

Stephanie Otts (00:03):

Good afternoon everyone. Thanks for joining us here for the September installment of the National Sea Grant Law Center's 2025 webinar series. My name is Stephanie Otts. I'm the director of the National Sea Grant Law Center, and we're excited to share with you what's become our reoccurring webinar in September to review the most recent US Supreme Court term and also do a little bit of preview for what is coming up so far in the next term, which we'll start next month. So just for anyone who's new and is not familiar with the National Sea Grant Law Center, we were founded in 2002. We are part of the National Sea Grant College Network of 34 Sea Grant programs. We are hosted at the University of Mississippi School of Law, and we were established to conduct non advocacy, legal research, education, and outreach for the Sea Grant Network and its stakeholders.

(01:16):

So if you're curious about the other work that we do, check out our website. We've got lots of information on there. Just some brief housekeeping, we have everyone on mute right now to cut down on background noise. The webinar is being recorded and will be shared on our website afterwards. So if there's anyone that you think would be interested and missed it, we will be sending that information out. You can ask questions in the chat at any time, but we should also have plenty of time at the end for q and a. And if the group is small, we may ask you to come off mute to ask your question. If you have any technical difficulties, you can private chat Lauren Fremin for assistance. We can't promise that we can fix anything, but we do want to know if you're having any trouble today day.

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Finally, this webinar is unique in our series in that we are offering continuing legal education for this hour. It has been approved by the Mississippi Commission on Continuing Education. So participants here that are seeking CLE credit should submit their information via a Google form that Lauren is going to share in the chat at the end of the webinar. We will report the credit for Mississippi attorneys and then attorneys in other states will need to self-report, but we're happy to provide certificates of attendance and other information as needed upon request. So with that, I'm just going to do a quick table of contents preview of the webinar. We really try to do somewhat rapid fire roundups of key decisions from the 2024 - 2025 term. We're going to start with the decided merit cases that we think are of most interest and relevance to the Sea Grant Network. Then we'll talk a little bit about the shadow docket activity from both the previous term and the current term. And then we'll wrap up the webinar with a preview of two cases that we've been watching that have been accepted by the court. With that, I'm going to turn it over to, oh, and I should have mentioned we'll have a series of presenters today from the National Sea Grant Law Center. So we'll be rotating around as we go. So with that, I'm going to turn it over to Amy Kraitchman, one of our National Sea Grant Law Center Ocean and Coastal Law Fellows to walk us through the first case.

Amy Kraitchman (04:14):

Hi, I'm Amy Kraitchman. I'm an Ocean and Coastal Law fellow here at the Sea Grant Law Center, and I'm going to be talking about city and county of San Francisco versus EPA or I'm going to probably refer to it mostly as SF versus EPA, which is a decision that came down in April, I believe. And so before I get into the decision and outcome, I'm going to give a little bit of background on the Clean Water Act and the Federal Water Pollution Control Act. The Federal Water Pollution Control Act was passed in 1948 and it was the first major national act aimed at water pollution. However, it was largely seen as inadequate at actually addressing any pollution or preventing pollution. And so in 1972, Congress passed the Clean Water Act amendments, which basically overhaul the Federal Water Pollution Control Act and replaced it with the Clean Water Act that we know today.

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And specifically within the Clean Water Act, I'm going to be talking about the National Pollutant Discharge Elimination System or N-P-D-E-S permit program, which is required for any pollutant that is discharged into a water body. The program was created in 1972 as a way to regulate from point sources and to protect water quality. It's mostly run by the EPA, but states can have authorization, even either partial or full authorization to run the program. And so that's kind of confusing, but I'm just going to be referring to it as EPA, but it's good to know. And in this case specifically California, actually is authorized to run part of their program, but not all of it. And then permits are renewed every five years by EPA or they're authorized state. Next slide please.

