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Wisconsin Chapter

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May Case Law Update
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A summary of appellate court opinions decided during the month of May affecting planning in Wisconsin[1]

United States Supreme Court Opinions

Court Limits Federal Jurisdiction Over Wetlands

Sackett v. EPA, 598 U.S. ___ (2023), concerns a nagging question about the outer reaches of the Clean Water Act (CWA), the principal federal law regulating water pollution in the United States. The outer boundaries of the Act's geographical reach have been uncertain from the start. The Act applies to "the waters of the United States," but what does that phrase mean? For more than a half century, the agencies responsible for enforcing the Act have wrestled with the problem and adopted varying interpretations. On three prior occasions, the United States Supreme Court tried to clarify the meaning of "the waters of the United States" but only muddied the waters. This case is the most recent attempt to clarify the issue.

The Sacketts purchased property near Priest Lake, Idaho, and began backfilling the lot with dirt to prepare for building a home. The Environmental Protection Agency (EPA) informed the Sacketts that their property contained wetlands and that their backfilling violated the CWA, which prohibits discharging pollutants into "the waters of the United States." The EPA ordered the Sacketts to restore the site, threatening penalties of over $40,000 per day. The EPA classified the wetlands on the Sacketts' lot as "waters of the United States" because they were near a ditch that fed into a creek, which fed into Priest Lake, a navigable, intrastate lake. At the time, the EPA interpreted "the waters of the United States" to include "[a]ll . . . waters" that "could affect interstate or foreign commerce," as well as "[w]etlands adjacent" to those waters. 40 CFR §§230.3(s)(3), (7) (2008). "[A]djacent" was defined to mean not just "bordering" or "contiguous," but also "neighboring." §230.3(b). Agency guidance instructed officials to assert jurisdiction over wetlands "adjacent" to non-navigable tributaries when those wetlands had "a significant nexus to a traditional navigable water." A "significant nexus" was said to exist when "wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity" of those waters.

The Sacketts sued the EPA, alleging that their property was not "waters of the United States." The District Court entered summary judgment for the EPA. The Ninth Circuit affirmed, holding that the CWA covers wetlands with an ecologically significant nexus to traditional navigable waters and that the Sacketts' wetlands satisfy that standard. The Supreme Court granted certiorari to decide the proper test for determining whether wetlands are "waters of the United States."

In a decision written by Justice Alito, the Supreme Court reviewed the language of the CWA to hold that the wetlands on the Sacketts' property are distinguishable from any possibly covered waters and reversed

[1] Previous updates are available at: https://wisconsin.planning.org/policy-and-advocacy/case-law-updates/

the decision of the Court of Appeals for the Ninth Circuit. According to Alito's opinion, the CWA extends to only those "wetlands with a continuous surface connection to bodies that are 'waters of the United States' in their own right," so that they are "indistinguishable" from those waters. In other words, the CWA extends to only those wetlands that are "as a practical matter indistinguishable from waters of the United States." This requires the party asserting jurisdiction over adjacent wetlands to establish "first, that the adjacent [body of water constitutes] . . . 'water[s] of the United States,' (i.e., a relatively permanent body of water connected to traditional interstate navigable waters); and second, that the wetland has a continuous surface connection with that water, making it difficult to determine where the 'water' ends and the 'wetland' begins."

Alito's opinion was joined by Chief Justice Roberts, and Justices Thomas, Gorsuch, and Barrett. Justice Thomas filed a concurring opinion, in which Justice Gorsuch joined. Justice Kagan filed an opinion concurring in the judgment, in which Justices Sotomayor and Jackson joined. Justice Kavanaugh filed an opinion concurring in the judgment, in which Justices Sotomayor, Kagan, and Jackson, joined.

The decision narrows the reach of the federal government's authority under the CWA to protect wetlands. It does not limit the independent authority of the states and local governments to regulate wetlands.

County Keeping Excess Proceeds in Tax Foreclosure Proceeding Unconstitutional

In Tyler v. Hennepin County, 598 U.S. ___ (2023), a unanimous Supreme Court held that the money remaining after a home is sold by a county to satisfy past due taxes is property protected from uncompensated appropriation by the State under the Taking Clause of the Fifth Amendment to the United States Constitution applicable to the states under the 14th Amendment to the Constitution.

In 1999 Geraldine Tyler purchased a one-bedroom condominium in the City of Minneapolis, Hennepin County, and lived there for more than a decade. She moved into a senior housing community in 2010 and retained ownership of the condominium but did not pay property taxes on the unit. By 2015, she owned about $2300 in unpaid taxes and $13,000 in interest and penalties. In accordance with Minnesota law, Hennepin County seized the condo and sold it for $40,000. The county used $15,000 to pay off the tax debt and kept the remining $25,000 for its own use.

Tyler brought a class action against the County in federal court alleging the County's retaining the excess value above the tax debt violated the Takings Clause of the Fifth Amendment and the Excessive Fines Clause of the Eighth Amendment. The federal district court dismissed the case, and the Eighth Circuit Court of Appeals affirmed the dismissal. The Supreme Court granted certiorari to review the case.

Citing a doctrine originating in the Magna Carta, the Supreme Court held that a government may not take more from a taxpayer than she owes. According to the Court, "The Takings Clause 'was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.' *Armstrong*, 364 U. S., at 49. A taxpayer who loses her $40,000 house to the State to fulfill a $15,000 tax debt has made a far greater contribution to the public fisc than she owed. The taxpayer must render unto Caesar what is Caesar's, but no more."

Because the Court decided the Takings Clause applied, the Court did not address whether keeping the excess money was an excessive fine under the Eight Amendment.

The decision should not have a significant impact in Wisconsin. While an earlier Wisconsin case, *Ritter v. Ross*, 558 N.W.2d 909 (Wis. Ct. App. 1996), held that a county keeping the excess proceeds from a tax forfeiture sale did not violate the Wisconsin Constitution, following the passage of 2021 Wis. Act 216, Wisconsin prohibited counties from keeping any surplus proceeds after a tax foreclosure sale. In the *Ritter* case, the property owners owed $84.43 in back taxes and the county sold the property at auction for $17,345 and kept all the profits.

Wisconsin Supreme Court Opinions

[No planning-related cases to report.]

Wisconsin Court of Appeals Opinions

[No planning-related cases to report.]

U.S. Court of Appeals for the 7th Circuit Opinions

[No planning-related cases to report.]