Stephanie Otts:

Okay, good afternoon everyone. Welcome to the National Sea Grant Law Center's 2024 Webinar Series. My name is Stephanie Otts. I'm the Director of the National Sea Grant Law Center and it's great to see everyone here this afternoon. So today we're going to be taking a look back at the US Supreme Court opinions for the 2023 term. But before we jump into that, just wanted to give a brief overview of the National Sea Grant Law Center to anyone who may be new to our webinar series. We are one of 34 sea grant programs around the country. We were established in 2002 to conduct legal research, education, and outreach for the Sea Grant Network and it's stakeholders. So if you want to learn more about us, please visit our website. You can use the QR code or just Google the National Sea Grant Law Center. Right now for this portion of the webinar, we do have all of the participants on mute and we ask everyone to stay on mute.

The webinar is being recorded and we will share the recording on our website when it becomes available. It usually takes a couple of days to get the transcripts and captions ready. If you have a question, at any time, you can place it in the chat. We will do our best to answer them as we go along, but we will also have time for Q&A at the end. And if you have technical difficulties, you can private chat, Lauren Fremin, our project coordinator, and we might not be able to help with everything, but we'll do our best to try to make sure that you have an enjoyable experience today.

So for those of you who are joining us for continuing legal education, this course has been approved by the Mississippi Commission on Continuing Education for one hour of credit. We will be dropping a link to a Google form in the chat at the end of the webinar where you can share your information with us. The law center will report credit for Mississippi attorneys. Attorneys in other states need to self-report, but we are happy to provide certificates of attendance if needed upon request to help with that reporting.

Okay, so this is a preview of what we're going to be doing on this webinar. It's going to be a bit of rapid fire roundup of the key cases from the 2023-2024 term. Then we'll check in on where we are with a big case from the previous term, EPA v. Sackett, which involved wetlands jurisdiction, and then do a little bit of a preview of what is and may be coming in the next term, which will begin in October, 2024. We're going to tag team among the attorneys at the National Sea Grant Law Center with respect to these cases. And so with that, I'm going to turn it over to Terra Bowling to start our first case.

Terra Bowling:

Hey everyone. Thanks, Stephanie. So the first case that we're going to talk about is Ohio v. EPA. This is a Clean Air Act case. And so just a little bit of background on the Clean Air Act, both the federal government and the state government have roles under this act. The EPA establishes national ambient air quality standards for common pollutants and then states develop SIPs or state's implementation plans to implement those standards. If a state does not comply with the federal standards, then the EPA can step in and develop a federal implementation plan for those states. Okay, next slide.

So under the Clean Air Act's good neighbor provision, upwind states when developing their SIPs must consider the impacts of air currents on downwind states and then adjust their standards accordingly. So in 2015, the EPA updated ozone air quality standards and asked states to update their SIPs after this. And then several years later, the EPA said, well, there are 23 non-compliance states. They aren't addressing the good neighbor provision. Some states didn't submit their SIPs, and so we're going to develop a FIP for those remaining states that will cover them. And so several of these states did not like the FIP. They went to various federal courts and 12 of the 23 states got the FIP stayed. So next slide please.

So then the remaining states went to the DC circuit and said, all these states have dropped out. Now this FIP only applies to a smaller subset of states. The EPA's role is arbitrary and capricious and they requested an emergency stay. And so the issue before the Supreme Court is whether they should issue that stay, and these are the four factors that the courts will look at. The Supreme Court said that really the latter three factors here weighed equally on either side, but what they focused on this case is whether the

applicant is likely to succeed on the merits because they said that the petitioners, the states were likely to succeed on the merits because the EPA did not address comments that were made during the public comment period to the FIP.

They said that the comments in question whether the rule would still be effective if only a subset of the states were under it. And the EPA argued that they had put in a severability clause into the FIP to address this, meaning that even if some states dropped out, the rule would still be in place. But the Supreme Court didn't really go for that. They said that the EPA didn't reasonably explain how that would address fewer states being under the FIP. Okay, next slide please. So on June 27th in a 5-4 opinion by Justice Gorsuch, the court ordered a stay of the rules enforcement and remanded it back to the DC Circuit.