(06:05):

Okay. So what does the National Pollution Discharge Elimination Act do? It prohibits the discharge of any pollutant from a point source into a water of the United States without a permit. A pollutant is defined pretty broadly and includes stuff like dredge spoil, solid waste, but also stuff like sewage, garbage, anything from municipal or agricultural waste being discharged into a water body, which in this case is going to mean mostly our oceans, any other sort of large water body that feeds into oceans or rivers or lakes. And then a point source is any definable discrete conveyance, which the pollutant goes through. And so specifically we're going to be talking about combined treatment facilities in regards to San Francisco, which is a type of facility that is covered under an N-P-D-E-S permit. And basically those collect rainfall and sewage and other industrial wastewaters through one system, treats it and then discharges it out into a water body.

(07:15):

The common problem is that when it rains or there's a lot of rain, it can cause overflow and basically untreated wastewater or sewage ends up in nearby water bodies. Next slide please. So in this case, San Francisco has two NPDES permits for their combined treatment facilities. This is to help treat the waste and sewage that comes from about 800,000 people that live in the city and one discharged directly into the bay and one discharges into Pacific Ocean. In the specific case, the dispute is over the one that discharges into the Pacific Ocean. In 2019 EPA added end results requirements to the NPDES permit renewal, which basically added more narrative requirements that don't specifically limit how much discharge they can discharge into water body, but more so limit how they do it, monitoring requirements, that sort of information. San Francisco didn't like that and they appeal to the Environmental Appeals Board, which is an administrative law court within the EPA who affirmed the requirements. And then they appealed that to the Ninth Circuit who upheld the environmental Appeal Boards decision and then they appealed to the Supreme Court. Supreme Court took up the issue and specifically were wondering if these end result generic requirements are allowed under the Clean Water Act or they have to actually get specific limitations in permits. Next slide please.

(09:03):

And so then in a five to four opinion, the Supreme Court ruled that the EPA is not allowed to use generic prohibitions and limitations and NPDES permits. They'll walk through a few different arguments that San Francisco raised. First, San Francisco argued that under section 1311 of the Clean Water Act, all limitations have to be effluent limitations, which are these numeric limitations on how much discharge there is. And the Supreme Court denied that argument and said that that's not the case if you actually read the statute. Congress doesn't have effluent limitations in that section, but other sections they do specifically call out effluent limitation requirement. So EPA doesn't have to just set effluent limitations. They can set other sorts of limitations on discharge. And then second though, they said that even though EPA doesn't just have to do absolute limitations under section 1311 B one C, they are not authorized to use these narrative and result requirements and that they have to give a specific plan or standard for permit holders to meet.

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And basically they came to this conclusion by saying that under the original act, the Water Pollution Control Act, there were these vague requirements and standards that avoided liability and pretty much prevented EPA from enforcing water pollution standards. And that when Congress overhauled the Water Pollution Control Act, they made it clear that EPA had to give specific standards and specific expectations basically under these permits. Then they also said that the permit shield provision, which protects permit holders who are in compliance with the Clean Water Act, prove this point because if you're in compliance, then you wouldn't need to worry about meeting your standards or whatnot. And so the absence of any provision in the Clean Water Act that addressed how EPA should handle liability was more so another way of signaling that this wasn't the case under the regulations. And so pretty much they knocked it down and said, EPA, you can't enforce these end result requirements; you have to set specific numeric requirements in permits for everyone who's discharging into a water body. Next slide please.

(11:33):

The dissent, however, disagreed and argued that end result requirements are enforceable limitations under the Clean Water Act and that they should be allowed. And mainly they pointed to the fact that they believe the majority misinterpreted how the Clean Water Act was written and said that these end result requirements are actually on top of numerical requirements and limitations and that something added on when EPA needs to provide more limitations or give more requirements, but they don't have a numeric number or standard that they're aimed at. And mostly that kind of gap comes in when EPA doesn't have the resources or personnel needed to actually do the research to determine what these limitations are. And so a body water as big as specific ocean, it is kind of hard to tell what sort of limitation you need, but you put in these generic requirements and that can kind of fill the gap and tell what the permit holder needs throughout the permit holder what they need to do in order to maintain standards and prevent discharging into water bodies beyond what the quality standards are.

