

## Right-wing media attempt to distract from the contentious nature of *Sackett v. EPA*

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Right-wing media are attempting to discredit mainstream coverage and reactions around the Supreme Court’s recent decision to limit bodies of water protected under the Clean Water Act.

On May 25, the Supreme Court ruled unanimously in favor of wealthy Idaho couple Michael and Chantell Sackett in *Sackett v. Environmental Protection Agency*, after a 14-year legal battle in which they fought to do construction near protected wetlands without a permit. All nine justices ultimately agreed they could do so, however, their reasoning differed and concurring opinion on the scope of the case was split 5-4. Five conservative justices ruling for the majority decided that definitions previously laid out in the 51-year-old Clean Water Act were the problem, considerably narrowing the scope of which bodies of water must be protected. According to the environmental law nonprofit EarthJustice, which filed an amicus brief in the case, the new decision means that “as many as half of the 118 million acres of wetlands in the U.S. are no longer protected by the Clean Water Act, embracing the decades-long demands of mining companies, the fossil fuel industry, reckless developers, and other big polluters.”

Mainstream media coverage of the ruling rightfully highlighted this serious outcome. Democratic lawmakers including Sens. Chuck Schumer (D-NY) and Elizabeth Warren (D-MA) called out the decision’s radical implications and suggested it was driven by a partisan conservative agenda. Other experts pointed out that the majority decision ignores the best available science on how pollutants move through ecosystems.

In response, right-wing media celebrated the decision and slammed its critics, claiming that the unanimous ruling was intentionally being ignored to mislead the public and fit the narrative that conservative, Trump-appointed justices were making controversial decisions. In reality, the outcome of *Sackett v. EPA* was nothing if not controversial. Even Trump-appointed Justice Brett Kavanaugh opted to side with the court’s three liberal justices, saying the majority’s decision to redefine what is protected under the Clean Water Act went against scientific evidence.

### **Right-wing media attacks focus on the majority’s decision to gut the Clean Water Act**

Right-wing media attempted to expose those who called out the very real impacts of gutting the Clean Water Act and implied that the only decision that mattered — and the only one that should

be publicized — was the unanimous ruling in favor of the Sacketts. Suggesting otherwise, according to them, was a gross misrepresentation of the ruling.

These allegations started on May 25 in response to Schumer’s [tweet](#) attacking the “MAGA Supreme Court” for the decision to “erode our country’s environmental laws,” adding that “this ruling will mean more polluted water, and more destruction of wetlands.” Twitter users accused Schumer of lying by highlighting the unanimous ruling in favor of the Sacketts, and even added a community note clarifying the decision. Echoing the online backlash, right-wing media including Fox News and Newsmax piled on Schumer as well.

- **Trending Politics owner Collin Rugg: “I was today years old when I found out Ketanji Brown Jackson was a MAGA Republican.”** [Twitter, [5/29/23](#)]
- **Conservative precious metals investment influencer account Wall Street Silver pushed back on Schumer’s tweet: “It was a 9-0 unanimous opinion.”** [Twitter, [5/27/23](#)]
- **A Daily Wire op-ed claimed that Schumer labeling the decision as “MAGA” was a “smear” against the Supreme Court:** “Democrats attempt to smear anybody who goes against their agenda as a ‘MAGA’ extremist — even if those individuals are liberal members of the United States Supreme Court.” [Daily Wire, [5/27/23](#)]
- **Right-wing comedian Tom Shillue, filling in for Fox’s Greg Gutfeld, said the decision was “about as MAGA as a tofu hotdog with a Bud Light.”** “Senate Majority Leader Chuck Schumer took time out from never having a real job and slammed yesterday’s Supreme Court ruling,” Shillue said. “Shockingly, Schumer described the decision as the work of a MAGA court. This despite the fact the decision was 9-0. Yeah, that’s MAGA — that’s about as MAGA as a tofu hotdog with a Bud Light.” [Fox News, *Gutfeld!*, [5/26/23](#)]
- **Shillue later added that “there are plenty of liberals still on the court,” while Fox News contributor Kat Timpf asked if Schumer even bothered to look at the ruling.** “It’s just ‘MAGA’ and it doesn’t even make any sense,” Timpf said. “I mean, you know that. Did he not even bother to look at the 9-0?” [Fox News, *Gutfeld!*, [5/26/23](#)]
- **Newsmax co-host Bianca de la Garza dismissed Schumer’s comment and the 5-4 split.** “To be very clear, all nine judges unanimously agreed that the EPA overstepped its authorities,” she said. “I guess any reason to throw in MAGA, he’ll take.” [Newsmax, *John Bachman Now*, [5/26/23](#)]