So that means that the FIP will not be enforced against those 11 states. While the court is considering the merits of the FIP, Justice Barrett did file a dissenting opinion. She didn't agree with the majority's decision to issue the stay due to a procedural issue, and they said that the EPA did fulfill its obligation to address the commoners by including that severability in the FIP. So this case just suggests that it might be hard for any EPA program to withstand this level of scrutiny that the majority opinion gave, the public comments, and it just signifies the agencies will really have to be aware of the need to provide reasoned responses to concerns raised during the public comment periods or risk having their roles invalidated. So that's that one. I'll pass it to our next presenter.

Cathy Janasie:

Yeah. Hi everyone, I'm Cathy Janasie. I'm also a staff attorney at the law center. So I just want to talk for a few minutes about the Loper Bright decision, which we've already gotten a lot of questions about at the law center. So Loper Bright got to the Supreme Court by two different underlying cases that were lawsuits that were initiated by fishers in the Atlantic herring fisheries industry that's challenged a National Marine Fisheries Service rule that mandated fishers pay for fishery management observers on their own vessels in certain circumstances. The federal appellate courts deferred to NMFS's agency expertise and sided in favor of the government and those lawsuits. And so this case has gotten a lot of attention, but it's important to note that the court didn't rule at all on the fishery management issue. So those decisions by the appellate courts are still in place. Instead, the court looked only at a particular issue of administrative law.

So in the US, the Administrative Procedures Act governs the actions of federal agencies and a lot of statutes that agencies act under don't have their own mechanisms for challenging agency actions. And so the APA itself provides a mechanism for doing so. And so when someone brings a lawsuit under the administrative procedure to act, the agency's actions are reviewed under the arbitrary and capricious standard. That's a phrase you just heard Terra use. It's one you'll see a lot if you read our Case Alerts or our Sandbar articles. And that's because that's the legal standard that the courts were implying to these agency actions. Over time, the courts have viewed that arbitrary and capricious standard itself as being pretty deferential.

The court language I have on this slide is from the '70s, but it's still cited by courts today as kind of the touchstone for what we should do when courts are thinking about arbitrary and capriciousness. And so the courts have said that it's a searching and careful review of the court, but it's also a narrow review where courts are not supposed to be substituting its own judgment for that of the agency. Now, in addition to the arbitrary and capricious standard, the court has created these different tests to look at different types of agency actions. And so the Loper case in particular is looking at the Chevron Doctrine, but there are these other examples of different types of standards that the court has developed. So next slide, Stephanie.

So in 1984, the Supreme Court decided a case called Chevron v. Natural Resources Defense Counsel. And in that case, the court developed a two-step test for ruling on the legality of government agencies' interpretations of vague statutory language. We need to note that Chevron is only applying to very discreet set of agency actions. In particular, what the courts have referred to as formal actions. And

usually that means a rule or regulation that the agency has enacted through formal notice and common rulemaking. And so Chevron is not supposed to apply to every action that an agency takes. So under the Chevron test, the first question that a reviewing court was supposed to ask was, is the statute clear? And if there's clear statutory language, the idea under Chevron was that the court was supposed to give effect to that language and review the agency action in light of what they thought the statute said.

However, if the statutory language with ambiguous, the court was supposed to ask only if the agency's interpretation was reasonable. And what that meant was the court was not making these determinations of what the best reading of the statute was. Instead, Chevron said that the court should refer to an agency's expertise and with the idea that they were the experts and that they knew best. So this past term, six justices in a majority opinion declared that the Chevron Doctrine test was invalid. And in doing so, they cited a conflict with the Administrative Procedure Act and said that the Chevron Doctrine took the power of statutory interpretation away from the courts. And they argued that the judges are not only allowed to simply approve a reasonable interpretation, but instead are mandated to find this single best meaning of a statute's text. The court talked about how they can refer to agency's findings of fact, but both the Constitution and the APA require that the courts give full authority over the final interpretation of what a law is saying.