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And pretty much they signal that this is just going to make it really hard for people going forward because now EPA has to figure out how to set all these limitations and figure out how to provide these numeric limitations to groups without having additional resources or personnel needed to do it. And most likely that will result in less permits being renewed or accepted and there's going to be a real backup and people or municipalities are not going to be able to discharge any wastewater or pollution in any sort. And so it's going to just shut down these types of facilities. So pretty much they signaled that it's going to be a slower process and stuff is not going to happen potentially the way that they have been running. Yeah. On that depressing note, we can turn it over to Siena.

Siena Fouse (13:37):

Thanks, Amy. Good afternoon. I'm Siena Fouse, another Ocean and Coastal Law fellow with the National Sea Grant Law Center. I'm going to talk about the Supreme Court case from the past term *Seven County Infrastructure Coalition v. Eagle County, Colorado*. This case involves the scope of environmental review under the National Environmental Policy Act or NEPA. So I'll start by providing some context on what happened in this case, then get into some background on NEPA and finally discuss the Supreme Court's opinion. In this case, the US Surface Transportation Board approved an 88 mile railroad line connecting Northwestern Utah to the National Rail Network in order to facilitate transportation of crude oil from the Uinta Basin in Utah to refineries along the Gulf Coast in Louisiana and Texas. Eagle County, Colorado and environmental organizations filed a petition to review this approval in the US Court of Appeals for the DC circuit.

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They claimed the transportation Board had failed to properly consider reasonably foreseeable environmental impacts of the project as required by NEPA. By not considering the effects of increased oil drilling and development upstream in the Uinta basin, increased oil refining downstream on Gulf Coast

communities as well as greenhouse gas emissions from oil combustion. The DC Circuit Court of Appeals agreed that the board had impermissibly limited its analysis of upstream and downstream impacts, stating that environmental effects from oil drilling and the refining process were reasonably foreseeable impacts from the railroad project and stated that the Transportation Board has the authority to refuse to license the railroad construction if environmental harm caused by the railway outweighs its transportation benefits. For these reasons, the DC circuit vacated the transportation Board's environmental impact statement and their approval of the new railroad line. The Utah counties that make up the seven County Infrastructure Coalition as well as the railroad appealed this decision to the US Supreme Court.

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Next slide please. Thanks. Now to provide a little background on the National Environmental Policy Act or NEPA. For certain infrastructure projects that are built, funded, or approved by the federal government, NEPA is a procedural statute that requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions. This ensures that the agency and the public are aware of environmental consequences of their proposed project. The NEPA review has three different levels of analysis. A categorical exclusion determination is the least detailed review and assigned to federal actions that normally do not have a significant effect on the environment. If a categorical exclusion does not apply to a proposed action, an environmental assessment may be prepared from the assessment. The agency may determine that the action will not have a significant environmental impact and issue a finding of no significant environmental impact also referred to as FONSI.

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However, if the environmental assessment determines that the environmental impacts of the proposed federal action will be significant, an environmental impact statement or EIS is prepared. To ensure that the federal project is fully informed an EIS must address any significant environmental effects of a proposed project and identify feasible alternatives that could mitigate those effects. The EIS is the most extensive analysis under NEPA, but also occurs the least often in projects that are reviewed under NEPA. A 2014 Government Accountability Office report estimated that about 95% of NEPA analysis are categorical exclusions. Less than 5% are environmental analysis and less than 1% are environmental impact statements or EISs. And because NEPA is a procedural statute, not substantive, agencies don't have to change their decisions about a project after undergoing this analysis. The analysis is just to make sure that they're informed about the anticipated environmental effects. Next slide, please.

