Supreme Court Curbs Scope of Environmental Reviews

The question for the justices was whether an agency had complied with a federal law by issuing a 3,600-page report on the impact of a proposed railway in Utah.

By **Adam Liptak**
New York Times

The Supreme Court unanimously ruled on Thursday that a federal agency had done enough to consider the environmental impact of a proposed 88-mile railway in Utah. The ruling limits the scope of environmental reviews required by federal law in all sorts of settings.

The proposed railway would connect oil fields in the Uinta Basin in northeast Utah to a national rail network that runs next to the Colorado River and then to refineries on the Gulf Coast.

Justice Brett M. Kavanaugh, writing for five justices, said that many lower courts had dictated that the environmental impact statements required by a 1970 federal law, the National Environmental Policy Act, be needlessly elaborate.

“The goal of the law,” he wrote, “is to inform agency decision making, not to paralyze it.”

The court’s three liberal members agreed with the decision’s bottom line but on narrower grounds. Justice Neil M. Gorsuch was recused.

Environmental groups reacted to the ruling with alarm.

“This disastrous decision to undermine our nation’s bedrock environmental law means our air and water will be more polluted, the climate and extinction crises will intensify and people will be less healthy,” Wendy Park, a lawyer with the Center for Biological Diversity, said in a statement.

The Surface Transportation Board, a federal agency that regulates rail transportation, approved the Utah project in 2021 after conducting a review that yielded a 3,600-page report. Environmental groups and a Colorado county sued, saying the report had not taken account of some ways in which the railway could do harm to the environment.

The U.S. Court of Appeals for the District of Columbia Circuit ruled for the challengers, saying the agency had not considered all the “reasonably foreseeable” results of the project.

In reversing that ruling, Justice Kavanaugh said the appeals court had gone far beyond what the law required. “The D.C. Circuit,” he wrote, “ordered the board to address the environmental effects of projects separate in time or place from the construction and operation of the railroad line.”

More generally, he said the way that the lower courts have used the law has thwarted economic progress. “A 1970 legislative acorn has grown over the years into a judicial oak that has hindered infrastructure development,” he wrote.

The consequences, Justice Kavanaugh said, have been vast.

“Fewer projects make it to the finish line,” he wrote. “Indeed, fewer projects make it to the starting line.”

“Those that survive often end up costing much more than is anticipated or necessary,” he went on, adding: “And that in turn means fewer and more expensive railroads, airports, wind turbines, transmission lines, dams, housing developments, highways, bridges, subways, stadiums, arenas, data centers and the like.”

Justice Kavanaugh said the detailed reports had been used “by project opponents (who may not always be entirely motivated by concern for the environment) to try to stop or at least slow down new infrastructure and construction projects.”

He noted that some groups had even cited the law to fight “clean-energy projects.”

Justice Sonia Sotomayor issued a concurring opinion, joined by Justices Elena Kagan and Ketanji Brown Jackson. She said the majority had ruled too broadly, “unnecessarily grounding its analysis largely in matters of policy.”

But Justice Sotomayor agreed with an aspect of the majority’s reasoning. “I agree with the court that the Surface Transportation Board would not be responsible for the harms caused by the oil industry,” she wrote, “even though the railway it approved would deliver oil to refineries and spur drilling in the Uinta Basin.”

Paul D. Clement, a lawyer representing seven Utah counties that support the project, told the justices when the case was argued in December that the National Environmental Policy Act was “the single most litigated environmental statute.”

He added that the board had acted responsibly.

“It consulted with dozens of agencies, considered every proximate effect and ordered 91 mitigation measures,” he said, referring to measures intended to, among other things, dampen noise pollution and protect wildlife. “Eighty-eight miles of track should not require more than 3,600 pages of environmental analysis.”

William M. Jay, a lawyer for the challengers, said at the argument that the report did not consider all the reasonably foreseeable results of the project, like oil spills and sparks that can cause wildfires, as required by the federal law.

The case, Seven County Infrastructure Coalition v. Eagle County, Colo., No. 23-975, was decided by an eight-member court after Justice Gorsuch recused himself, apparently over concerns that his ties to Philip F. Anschutz gave rise to a conflict of interest. Neither Mr. Anschutz, a billionaire and Republican donor, nor his companies are parties to the case, and the letter announcing Justice Gorsuch's recusal gave no reasons.

But the proposed railway could benefit companies in which Mr. Anschutz has an interest. Justice Gorsuch represented Mr. Anschutz and his companies as a lawyer, benefited from his support when he was being considered for a seat on an appeals court and once served as a keynote speaker at an annual party at his ranch.