The dissent argued that statutory ambiguities are inevitable and that it was vastly preferable to have these kind of ambiguous statutory terms filled in by the agencies, rather by the courts. And they said that that majority kind of seized power for the judiciary with this decision. So what is the impact for right now? Mostly this is for right going to apply to cases going forward, looking at regulation and these other formal agency actions. It's not at this point going to apply to every review of agency action by the courts. That said, it will be interesting to see how the court addresses these other types of deference tests that they created as well as their own view of that arbitrary, capricious standard and see if the court starts to pull back on the deferential nature of that standard as well. This trend we've been seeing the last few terms with the court, so we'll talk about Sackett in a few minutes, but West Virginia versus EPA from two terms ago struck down an EPA regulation interpreting the Clean Air Act.

And so it's definitely this trend that we're seeing from the Supreme Court of pulling back on deference to agencies. And then finally, the one rule that we have on our radar to particularly watch is the new PFAS drinking water regulation that was just issued this year from the EPA. So that rule has already been challenged with multiple lawsuits. And so going forward, the courts are not going to be using Chevron deference to look at that rule. And so that may have an impact on how the courts look at that regulation by the EPA. With that, I'll pass it on to our next case.

Amy Kraitchman:

All right. Hi everyone, I'm Amy. I'm the Ocean and Coastal Law fellow here, and I'm going to talk briefly about SEC verses Jarkesy, hoping I'm saying the name right, I'm not totally sure. But this case isn't entirely environmental, so you might be wondering why we're talking about it, but it has implications that could affect environmental agencies and that's why we thought it's important to discuss. So very briefly, this case involves administrative law courts, which are courts set up within agencies. They're not Article III courts like you would think of a normal court, but a little bit different.

About 28 agencies have administrative courts and those are put in through statues from Congress. And then ones that are of note for this audience are NOAA, EPA, Department of Energy, all have administrative law judges, administrative law courts that handle civil penalties and statutory violations. And then previously before this case in 1977, the Supreme Court in Atlas Roofing versus Occupational Safety and Health Review Commission had affirmed the ability of agencies to have the sort of administrative law courts to adjudicate statutory violations and apply penalties and that was in the context of OSHA and employee safety. Next slide please.

So briefly, the Seventh Amendment is big here. The case is about if the Seventh Amendment applies to administrative law courts. And so in it, there's the text, it's about if you have a right to a jury trial. And in this case, Jarkesy was arguing that he did have a right to a jury trial. And yeah, next slide please. Okay, so background. So in 2010, Congress gave SEC administrative law courts to handle security frauds following the 2008 recession. And in 2011, Jarkesy was investigated by the SEC for security frauds with his company Patriot 28 LLC. They brought federal security law violations against him within their administrative law court.

And the judge, after an evidentiary hearing, charged him with $300,000 in penalties and held that he wasn't allowed to participate in the industry anymore. Jarkesy attempted to challenge the ruling, attempted to challenge the ability to even bring this case within an administrative law court to the DC Circuit and the DC Court of Appeals who both held that they didn't have jurisdiction to rule on the matter prior to the holding by the administrative law judge. And then after the holding, he brought a claim to the Fifth Circuit arguing that his Seventh Amendment was violated in this process. The Supreme Court brought it up on three issues, but only addressed one. They only considered the first one on that slide if the Seventh Amendment applied, and if he had his right violated for a jury trial. And next slide, please.

In a 6-3 ruling by Chief Justice Roberts, they held that he was entitled to a jury trial after going through a two-step approach. So at first they considered whether the seventh Amendment applied here and they determined that it did because there was a civil penalty that was meant to punish and deter a future bad act versus remedy and restore. And that was going back to old times and what we understood as a common law and a civil penalty. And they determined that fraud was something that existed back then. And then they considered yes, since the Seventh Amendment applied, was there a public rights exception? And for that, they determined that there was not one that applied. And that goes back to that old understanding of common law of fraud and if fraud existed and they held that Congress didn't have the right to assign this sort of action, because it was something that was normally adjudicated within a court.