(17:44):

Thanks. Reversing the Court of Appeals Decision, the Supreme Court held that the Transportation Board should have been given deference under NEPA and that the Appeals Court had incorrectly required the Transportation Board to consider environmental effects of projects that are separate in time and place from the railroad project looking at the downstream effects. While the transportation Board acknowledged that trains would use the proposed rail line to transport crude oil to other states, which would likely result in an increase in oil refining, further analysis was not required of those potential impacts because the transportation Board does not have authority over oil and gas development or the environmental effects of future oil and gas development since those are speculative and separate from the Railroad project. Beyond confirming that the agency addressed environmental consequences and feasible alternatives of the proposed project in the EIS, the Supreme Court held that the courts should defer to agencies about where to draw the line in considering indirect environmental effects.

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The court also emphasized that the upstream oil drilling and downstream oil refining projects fall outside of the board's authority, reiterating that agencies are not required to analyze to all the effects of projects over which they don't have regulatory authority. There could be a question in this case about why the seven county case does the Transportation Board get substantial deference in deciding what indirect environmental effects should be considered in their EIS under NEPA. Where in the Loper Bright case last

year, the US Supreme Court spoke against deferring to agencies interpretation of ambiguous statutes. In *Loper Bright Enterprises versus Raimondo*, no fisheries asserted it had the authority under the Magnuson Stevens Act to require industry to pay the salaries of federal observers on onboard vessels to enforce overfishing regulations. A fishing company, Loper Bright, challenged this authority and this US Supreme Court overturned the longstanding doctrine of Chevron deference and decided federal courts should determine the meaning of ambiguous federal statutes rather than what they had been doing, which was rely on agencies to do so.

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The court said that the Administrative Procedure Act requires courts to decide all relevant questions of law when reviewing agency actions. To distinguish it from *Loper Bright*, in that seven county case, the court described how when an agency interprets a statute like in *Loper Bright*, it's a question of law. So the court doesn't defer to the agency's interpretation. In the NEPA context, for something like the seven county case, the court says a question of law could be what does detailed mean when NEPA says an EIS should be detailed. So they say that question would be decided as a court. However, like in seven county, our railroad case, when an agency exercises discretion granted by a statute, the court says this is a question of fact and provides deference to the agency and just asks whether the agency action was reasonable and reasonably explained. So the question of what details an agency needs to include in their EIS involves primarily issues of fact, which the agency decides which facts are relevant to their decisions. And so the courts say courts should defer to agencies to determine what to include in their EIS. And I'll pass it back to Stephanie.

Stephanie Otts (21:10):

Thanks, Siena. Yeah, and I see that there's a question in the chat about the relationship between NEPA and the so-called alligator Alcatraz facility in Florida. So that case has not made it to the Supreme Court yet, so it was not part of what we were going to cover today. It's my understanding that that case is turning on the extent of federal connection to that project. So NEPA applies to federal actions such as issuing permits or projects that the federal government is funding. And I believe in the court cases so far related to the NEPA, the lower court held that NEPA did apply because there was some alleged federal funding and control happening, and then the appeals court disagreed. So I think that issue has yet to be determined about whether there was federal funding going to that facility and enough federal influence or control to trigger a NEPA requirement in that case.

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Okay. So with that, we're going to turn to the shadow docket, which has actually been where more of the activity has been happening recently. And so in a 2015 law review article, university of Chicago, professor William Baude coined the term shadow docket to describe appeals that come before the court outside of the standard merits docket. So in the Supreme Court's ordinary proceedings cases are filed to the merits docket following a grant of certiorari. Accepted cases receive full briefing followed by oral arguments with the court issuing lengthy signed opinions several months later. The two cases just discussed by Amy and Siena are examples of those type of merit cases. For the shadow docket parties file an application to the court which is assigned the relevant circuit justice. So the entire US Federal Courts system is divided into 13 circuit courts of appeal.