- **Fox News host Sean Hannity:** **“\*IT WAS UNANIMOUS, CHUCK!\* ‘All 9 judges agreed that the EPA overstepped its authority and that the plaintiffs’ property should not be subject to EPA regulation.’”** [Twitter, [5/26/23](#)]
- **Fox Business host Liz MacDonald accused Schumer of politicizing the ruling:** “This was a unanimous ruling, so that means Justice Ketanji Brown Jackson, Elena Kagan, Sonya Sotomayor joined in this unanimous ruling. So are they MAGA too? Why is this politicizing everything?” [Fox Business, *The Evening Edit*, [5/26/23](#)]
- **Townhall accused Democrats of having “grossly misled on the outcome of the case.”** “Democrats are not taking the news well, to the point that they've grossly misled on the outcome of the case,” Townhall wrote. “In a tweet from his official account, Senate Majority Leader Chuck Schumer (D-NY) lamented about how the ‘MAGA Supreme Court is continuing to erode our country's environmental laws,’ despite how, again, it was unanimous.” [Townhall, [5/25/23](#)]
- **National Review senior writer Dan McLaughlin mocked Schumer over the 9-0 decision:** “Unanimous SCOTUS decision written by George W. Bush appointee. Outcome joined by GHW Bush appointee, 2d GW Bush appointee, 2 Obama appointees, & a Biden appointee. The 3 Dems joined a concurring opinion written by a Trump appointee. Chuck Schumer: That's so MAGA!” [Twitter, [5/25/23](#)]

Right-wing media also attacked [The Washington Post](#) and [Bloomberg](#) for not highlighting the unanimous decision more prominently, or even falsely stated that this was not even mentioned.

- **Radio host Erick Erickson:** **“You’d never know from Bloomberg that the decision was unanimous.”** [Twitter, [5/25/23](#)]
- **Red State blogger known as Bonchie:** **“This is the first seven paragraphs of the Post's write-up. Can you tell it was actually a 9-0 unanimous decision?”** [Twitter, [5/25/23](#)]
- **Former New York Post columnist and Daily Wire content creator Frank Fleming:** “What the hell is wrong with the Washington Post misleading people like that?” “I have to defend Schumer a bit here,” Fleming wrote. “Everyone is dunking on him for this being a unanimous decision, but the Washington Post article he links doesn't mention that and calls it a 5-4 decision (when actually, it's separate concurring opinions). What the hell is wrong with the Washington Post misleading people like that?” [Twitter [5/25/23](#)]

**Why the 5-4 split between the concurring justices matters**

It's true that all nine justices ruled in favor of the Sacketts. Specifically, they found that the Army Corps of Engineers and the EPA did not have jurisdiction over this particular property. But despite what right-wing media say, the differences in their reasoning are important.

Initially, the Sacketts filed a lawsuit against the EPA because the agency ordered them to remove sand and gravel fill from the lot where they wanted to build a house, arguing that it was on protected wetlands and they would need to return the area to its natural state. The couple brought the case to the Supreme Court for the first time in 2012 after lower courts sided with the EPA, maintaining that the property was subject to the Clean Water Act and the Sacketts did indeed need permits to continue construction. The Supreme Court at the time ruled in favor of the Sacketts' right to challenge the EPA's order.

Aided by the Cato Institute and Americans for Prosperity, both of which were founded by the fossil fuel billionaire Koch brothers, as well as other industry groups, the Sacketts managed to get their case in front of the Supreme Court for a second time. They were represented by the Pacific Legal Foundation, which has received funding from the fossil fuel industry and its allies and also fought to weaken the Clean Water Act back in 2006.

This time, five far-right justices didn't just rule in favor of the Sacketts — they went so far as to adopt the narrowest possible definition of which waters are protected by the Clean Water Act, completely changing how the law has functioned for the past 51 years. Kavanaugh, along with three liberal justices, argued that this decision went too far. Though they wrote a concurring opinion, he and three other justices fundamentally disagreed with Justice Samuel Alito's reading of the law, which would not protect wetlands unless they have a "continuous surface connection" to bodies of water. Kavanaugh explained why that doesn't make sense in his concurring opinion (citations omitted):

"Because of the movement of water between adjacent wetlands and other waters, pollutants in wetlands often end up in adjacent rivers, lakes, and other waters. Natural barriers such as berms and dunes do not block all water flow and are in fact evidence of a regular connection between a water and a wetland. ... The scientific evidence overwhelmingly demonstrates that wetlands separated from covered waters by those kinds of berms or barriers, for example, still play an important role in protecting neighboring and downstream waters, including by filtering pollutants, storing water, and providing flood control. In short, those adjacent wetlands may affect downstream water quality and flood control in many of the same ways that adjoining wetlands can."

Right-wing media's gripes ignoring the concurring opinion and framing the Supreme Court's unanimous ruling as key to the case are completely bad-faith attempts to gaslight the public into thinking that the decision was less controversial than it actually was. This narrative directly benefits the industries that were so keen to help gut a bedrock environmental law while refusing to accept clear scientific evidence that is inconvenient to their bottom line. As Earthjustice puts it, the effort was part of "a coordinated push by industry polluters that want to blow a hole in the Clean Water Act, bulldoze cherished wetlands, and contaminate the country's streams with waste

from mining, oil and gas, and agro-industrial operations as they see fit, just to maximize their profits.”

This isn't the first time this court has delivered a victory to polluters. In June 2022, the court's conservative majority issued a devastating ruling in *West Virginia v. EPA* that severely limited the EPA's power to make power plants cut the toxic pollution that is driving the climate crisis.