And then very briefly, the dissent, oh, sorry, and then they also distinguish it from Atlas ruling and held that that situation was not something that was public right and not under common law. And so it was different, but the dissent pointed out that there really wasn't a distinguish, and they were more so overruling Atlas Grouping Co. And they warned that similar to Loper, that there was a violation of separation of powers and the court was kind of taking power for themselves in this situation. And because Congress had expressly given this power to the Executive branch and now the Judicial branch was taking that power from them.

And then briefly, the outcomes of this are so unknown, but it puts in jeopardy a lot of these administrative law courts where Congress has given this power to them to adjudicate issues that may be considered common law and may have existed by the court's determination, which is unclear. And it also puts into jeopardy the ability of agencies to adjudicate these sort of issues, penalties, and violations because it's just going to overload the existing court system and there won't be as fast of a process as there is now.

Stephanie Otts:

Great. Thanks, Amy. Yeah, good. All right. So another one that you may wonder why we've included, Corner Post versus Federal Reserve. This one is a bit more obscure and it's a case about the statute of limitations for filing a lawsuit, but it could generate significant uncertainty for some regulatory programs moving forward. So this case came before the Supreme Court because there was a Durbin Amendment to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. So this was another one of Congress's responses to the recession, which directed the Federal Reserve Board to set standards for assessing whether any interchange transaction fee like credit card transaction fees was reasonable and proportional, which the Federal Reserve Board did in 2011 by issuing a regulation. Trade associations and retailers quickly sued the board, challenging the regulation, claiming that it was arbitrary and capricious as Cathy was talking about or not in compliance with the law.

The DC Circuit Court rejected the claim holding that the regulation was based on a reasonable construction of the statute. So then the industry got creative. So Corner Post is a truck stop and convenience store in North Dakota that opened in 2018. So it did not exist back in 2011 when the regulation was published and that initial litigation was happening. It in 2021 filed a new and separate lawsuit challenging the regulation. Remember, this regulation had already been litigated and upheld by the DC Circuit Court and it had not changed since that ruling. So at the time under previous case law, the thought was that they would not be able to challenge this regulation again, because they were outside of the statute of limitations written into the Administrative Procedures Act, which is that actions have to be brought within six years after the right of action first accrues.

So that was understood at the time to be when the regulation is published. So you have six years from when the regulation is published to bring your lawsuit, which in this case would've been 2017, so Corner Post was too late and that was the District Court's ruling. However, Corner Post in the industry made the argument that the statute of limitations should not start to run until there is alleged harm from the regulation. And so since Corner Post couldn't have been harmed until they opened their business and started running credit cards, they should be allowed to file the lawsuit within six years of that alleged harm occurring. The Supreme Court agreed with Corner Post in a 6-3 divided opinion. And so they reversed the lower courts and held that the six year statute of limitations does not begin to run until the plaintiff is injured by the final agency decision.

And so there is expected to be quite a bit of uncertainty with respect to older established regulatory programs as this opinion potentially opens the door to new challenges, to old rules. So either by a newly formed business that was not in existence at the time or a business that maybe is able to argue that something has changed in their operations and they were not harmed before, but now they are. And so like many of the other cases that we're talking about, the full impact of this opinion isn't known, but it could lead to significantly more litigation over regulatory programs that maybe were enacted five, six, 10 years ago. And so again, if those lawsuits are filed and they are brought forward and now courts are not applying Chevron deference, it may make it harder for agencies to successfully defend those lawsuits. So we'll just have to see whether this happens. But we all know that environmental law is an area that is heavily litigated anyway. And so the opportunity to go back and maybe challenge some older rules is likely to be appealing to some businesses and organizations.