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And then each of those circuit courts is assigned a circuit justice from the US Supreme Court. So the circuit justice reviews, the non-med case applications and decides whether to independently make a ruling or refer it to their colleagues on the Supreme Court. And most of this stuff is kind of happening behind the scenes. You don't really see this decision making, hence the term shadow docket. Cases accepted through the shadow docket are normally decided very quickly, maybe in just a matter of days without the

benefit of full briefing or oral arguments and orders are often unsigned or unexplained. So there's just a lot more or a lot less transparency with respect to the cases being decided outside of the merits docket.

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So historically, the shadow docket was used primarily for issuing routine orders such as giving parties more time to file a brief or extending oral arguments or for reviewing applications for stays of execution in death penalty cases. So there's lots of cases that come up to the Supreme Court related to stays of execution that are also dealt with on the shadow docket. But for what we'll be talking about are shadow docket cases that are being filed by the presidential, the government that are coming up in actual cases being litigated through the lower courts. There were a few rare occasions in previous decades when the shadow docket was used for consequential rulings such as the 1953 stay of the executions of Julius and Ethel Rosenberg. There was also a reinstatement in 1973 of an emergency injunction ordering the halt to the Nixon Administrations bombing of Cambodia. So it's not that the shadow docket hasn't ever been in the news before or been controversial, but what's different now is the level of activity happening on the shadow docket.

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So the court's use of the shadow docket for important rulings has increased significantly since 2017 and the first Trump administration. So according to Georgetown University law professor and Shadow scholar, Steve Vladeck, the first Trump administration sought emergency relief in 41 cases with the Supreme Court granting relief in 28 of those cases. So almost more than half by comparison, the George W. Bush and Barack Obama administrations sought relief request just eight times over that 16 year period. So this is a significant increase. And we also saw the number of requests go down during the Biden administration, but the shadow docket was active during the Biden administration. Probably the one that got the most attention was well, there were rulings about the FDA and the Miller Prestone cases. Also, the challenges to the Biden administration's student loan forgiveness were coming up on the shadow docket, but it wasn't at the level that they had seen during the Trump administration and definitely not the level that we're currently seeing right now.

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So the trend has continued during the second Trump administration with a number of key shadow docket rulings during the '24 - '25 term on applications for stays in litigations involving all types of administrative actions including the birthright citizenship, executive order mass layoffs of federal employees and actions by the Department of Government efficiency. According to the courthouse News Service, federal district courts have ruled against the administration roughly 94% of the time between May and July of this year. However, the Supreme Court has flipped that outcome siding with the administration in about 94% of the cases, mostly on the shadow docket.

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The Supreme Court granted the Trump administration's stay request in all but one of the shadow docket cases in the '24 - '25 term. That notable exception was the court's May 16th ruling that extended an earlier ban on the deportation of undocumented Venezuelan men in immigration custody in Texas under the Alien Enemies Act of 1798. So since that May 16th ruling, the administration has pretty much run the table with respect to the shadow docket cases. So the National Secret Law Center has been tracking litigation from the start of the Trump administration relating to the termination of federal grants and impoundment of federal funding given the potential impact of these administrative actions on Sea grant programs. So one notable shadow docket decision related to that was issued in the case of Department of Education versus California on April 4th, 2025. In that case, the court granted an emergency application to vacate an order by a federal judge in Massachusetts that would have required the Department of Education to reinstate more than \$65 million in grants that it had terminated in February because they funded programs that included diversity, equity and inclusion initiatives.

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In an unsigned three page opinion, a majority of the court explained that the government lengthy would not be able to get the funds back once they were dispersed and that this rose to the level of a harm that the court needed to address. The majority added that the government had made a compelling argument that the recipients of funds would not be permanently harmed if the funds were withheld while the litigation continues. It's not clear where this came up in the briefing, but the court reached this conclusion because the plaintiffs had indicated at some point that they could keep their teacher training programs running without federal funding. So the court took that statement that, well, the schools can continue to run their teacher training programs regardless of the federal funding, weighed that against what they claimed would be the difficulty in the government recouping the funds once they were issued, if it turned out they were allowed to withhold those funds and lean towards the government and vacated the injunction by the federal judge. So what that meant was that the administration could terminate those grants, right, which would then have an immediate impact on those programs. Another key shadow docket ruling involved the question of nationwide or universal injunctions. These are injunctions that lower courts issue that apply across the whole country, not just in their circuit, but basically saying this is an administration action that applies across the country -- we're enjoining you from doing that anywhere, not just within the circuit that we have jurisdiction over. In a six-three opinion offered by Justice Amy Barrett in June, the court granted the Trump administration's application for a partial stay of prohibiting the implementation and enforcement of the Trump administration's January 20th executive order ending birthright citizenship. And so ruling the court held that nationwide injunctions likely exceed the equitable authority that Congress had granted to federal courts.

