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39 Members of Congress Join WLF to Ask Appeals Court to Rein in Environmental Protection Agency

(American Farm Bureau Federation v. U.S. Environmental Protection Agency)

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—Cory Andrews, WLF Senior Litigation Counsel

“EPA’s power grab surrounding the Chesapeake Bay TMDL sets a dangerous precedent by usurping authority delegated to the states in the Clean Water Act simply because the agency disagrees with a state’s decision on implementation. The district court wrongly left this power grab unchecked. As the EPA continues to ignore the intent of Congress, it is necessary for lawmakers to weigh-in on the appeals court’s proceedings and highlight where the EPA has violated the law and infringed upon states’ rights.”

—Chairman Bob Goodlatte, U.S. House Judiciary Committee, (Virginia-06)

WASHINGTON, DC—Thirty-nine bipartisan Members of Congress joined the Washington Legal Foundation today to ask the U.S. Court of Appeals for the Third Circuit to reverse a lower court decision that would enlarge the scope of EPA regulatory power under the Clean Water Act.

The case centers on the proper scope of EPA’s authority under the CWA to establish a “total maximum daily load” (TMDL) for pollution. Section 303(d) of the CWA authorizes EPA to set a single TMDL at a level necessary to meet applicable water quality standards. In contrast, the TMDL for the Chesapeake Bay at issue in this case far exceeds that authority by allocating pollutant limits to specific sources, requiring states to give reasonable assurances how they will meet those individually allocated limits, and imposing deadlines for meeting the TMDL’s goals.

In a brief filed in support of the American Farm Bureau Federation, WLF argues that nothing in the CWA grants sweeping authority to EPA to “micromanage” implementation of a TMDL. By exceeding its statutory authority, WLF contends, EPA has usurped state and local prerogatives to decide how to achieve TMDL limits and ignored the cooperative federalism framework Congress employed to govern EPA’s regulatory implementation of the CWA. WLF’s brief was filed for itself and on behalf of its clients, thirty-nine bipartisan Members of Congress.

WLF’s brief also emphasized that, by deferring to EPA’s interpretation of the power the CWA delegated to it, the district court misapplied the Supreme Court’s *Chevron* precedent, which is designed to prevent agencies from assuming Congress’s policymaking role through expansive interpretations of regulatory power. WLF argued that EPA must not be allowed to seize power, as it did, by asserting that a statute’s *failure* to expressly prohibit something grants authority.

Upon filing its brief, WLF issued this statement by Senior Litigation Counsel Cory Andrews: “Congress’s ability to draft legislation is one of its chief means of cabining Executive Branch power. By reading statutory grants of authority too broadly, the district court below failed to respect that check on agency power, and its ruling thus invites further administrative abuses.”

U.S. House Judiciary Committee Chairman Bob Goodlatte, who led the efforts of Congressional *amici* on the brief, added: “EPA’s power grab surrounding the Chesapeake Bay TMDL sets a dangerous precedent by usurping authority delegated to the states in the Clean Water Act simply because the agency disagrees with a state’s decision on implementation. The district court wrongly left this power grab unchecked. As the EPA continues to ignore the intent of Congress, it is necessary for lawmakers to weigh-in on the appeals court’s proceedings and highlight where the EPA has violated the law and infringed upon states’ rights.”

WLF is a national public interest law and policy center. WLF regularly litigates in cases raising separation-of-powers concerns and involving government regulatory overreach.

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