Another one I wanted to touch on briefly because we did receive an advisory request related to this settlement a couple years ago was the ruling by the Supreme Court in Harrington versus Purdue Pharma. This one was about the validity of the Purdue Pharma bankruptcy settlement. So you may have heard about this rates to the opioid epidemic and in a $4.3 billion negotiated bankruptcy settlement, the Sackler family who was the owner at the time of Purdue Pharma sought protection from tort related lawsuits that various parties were seeking to file against the family for opioid related harm. In a five four decision, the Supreme Court struck down the bankruptcy settlement, which was intended to address Purdue Pharma's role in the opioid crisis. So as I mentioned, this was a negotiated settlement. The Sackler's offered to provide the $4.3 billion, but that would've been in exchange receiving immunity from future lawsuits by victims or families.

The Chapter 11 bankruptcy plan was put to a vote and an overwhelming majority of the voting creditors supported the plan. And so that would've been companies or entities that were actually creditors of the Purdue Pharma and they approved the plan. But the US trustee, numerous states and municipalities and others objected to the settlement and this release of liability. The bankruptcy court originally approved the proposed reorganization plan, but then a federal district court vacated the decision. A divided panel of the Second Circuit Court of Appeals reversed the district court that revived the bankruptcy court's orders, kind of bringing that back into effect, and it was appealed to the US Supreme Court. So the court held that the bankruptcy code does not authorize a bankruptcy court to approve as part of a reorganization under Chapter 11, a release and injunction that extinguishes claims against non-debtor third parties without their consent.

And so that ruling effectively extends to non-debtors legal protections that are usually only reserved to actual creditors of a entity during bankruptcy. So as a result of the Supreme Court striking down the agreement, state and local governments that were slated to receive the settlement money to fund their opioid crisis response capabilities may have to delay their plans potentially for years, because it is restarting the negotiations and it is unknown at this time whether they'll receive the same settlement numbers as what they had in the past. So I think I saw a hand up from Madeline Dotson. If you want to, you can put your question in the chat and I can answer it or we can come back during the Q&A for that. Yeah, so that's basically where we are on that. So if you've been following the Purdue Pharma settlement stories, all of this is in limbo now because the bankruptcy negotiations need to start over and we don't know what's going to happen with those settlement agreements, and we could end up with a lower amount moving forward.

Then just two other cases to briefly note that we're not going to go over in the webinar that were from this term, so Texas v. New Mexico related to water rights and water law in the West, there is material in the CLE materials about that case. And the National Sea Grant Law Center has also published a blog post on this case that you can get to from the webinar materials or by going to our website. And Sheetz versus County of El Dorado was a Takings case about whether a permit condition resulted in a taking that required compensation from the local government. And so it was a bit of an obscure case in that they were looking at the difference between a condition required by statute versus just a local government planning decision. And the Supreme Court said the rules are the same with respect to any type of permit condition. So with that, we're going to take a step back and reverse a little bit and look at one of the biggest cases from the previous term, and I'm going to turn it back over to Cathy.

Cathy Janasie:

Yeah, so we just wanted to give an update about where we are in the regulatory landscape after the Sackett decision last term from the court. We've been getting a lot of questions about where we're standing after Sackett. So just to review, the second opinion considered what wetlands are subject to the permitting requirements of the Clean Water Act, and as background, the Clean Water Act requires that the discharge of a pollutant to navigable waters by a point source requires a permit, either a Section 402 point source permit or a Section 404 dredge and fill permit. The geographical scope of the Clean Water Act program hinges on what are called navigable waters, and the statute defines navigable waters as waters of the United States, often referred to as WOTUS. And what constitutes a WOTUS has been contentious since Congress passed a Clean Water Act back in the early 1970s.

So Sackett is a continuation of a line of cases that we've seen interpreting what is a WOTUS. So in May, 2023, the Supreme Court issued its opinion in Sackett looking at what wetlands could be considered WOTUSed. The resulting rule first requires that the adjacent body of water to the wetland has to be a WOTUS itself. So it either has to be a relative permanent body of water connected to a traditional interstate navigable water. And then second, the wetland has to have a continuous surface connection with that water, making it difficult to determine where the water ends and the wetlands begins. I mentioned talking about Loper, this case was in this trend that we're seeing from the court and pulling back against deference to the agency on the rule, on the position that the court overturned in Sackett of the EPA and the court had stood for 50 years.