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So the court held that the courts can only grant relief to the parties that are before it in that action. So they can't just issue some universal injunction that applies to all similarly situated plaintiffs or possible plaintiffs. The court left open the question of how the district court should narrow the injunction to apply to just the name plaintiffs in that case, which some were pregnant women who were concerned that their children may not have US citizenship and some other groups there. It also did not take a position on whether the same arguments could be made in a class action where the attorneys would bring together a large class of similarly situated plaintiffs through a class action. So this is really an open question of how the district courts are going to respond to this ruling and how it's going to affect injunctions that are issued in the future.

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So the shadow docket is already active for the '24 - '25 term, even though the court does not officially come back into session until October. There have already been 18 decided cases and three pending. Although some of those are related to death penalty cases. The decisions to date continue the trend of the court overruling lower courts on major political and policy issues, including the authority of the Trump administration to terminate National Institutes of Health grants or fire members of independent bodies such as the Consumer Product Safety Commission. The court's three liberal justices, especially Justice Ketanji Brown Jackson, are more frequently publishing fiery dissents to these shadow docket cases, calling out the majority's, what they see of the majority's disregard of lower court fact finding and perceived bias towards the government. So on August 21st, a fractured court granted the administration's emergency application for a stay of district court judgments in National Institutes of Health versus American Public Health Association. To comply with the executive orders issued by the Trump administration, the National Institutes of Health issued internal guidance regarding its funding of scientific research. Those guidelines specified that the NIH will no longer fund research related to COVID-19, gender identity, or diversity equity and inclusion objectives. And then based on those guidelines, NIH terminated numerous existing grants. Various plaintiffs sued challenging the NIH guidance and their grant terminations under several theories of law, including that the NIH violated the Administrative Procedure Act. Applying the a standard of review, the US District Court for the District of

Massachusetts declared that both the guidance and the individual grant terminations were "breathtakingly arbitrary and capricious" and thus vacated those decisions. The US Court of Appeals for the First Circuit denied the government's request to stay the District Court's order and to lift that while they were moving through the appeals process. So the administration filed an emergency application with the court, and this decision is probably the most fractured that we've seen so far on the shadow docket because it was a 4-1-4 decision and it is a confusing decision because Amy Coney Barrett is in the middle moving between those two fours, so we get this confusing partition decision. So the Supreme Court granted the government's request, in part it stayed the District Court's injunction of the termination of the research grants at issue finding that such claims must be filed in the US Court of Appeals under the Tucker Act, but it left standing the District Court's order with respect to the guidance documents on which the NIH staff had relied in terminating those grants because district courts have jurisdiction over those type of disputes under the APA. So the impact of this ruling means that plaintiffs challenging both the termination of their individual government grants or contracts and the policy on which the terminations were based must generally file separate lawsuits. One in the US Court of Federal claims under the Tucker Act and one in Federal District Court under the Administrative Procedures Act. And significantly because the court of Federal claims generally lacks authority to provide equitable relief for the contractual breaches, meaning the Supreme Court is saying they're funneling it into a court that cannot do what the plaintiffs want most, which is to give them their grants back right and their money back.

