interpretations and challenge the power and constitutionality of this important federal statute. At the core of the two cases about "wetlands"-ecosystems essential for flood control, drinking water, agriculture, and wildlife-is also a large, key issue: Does the federal government's (Congress') have the power to carry out one of its most important functions of protecting Americans by ensuring national levels and standard for clean water?

As polluters and political leaders continue their efforts to roll back environmental laws in favor of special-interest groups and big business, what kind of judges sit on federal courts becomes more and more important. In 2003-2004, ten percent of the cases that came before the Supreme Court concerned the environment, and many of those cases were decided by one vote. If the composition of the Court changes dramatically, then, in the words of Doug Kendall, Executive Director of the Community Rights Counsel, "we could wake up one morning to find our fundamental environmental safeguards wiped out by a stroke of the Supreme Court's pen."

For more information on environmental protection and the courts, please contact the National Campaign to Restore Civil Rights at: rollback@nylpi.org.

For detailed case information, please see the below:

- [*The State of New York v. U.S. Environmental Protection Agency*](#)
- [*Rancho Viejo, LLC v. Norton, 334 F.3d 1158*](#) (D.C. Cir. 2003 cert. denied)