

PLF asks U.S. Supreme Court to overturn conviction of 77-year-old facing prison, fines for his ponds

November 16, 2018



Eighteen months in prison and \$130,000 in restitution. That was the punishment handed down to 77-year-old Joe Robertson for allegedly polluting ponds he built on his own property in Montana. The Environmental Protection Agency said his ponds were navigable waters and, therefore, subject to the Clean Water Act. But the federal government can't control the use of every drop of water in the country. And the EPA can't

undermine fundamental human needs and rights. So PLF asked the U.S. Supreme Court to overturn Joe's conviction.

Could Joe's injustice happen to you? Tony Francois says it depends on your state.

PLF Case: *Robertson v. United States*

Montana man unjustly convicted of violating Clean Water Act



***Robertson v. United States* - Case Status: Active: Litigation is ongoing**

The Environmental Protection Agency and the U.S. Army Corps of Engineers prosecuted Joe Robertson for allegedly polluting waters of the United States as a result of a series of ponds he built on land above the small town of Basin, Montana. The prosecution turned on a definition of “waters of the United States” that included land 40 miles away from the nearest navigable river. A jury agreed with this definition, finding the ponds had a “significant nexus” to the river, and convicted Robertson. PLF has asked the U.S. Supreme Court to overturn Robertson’s conviction.

What’s at stake?

The federal government does not have the power to regulate the use of every drop of water in the nation.

The human community is the essential primary interest to be protected by government action and we must ensure that environmental laws do not undermine fundamental human needs and rights.

Case Overview - *Robertson v. United States*

Joe Robertson, a 77-year-old rancher in Montana, was prosecuted for violating the Clean Water Act by discharging dredge and fill into wetlands. He argued that he could not have violated the Clean Water Act because the waters he “discharged” into were ponds he constructed on his own property, with no continuous surface water connection to navigable waterways. The nearest navigable river is 40 miles away. He was convicted and sentenced to 18 months in prison, probation, and ordered to pay \$130,000 in restitution. Whether this conviction was lawful depends on the definition of “navigable waters.”

In *Rapanos v. United States* (a PLF case), the Supreme Court sought to define the scope of the Clean Water Act. The Court split on a 4-1-4 vote. Since then, the lower courts have struggled to determine which of those opinions controls the question whether wetlands are “navigable waters.” Justice Kennedy’s concurrence in *Rapanos* would extend federal jurisdiction to any water that has a “significant nexus” to a traditional navigable water, even in the absence of a direct hydrological connection. That overly broad reading of the Clean Water Act allowed the federal government to prosecute Mr. Robertson for “polluting” waters of the United States by creating ponds to protect his property from fire.

On the other hand, the *Rapanos* plurality opinion written by Justice Scalia, would authorize federal regulation of only those wetlands physically abutting and indistinguishable from natural rivers, lakes, and streams connected to a traditional navigable waterway. Under the Scalia test, Robertson would have been found not guilty (if charged at all), since his ponds are more than 40 miles away from the river, and do not abut lakes or streams. Representing our clients in other Clean Water Act cases, including *Chantell* and *Michael Sackett and Duarte Nursery*, PLF has asked the U.S. Supreme Court to overturn Robertson’s conviction.

November 9, 2018: [Cert. Petition](#)

November 7, 2018: *Robertson v. United States* – [Cert Petition](#)

July 21, 2017: *Robertson v. United States* [Documents 7-21-17](#)

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Nation of criminals: Build a pond, face \$20 million in penalties or even prison



When Andy Johnson faced \$20 million in government fines for building a pond on his own land, the Wyoming man fought the law—and won with PLF. Now, CBN News features Andy’s horrific experience in its series on the out-of-control system of federal crimes and regulations that could literally make us A Nation of Criminals:

“In 2011, Andy Johnson obtained all of the necessary government paperwork before building a stock pond on his eight-acre ranch in Fort Bridger, Wyoming. At least, that’s what Johnson was told, according to Jonathan Wood, a lawyer with the Pacific Legal Foundation who has been working with Johnson. ‘He worked with the state, the local government; got all the sign-offs he needed, and created a pond in his front yard,’ Wood told CBN News.” [Read More](#)

PLF Case: [Johnson v. Environmental Protection Agency](#)