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The Federal Court of Claims doesn't do that. So it's going to be moving forward exceedingly difficult for plaintiffs to successfully challenge a contract or grant termination, at least absent solid evidence of bad faith or a clear abuse of discretion. So this one, this particular case is going to have pretty significant impacts on the dozens of lawsuits floating around out there related to grant terminations because first they'll need to be funneled into the Federal Court of claims and that will just take longer and may not award the relief that plaintiffs are looking for. And some plaintiffs may just decide to stop at this point and not pursue it anymore because the impact is done right. The grants have been terminated, the labs may have already been closed, so it's difficult to move forward. But one final case wanted to note before turning to our preview of the merits cases in the 2025 - 2026 term is currently pending on the Shadow Docket is the application by the Trump administration for a stay in the Department of State versus AIDS Vaccine Advocacy Coalition, which raises the question of "Whether the Supreme Court should stay a district court order requiring the Trump administration to make available for obligation billions of dollars in appropriated foreign-aid funds."

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So, so far in a one page order last week, the Justice Roberts granted the Trump administration's request for a temporary hold on a lower court's directive that officials prepare to spend the money by the end of the fiscal year. Justice Roberts did not provide any explanation for his ruling, but it will remain in place while the full court considers how to handle the emergency appeal that the Justice Department filed. And so this one could be determined just by the clock running out on the end of the fiscal year. So stay tuned. There's a lot more to come on the shadow docket. I think this NIH case was either the 20th or the 21st ruling in favor of the Trump administration since the beginning of the term. So the Supreme Court is sending very clear signals to the district courts about what they feel are the appropriate boundaries of implementations of the administration's priorities.

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So with that, we just want to just quickly share previews of two cases that have been accepted so far by the Supreme Court for the next term. Both of these cases do relate to very important issues in litigation of relevance to the Sea Grant Network, but the court took the cases up on procedural matters that do not relate to the merits of the cases. So the first one we wanted to touch on was Chevron, Chevron versus Plaquemine Parish in Louisiana. So in 2013, several Louisiana coastal parishes joined by the Louisiana

Attorney General and the Louisiana Secretary of Natural Resources filed 42 lawsuits in state court against various oil and gas companies to hold them liable for production of crude oil in Louisiana Coastal Zone during World War II. The oil companies including BP, Chevron, Exxon, and Shell sought to remove the cases to federal court under a federal officer removal statute.

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That statute provides federal jurisdiction over civil actions against any person acting under an officer of the United States for or relating to any act under color of such office. The companies claim the statute applies because they were acting under World War II era military contracts to produce aviation fuel for the war effort. In 2024, the Fifth Circuit Court of Appeals denied removal. The court agreed that the oil companies were acting under the federal government in fulfilling the refining contracts, but found that the actions within the contract were unrelated to the production of crude oil. So applying its connection or association test, the Fifth Circuit reason that those contracts directed only the company's refining activities, while the lawsuit challenged the company's crude oil production activities. In their appeal to the Supreme Court, the oil companies are arguing that the Fifth Circuit required too tight of a nexus between the Louisiana lawsuits and the federally directed acts.

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So although the issue raised on this appeal is a narrow procedural one that is not directly related to the underlying environmental claims in the case, the case could have an impact on those outcomes. So underlying the federal officer removal statute is the presumption proceedings in state court may reflect local prejudice or priorities. Federal contractors implementing federal priorities often prefer to litigate in federal court where they feel like they might have a more friendly forum and there can be some truth to this notion. In April, a jury and lower Plaquemines Parish ordered Chevron to pay \$744 million in damages for its role in the degradation of the state's coastal wetlands. That verdict marks the conclusion of the first trial among those 42 lawsuits filed by the parishes. And so that's kind of the background for why the oil companies are seeking to get these case removed from state court to federal court. So we'll see later this year, the arguments have not yet been scheduled. And with that I'm going to turn it over to Terra Bowling to cover our last preview case.

