

The Supreme Court - January 23, 2018

The Supreme Court of the United States issued three decisions yesterday:

National Assn. of Mfrs. v. Department of Defense, No. 16-299: In 2015, the Environmental Protection Agency (EPA) and the Army Corps of Engineers promulgated an agency regulation called the Waters of the United States Rule (WOTUS Rule), which defined the statutory phrase “waters of the United States” in the Clean Water Act. The National Association of Manufacturers (NAM) and other parties sought to challenge the WOTUS Rule, but there was disagreement as to the proper procedure for doing so. EPA actions are generally to be challenged in federal district court under the Administrative Procedure Act, and that is where NAM filed its suit. But the Clean Water Act has seven categories of EPA actions where review lies directly with the federal circuit courts, and the Government maintained that was where the challenge to the WOTUS Rule needed to be brought. NAM intervened as a respondent in a WOTUS Rule challenge filed in federal appellate court, and brought a motion to dismiss for lack of jurisdiction, which the Sixth Circuit denied. Today, the Court reversed, holding that challenges to an EPA regulation defining the Clean Water Act term “waters of the United States” must be filed in federal district courts.

The Court's decision is available [here](#).

Artis v. District of Columbia, No. 16-460: The Supplemental Jurisdiction statute, 28 U.S.C. §1367(d), provides that when a party brings suit in federal court, and includes state claims under the court's supplemental jurisdiction, “[t]he period of limitations for any [state] claim [joined with a claim within federal-court competence] shall be tolled while the claim is pending [in federal court] and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.” Here, the federal court dismissed petitioner Stephanie C. Artis's suit, and she refiled her state-law claims in state court 59 days later. If Section 1367(d) stopped the clock, such that the state limitations period was suspended while the federal suit was pending, Artis's state court suit would be timely. But the D.C. Court of Appeals held that Section §1367(d) only provided a 30-day

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grace period for refiling in state court. The Court today reversed, holding that §1367(d)'s instruction to "toll" a state limitations period means to hold it in abeyance, i.e., to stop the clock.

The Court's decision is available [here](#).

District of Columbia v. Wesby, No. 15-1485: District of Columbia police officers responded to a complaint about a loud party and illegal activities at a house that had been vacant for months. A party with over twenty people was going on, and when officers went inside, they observed that the house "was in disarray," looked like "a vacant property," and saw marijuana, alcohol, and sexual debauchery throughout. The partygoers claimed they had permission to be there from "Peaches," who was renting the house. When officers got "Peaches" on the phone, she was agitated, and first reported she was renting the house and had given permission for the party, but then admitted she did not have permission to use the house. The owner of the house then confirmed by phone that he had not given anyone permission to be there. The officers arrested the parties for unlawful entry. Sixteen of those individuals later brought a civil suit against the officers. The D.C. Circuit held there was no probable cause and that the officers were not entitled to qualified immunity. Today, the Court reversed, holding that the officers had probable cause to arrest the partygoers for holding a raucous, late-night party in a house they did not have permission to enter; and, in any event, the officers were entitled qualified immunity.

The Court's decision is available [here](#).

Yesterday, the Court granted certiorari in the following case:

Weyerhaeuser Co. v. Fish and Wildlife Service, et al., No. 17-71: (1) Whether the Endangered Species Act prohibits designation of private land as unoccupied critical habitat that is neither habitat nor essential to species conservation. (2) Whether an agency decision not to exclude an area from critical habitat because of the economic impact of designation is subject to judicial review.

On Friday, the Court granted certiorari in the following case:

Trump v. Hawaii, No. 17-965: (1) Whether respondents' challenge to the President's suspension of entry of aliens abroad is justiciable. (2) Whether Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 27, 2017) is a lawful exercise of the President's authority to suspend entry of aliens abroad. (3) Whether the global injunction is impermissibly overbroad.