

Proposed NC law could mean Supreme Court wetlands ruling has 'drastic' impact

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A U.S. Supreme Court ruling this week rolled back protections for many wetlands nationwide. North Carolina is considering a law that would require the state to use the same test for a "wetland" as the federal government, which advocates warn would leave vast swaths of fragile

areas like this one in Aurora, NC, without protection. 2006 News & Observer file photo

A proposed state law could mean that the Supreme Court's decision this week to roll back Clean Water Act protections for many [wetlands](#) has significant impact for North Carolina, according to environmental advocates.

In *Sackett v. EPA*, the Supreme Court ruled that in order to be considered a "[water](#) of the United States," and thus to receive protection, a wetland needs to be indistinguishable from a larger body of water. That means many seasonal wetlands would no longer be protected, even if they neighbor larger waterways.

A provision in the N.C. Farm Act currently being considered by the General Assembly would remove protections from wetlands using the standards set forth in the *Sackett* case. That proposed law would require North Carolina's wetlands protections to match the federal governments, and not go any further.

Environmental advocates warned that provision along with the Supreme Court's ruling could imperil fragile wetlands in North Carolina, opening them up to development and increasing flood risks for low-lying communities throughout the state.

"The only thing now protecting many North Carolina communities from being flooded in the coming years is the state's existing ban on paving over wetlands without a permit. The N.C. General Assembly should not remove that protection—it is literally protecting lives and property," Grady McCallie, the N.C. Conservation Network's policy director, wrote in a statement.

Each session, the General Assembly passes a Farm Act, a collection of

laws and provisions meant to aid the state's agricultural sector. This year's version, Senate Bill 582, requires the N.C. Department of Environmental Quality to redefine wetlands in a manner consistent with federal laws.

Those laws were fundamentally altered and limited by the Supreme Court's decision in *Sackett v. EPA*.

But Kelly Moser, a Southern Environmental Law Center senior attorney, said that means wetlands like Carolina bays and pocosins would no longer be protected.

How redistricting in NC can tip the balance of power here and in Congress.

"It requires the state definition of wetlands to match the federal definition, which would obviously harm North Carolina's ability to preserve the flood resilience benefits of our wetlands for downstream communities," Moser said.

The Farm Act has passed the Senate and is set for a vote next week by the House Agriculture Committee. It must pass through two more committees before a full vote by the House, at which point the Senate would need to approve any changes before the bill could be sent to Gov. Roy Cooper.

A Southern Environmental Law Center analysis found that a Trump administration definition of "waters of the United States" would lift protections on 526,996 acres of wetlands in the Cape Fear River basin and 364,586 acres in the Neuse River basin.

The *Sackett* decision is likely, Moser said, to lead to a stricter definition than that proposed by the Trump administration.

The case was filed by a couple who purchased property in Idaho and started filling it with dirt to prepare the site for construction of a home. The EPA informed them that the property was defined as "waters of the United States" because it featured a ditch that led to a creek that led to a nearby lake.

Both the U.S. District Court and the Ninth Circuit Court of Appeals found in favor of the EPA using a long-established test that a wetland is protected if it has a "significant nexus" to a nearby waterway. The Supreme Court reversed their decision.

"For our floodplain wetlands that are not right next to a large waterway or a protected stream, those wetlands are not indistinguishable from a larger water body and they would be left without any protections," Moser said.

Some celebrated Thursday's decision, saying it brings clarity to a long-standing legal question and rolls back often-confusing regulations that resulted in overreach.

U.S. Rep. David Rouzer, a Wilmington Republican, praised the ruling in a statement and said it shows the Biden administration should have waited to release new Waters of the United States rules.

"The Supreme Court rightly recognizes that the significant nexus test, which underpinned the Biden rule, is an improper reading of the Clean Water Act. The only reasonable step for the Administration to take now is to withdraw its ill-advised rule," said Rouzer, who chairs the U.S. House of Representatives' Water Resources and Environment Subcommittee.

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