Terra Bowling (45:30):

Hello. So I'm Terra Bowling. I'm also an attorney at the National Sea Grant Law Center. I'm going to go over the Enbridge Energy versus Nessel case. So this case began with a dispute over Enbridge Energy Line five Pipeline. It transports crude oil and natural gas through Michigan and Wisconsin into Canada. And it goes across the bottom lands of the Straits of Mackinac under an easement granted by the state of Michigan in 1953. So the case arose over environmental concerns over the potential for oil spills in the straits. However, as Stephanie mentioned, the Supreme Court is not looking at the merits of the case, but rather whether the case can be moved from state to federal court. Next slide please.

(46:24):

Alright, so just some background. In June, 2019, the Michigan Attorney General filed a lawsuit in state court alleging that the state's easement for the pipelines violated that the Public Trust doctrine and other state law. And then shortly thereafter in 2020, the governor of Michigan revoked the easement that it had granted the pipeline. And then the governor also filed a separate lawsuit that had many of the same issues as the Attorney General's suit. And although the Attorney General's case was filed in state court, in December, 2021, Enbridge removed the case to Federal District Court arguing federal question jurisdiction. So to remove a case from state to federal court, a defendant must meet the requirements for removal in federal law. So 1446 B-1 says the notice of removal must be filed within 30 days of the defendant's receipt of the complaint or summons. But there are some exceptions to this.

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If there's the complaint wasn't initially removable and the defendant finds out later that it is or has become removable, they then have 30 days to remove from that date. So the Attorney General argued that Enbridge had missed this statutory 30 day deadline for removal and filed a motion to remand the case back to State Court. The Federal District Court rejected that motion, meaning the case would stay in federal court. So then in June, 2024, the Sixth Circuit Court of Appeals then reversed the district court and said Enbridge should have known that this case was removable when it was filed because the governor's separate case was promptly removed to federal court and there were many of the same issues. The court said even if Enbridge could have established that it later became aware that the case was removable, it would've missed that deadline too. But then the court turned to look at whether federal law would permit an equitable exception to the 30 day deadline.

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So statutory time limits are on a spectrum of how strictly courts enforce them. They go from jurisdictional conditions that are very strict to time-related directives in which the courts have more discretion. So the Sixth Circuit looked at whether these were jurisdictional, they said they were not, but then they looked at whether Congress had intended strict enforcement of the time limits. And they said that Congress did intend for these 30 day time limits to be pretty strict because Congress had detailed express scheme of exceptions and carve outs. So then next slide please. Enbridge appealed this to the Supreme Court. They said there's a split among the circuits on whether 1446 allows the equitable exceptions to the 30 day limit. Enbridge's brief says that there were cases in the fifth, seventh, and 11th circuit saying equitable exceptions are allowed. There's been no brief filed by the Attorney General yet. There's no date for oral argument yet, but if the court rules in favor of Enbridge, the case will go back to the sixth Circuit, which will decide whether Enbridge qualifies for this equitable extension on the removal. Or if they rule in favor of the Attorney General, it will go back to state court. So that's where they are.

Stephanie Otts (50:03):

Great. Thanks Terra. Yeah, so that brings us to our overview of what we thought was most relevant for Sea Grant programs in the Supreme Court term. So unfortunately with this year, we didn't really have too much good news. The trends with this Supreme Court related to environmental cases are a little bit of a mixed bag, but we'll see how they happen next time and we're happy to take questions, drop 'em in the chat if you have any. And then also just a reminder to those seeking CLE credit to fill out the Google form that we're going to drop in the chat here in minutes with that. So we'll just give it a little bit of time to see if anyone have questions.

(51:13):

Okay. All right. Well, Lauren's dropped the CLE form in there. I just want to say thanks to everyone on the National Sea Grant Law Center team for presenting today. Also want to give a preview of the next webinar that is coming up. We'll be the last in our 2025 webinar series in November where it's a joint webinar with Florida Sea Grant on HABs. So that information is on our webinar page on our website already, and stay tuned for information about when the recording of this webinar becomes available and how to register for the next one. So thanks everyone for joining us today and hope you found it helpful. Thanks.