So it was pretty significant when the court came out with this ruling. That interpretation hadn't been changed by Congress in that time. It stood through both Democratic and Republican presidents. And so it was a significant statement by the court when it came out. So in response in August, 2023, the EPA amended its WOTUS rule, and in order to track that court decision rule. As I'm going to talk about in a second, that rule is still not applicable everywhere in the United States. And then states have had various responses to the Sackett ruling. And so federal standards generally are floor for the states. States can choose to make hard standards. But that said, about half the states rely solely on federal rules, meaning that in particular with Sackett and about half the states, states can't go beyond this federal test. And then

I'll talk about again in a second about some of these particular responses that we're seeing from the states in response to Sackett. So next slide, Stephanie.

So this map is showing where in the United States that new Waters of the United States rule is operative. It's a map from the EPA. So as I mentioned in August of last year, the EPA amended its WOTUS rule to track the Sackett decision and apply that new test from the court. But what happened was that rule was actually amending a January, 2003 WOTUS rule that the core and EPA finalized before the Sackett decision. And so there was litigation challenging the interpretation of WOTUS in that rule. And as a result, several different courts in the United States enjoined that WOTUS rule in several states. That litigation is still pending, if not on pause due to Sackett. But what that means is that this new amended rule from 2023 is still not applicable everywhere throughout the United States. So the new rule as amended is the rule of law in 23 states, the District of Columbia and the US territories, but in another 27 states, the agencies are interpreting Waters of the United States consistent with pre-2015 regulatory regimes, as well as the Sackett decision until further notice.

And in particular, we found through research, that's having a real impact on how particularly the Army Corps of Engineers doing their jurisdictional determination under the Section 404 program. So this is definitely something we still have to have a watch on to see how the rule is being applied throughout the country. And then next slide, Stephanie. And then we're also seeing these various state actions and response to Sackett. And so this is a map that Earthjustice put together, but it's kind of tracking or we've seen different types of actions throughout the United States. So for an example in North Carolina, their 2023 Farm Act included a provision that said the state could only protect wetlands that met that new federal tests from Sackett, and they could not protect wetlands beyond the Sackett test. That passed through their state legislature and even overrode a veto by their governor last year.

Then in response to 2024, the governor issued an executive order that said that the state was going to prioritize wetland conservation, but that executive order doesn't change the permitting structure in the state, and so the state is still following that Sackett rule. And so it's kind of a mixed bag in what we've seen in North Carolina. An example of a state taking action to be more protective. In Maryland, they enacted the Clean Water Justice Protection Act, which was the first state law to expand the citizenship provision of the Clean Water Act. And so essentially what that does is it allows community groups that are harmed by water pollution in the state to bring an enforcement action under state clean water law to protect those wetlands that are no longer covered by that federal rule. And so giving more powers to community groups to be playing that citizen protector role in this state. Other states are still in flux.

So for example, Illinois introduced the Wetlands Protection Act this past term, it would've expanded protections beyond Sackett. That bill passed committee, but didn't ever make it to the floor of their assembly. And it's something the lawmakers say they're still going to address in the future, but it's not been passed yet. And then one other interesting thing to note with Sackett that we're seeing in states that have more protective programs is, for example, Washington has said that yes, we have this protective wetlands program, that because the federal side has been constricted as the state, that's put more of a burden on us on issuing permits as well doing enforcement efforts. So even in the states that have gone beyond Sackett, they are seeing kind of still the stresses of the Sackett decision and running their own state programs. And so obviously things are still in a lot in flux in response to Sackett. So as we continue to kind of see how the courts address challenges and the state's responses, we'll just keep tracking these developments.

