

One-Track Mind: Unanimous SCOTUS Decision on Rail Line Approval Further Narrows Scope of NEPA

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On May 29, the Supreme Court issued a unanimous opinion in [Seven County Infrastructure Coalition v. Eagle County, Colorado](#) that dramatically changes the way courts scrutinize federal agencies' environmental reviews under the National Environmental Policy Act (NEPA). Justice Brett Kavanaugh, writing for a five-justice conservative majority (with Justice Neil Gorsuch abstaining), held that (a) courts must afford federal agencies "substantial judicial deference" regarding both the scope and contents of their environmental analyses; and (b) courts do not need to consider the effects of the action to the extent they are "separate in time or place" from the proposed project. The ruling gives federal agencies permission to greatly streamline their NEPA analyses at a time when those agencies are rapidly being drained of their resources and facing increasing pressure to expedite lengthy permitting processes.

The decision at issue in this case was the approval by the U.S. Surface Transportation Board (STB) of an 88-mile rail line connecting the oil-rich Uinta Basin in Utah to the rest of the national freight rail network. The environmental impact statement (EIS) acknowledged that the rail line could increase upstream oil production and downstream oil refining, but declined to analyze these impacts in detail. Environmental groups and an affected county sued in the District of Columbia Circuit, charging that STB should have fully analyzed these upstream and downstream impacts as "reasonably foreseeable." The District of Columbia Circuit agreed and vacated both the EIS and the STB decision.

The Supreme Court voted unanimously to reverse. In upholding the STB NEPA analysis, Justice Kavanaugh drew a hard line between the low level of judicial deference owed to agencies when interpreting statutes, [established in last year's Loper Bright decision](#), and the high level of deference due to agencies when determining, among other things, which indirect impacts to analyze under NEPA, the appropriate level of detail for the analysis, the range of alternatives to be considered, and the significance of the impacts. He also lambasted lower courts that have second-guessed agencies and turned NEPA into a tool of project opposition. The majority laid out a clear litmus test for the scope of NEPA reviews: any actions other than the project itself (for instance, development that a project might reasonably be expected to catalyze) need not be analyzed. However, this permissive wording leaves open the possibility that agencies in a future administration could choose to draft broader EISs that do consider upstream and downstream projects (including those outside their jurisdiction) — and would be given judicial deference for those choices.

Justice Sonia Sotomayor, writing for the three liberal justices, concurred in the reversal of the District of Columbia Circuit but on a much narrower basis. Justice Sotomayor reasoned that because the STB had no statutory authority to consider the upstream and downstream effects of the rail line in its approval decision, it had no

obligation under NEPA to analyze those effects. This was enough to uphold STB's approval, Justice Sotomayor reasoned, so there was no need for the majority's sweeping policy judgments.

The Supreme Court's opinion offers federal agencies the ability to streamline and narrow their NEPA reviews. The opinion is consistent with Congress' goals in the Fiscal Responsibility Act to streamline NEPA processes, as well as [the administration's efforts to overhaul agency NEPA regulations](#). The decision will also likely make it harder for litigants to prevail in challenges to infrastructure projects based on an agency's failure to analyze indirect, remote, or speculative impacts.

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