

NEWS RELEASES

Amicus Brief Filed On Behalf Of U.S. Senators, Representatives In Waters Of The U.S. Case

November 9, 2016 | [Grand Rapids](#)

Attorneys in Barnes & Thornburg's Environmental Law Department and Appellate Practice Group filed an amicus brief pro bono on Nov. 8 in the case Environmental Protection Agency and Department of Defense, Final Rule: Clean Water Rule: Definition of "Waters of the United States," an environmental case pending in the Sixth Circuit Court of Appeals challenging this significant EPA rulemaking. The brief was filed on behalf of the U.S. Senate Environment and Public Works Committee, and supported by a bi-partisan group of Senators and Representatives.

A Senate announcement and the brief can be [found here](#) and below.



21 Senators, 67 Representatives File Amicus Brief, Urge Circuit Court to Block EPA and Corps of Engineers Attempt to Control Land and Water that Congress Left to State Authority

Amicus Brief Asks the Sixth Circuit Court of Appeals to Vacate EPA's WOTUS Rule

WASHINGTON – Led by U.S. Senate Environment and Public Works Committee Chairman Jim Inhofe (R-Okla.) and House Transportation and Infrastructure Water Resources and Environment Subcommittee Chairman Bob Gibbs (R-Ohio) 21 Senators and 67 House Members filed an amicus brief today in the case In Re: Environmental Protection Agency and Department of Defense, Final Rule: Clean Water Rule: Definition of "Waters of the United States."

The amicus brief is in support of petitions for review filed by 31 states and 57 municipal and industry petitioners seeking to overturn the EPA final rule identified as Final Rule: Clean Water Rule: Definition of "Waters of the United States," 80 Fed. Reg. 37,054, published June 29, 2015, also known as the "WOTUS Rule." A copy of the brief can be [found here](#).

Among the members filing the brief are Senate Majority Leader Mitch McConnell (R-Ky.), U.S. Senate Agriculture, Nutrition and Forestry Committee Chairman Pat Roberts (R-Kan.), U.S. Senate Appropriations Subcommittee on Interior, Environment and Related Agencies Chairwoman Lisa Murkowski (R-Alaska), U.S. Senate Appropriations Subcommittee on Energy and Water Development Chairman Lamar

RELATED PEOPLE



Charles M. Denton

Partner

Atlanta, Grand Rapids

P 616-742-3974

F 404-264-4033

charles.denton@btlaw.com



Tammy L. Helminski

Partner

Grand Rapids

P 616-742-3926

F 616-742-3999

tammy.helminski@btlaw.com

RELATED PRACTICE AREAS

Environmental

Alexander (R-Tenn.), U.S. Senate Committee on the Judiciary Chairman Chuck Grassley (R-Iowa), U.S. Senate Committee on Commerce, Science and Transportation Chairman John Thune (R-SD), U.S. Senate Committee on Small Business and Entrepreneurship Chairman David Vitter (R-La.), House Transportation and Infrastructure Committee Chairman Bill Shuster (R-Pa.), House Committee on Agriculture Chairman Mike Conaway (R-Texas) and Ranking Member Collin Peterson (D-Minn.), House Committee on the Judiciary Chairman Bob Goodlatte (R-Va.), and House Committee on Appropriations Chairman Hal Rogers (R-Ky.).

As Senators and Representatives duly elected to serve in the Congress of the United States in which “all legislative Powers” granted by the Constitution are vested, the members state that:

With this new rulemaking, the Agencies are encroaching on traditional state authorities over land use and water quantity (as opposed to water quality), contrary to the clear text and intent of the 1972 Amendments, its legislative history, and the Supreme Court’s decision in SWANCC, which warned that such an attempt to expand agency jurisdiction should receive no judicial deference. SWANCC, 531 U.S. at 174. Congress, not federal agencies, has the sole and exclusive right to make law. The Executive Branch, for its part, must “take Care that the Laws be faithfully executed.” U.S. Const. art. II, sec. 3 (emphasis added). The Agencies have failed to carry out that responsibility. Accordingly, this Court should reject the Agencies’ attempt to alter the federal-state framework of the Federal Water Pollution Control Act and vacate the WOTUS rule.

Additional Information: The WOTUS Rule was stayed by that court on October 9, 2015. Lawsuits filed by thirty-one state petitioners and twelve municipal and industry petitioners asking the court to vacate the WOTUS Rule have been consolidated in the Sixth Circuit. These petitioners filed their opening briefs on November 1, 2016, available [here](#) and [here](#). An amicus brief, or “friend of the court” brief, can be filed in order to address concerns and advise the Court on a matter of law that directly affects the case at hand.