Stephanie Otts:

Great. Thanks, Cathy. Yeah, so before closing out the webinar, we wanted to look ahead to the next Supreme Court term that, as I mentioned, begins in October. So I know that it can be really overwhelming to try to process all of these cases. I know it is for us, and there are some clear trends with respect to the Supreme Court issuing opinions that are shifting power away from the administrative agencies and the executive branch to the judicial branch. And we'll see in the two cases that we want to preview,

potentially continuations of those same trends. So with that, I'm going to turn it over to Amy to preview those cases.

Amy Kraitchman:

Yeah, okay. So our first case that we want to preview is county and City of San Francisco versus EPA. And this involves the National Pollutant Discharge Elimination Systems, which I believe were mentioned earlier, but it controls what pollutions from point sources enter into surface waters. And so under that program, the EPA or approved state can run the program and point source pollutions, which are stationary sources of pollution have to have a permit to discharge into surface waters. So in this case, San Francisco is challenging the EPA's use of generic prohibitions in their permits. And they say that it makes it harder for them to control surface water, and in particular makes it harder for permit holders to determine if or when they need to use additional pollution control measures in order to meet standards under the prohibitions set out in their permit. And so they challenged this case and went up to the Ninth Circuit, and the Ninth Circuit held that EPA's use of the generic prohibitions were allowed.

And so now San Francisco has appealed the case up to the Supreme Court to determine if they're allowed and oral arguments are scheduled for October 16th. And then next slide. And then this one's a bit more complicated, Seven County Infrastructure Coalition versus Eagle County of Colorado. And this involves an 88 mile common carrier rail line that the US Transportation Board approved in Utah. And the line would be mostly used to transport crude oil back and forth. And so the transportation board initially approved it, and the seven county infrastructure Coalition challenged it at the DC Circuit Court of Appeals and argued that the transportation Board didn't adequately consider the environmental impacts of crude oil.

And under NEPA, the National Environmental Policy Act, you have to consider the environmental impacts of any sort of federal action. And they're arguing that that transportation of crude oil and development of oil and gas should be considered. This case is trying to clarify a previous holding, previous Supreme Court case from 2004, Department of Transportation versus Public Citizen in which the Supreme Court held that a federal agency, if they determine that they are not legally relevant to a case, then they don't have to discuss or consider environmental effects of something outside of their regulatory control. And so in this case, the Transportation Board is arguing that the development of oil and gas is outside of their control.

I think there's another slide, next slide. So yeah, explaining a bit better. So they're arguing that gas and oil development and reliance is outside the scope of their environmental impact statement under NEPA and that they don't have to consider it. The citizen group is arguing that they do have to consider it since it's the main purpose of the line. And the DC Circuit had held that, they agreed with the citizen group that they did have to consider those environmental impacts, which created a circuit split with other circuit courts that had previously held that that is not a consideration that has to be held or has to be considered in a NEPA analysis. And so we're seeking clarification, but oral arguments are not scheduled yet in this case. Thanks.

Stephanie Otts:

Thanks, Amy. Yeah, great. Great. Well, that was it. That was our whirlwind tour through the Supreme Court's 2023 term. We're happy to take questions that anybody has about the cases that we've covered or what might be coming next term. While we're waiting to see if anybody has questions, just wanted to do a reminder for those that were here for the CLE credit, Lauren is going to drop a link in the chat to a Google form where you can enter your information. As I mentioned at the beginning, if you are a Mississippi attorney, we will report the credit from this webinar for you. If you are an attorney from another state, you can go ahead and self-report, and if you need documentation from us, we can provide that as well.

But with that, I'm going to give it 30 seconds or a minute to see if we get any questions for that. So maybe we just overwhelmed everyone like we often do. All right. Well, I don't see any questions coming in, but I want to thank everyone for joining us. I hope that you found this information useful. If you have any follow up questions or are hearing from the groups that you're working with that they have questions, please reach out to us. We're happy to help and we all have to navigate this collectively so we can all learn together. Thanks again for being a part of our webinar series, and we look forward to seeing you at the next one. Take care.