

“Deference Squared”: Supreme Court Limits NEPA’s Scope and Courts’ Reach in *Seven County Infrastructure Coalition*

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The [National Environmental Policy Act](#) (NEPA) requires federal agencies to consider the environmental impacts of certain major federal actions that will affect the environment. The Supreme Court’s May 2025 opinion in [Seven County Infrastructure Coalition v. Eagle County](#) (*Seven County*) constrains analysis of separate but related projects, expands the scope of agency discretion for NEPA analyses, and limits the scope of judicial review.

Seven County concerns a [decision](#) by the [Surface Transportation Board](#) (STB) to exclude detailed consideration of upstream and downstream environmental effects in its environmental impacts statement (EIS) for authorizing construction and operation of the Uinta Basin Railway. The primary [purpose](#) of the railway is to increase transport for waxy crude oil extracted from the Uinta Basin toward refineries located in other parts of the country. The STB prepared the EIS to inform its decision on whether to authorize construction and operation of approximately 85 miles of the proposed railway in Utah in order to connect it to the national rail network. The U.S. Court of Appeals for the D.C. Circuit vacated parts of both the EIS and the STB’s decision allowing railway construction to proceed when it [found](#) that the EIS did not sufficiently evaluate upstream and downstream impacts. The Supreme Court [granted](#) certiorari to [consider](#) whether NEPA requires consideration of impacts beyond the “proximate effects of the action over which the agency has regulatory authority.”

In its opinion, the Supreme Court [held](#) that courts must afford agencies substantial deference in determining whether an agency reasonably exercised its discretion in determining the appropriate scope and contents of an EIS. The Court [explained](#) that a NEPA analysis for any given project need not consider the broader effects of separate projects if an agency determines that those upstream and downstream effects are remote in both time and place.

Alongside regulatory changes undertaken in the second Trump Administration, the Supreme Court’s ruling in *Seven County* places more decisionmaking authority in the hands of individual agencies to determine the appropriate scope of effects to be considered in a NEPA analysis. This Legal Sidebar discusses the Court’s decision, its implications, and further considerations for Congress.

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Background

The STB exercises federal [jurisdiction](#) over rail carriers and rail lines, including by approving the construction and operation of new rail lines. In May 2020, the Seven County Infrastructure Coalition [petitioned](#) the STB for exemption from certain requirements typically required of an application for construction and operation of a new railway line pursuant to the STB's [statutory authority](#). For an exemption decision, the STB considers consistency with national rail [policy](#), including environmental considerations such as encouraging and promoting energy conservation and operating transport equipment and facilities without detriment to public health or safety.

As a part of considering the railway's exemption application, the STB [issued](#) an EIS pursuant to NEPA and the STB's own regulations to inform its decision on the proposed railway construction and operations. NEPA's "[purely procedural](#)" process for [environmental reviews](#) requires agencies to prepare an EIS when the environmental effects of a federal action could be significant. In preparing an EIS, agencies must [consider](#) "reasonably foreseeable environmental effects of the proposed agency action." The STB's [environmental regulations](#) require that effects described in an environmental report must include "indirect or down-line impacts" of rail traffic changes that surpass certain energy, noise, and air impact thresholds.

For the Seven County exemption application, the STB [weighed](#) the potential environmental impacts against the merits of the transportation project and—without detailed consideration of certain upstream and downstream impacts—[approved](#) the exemption subject to conditions intended to reduce environmental impacts. Eagle County, CO, and several environmental groups objected to the exemption consideration and also submitted comments on the draft EIS, expressing concerns about the adequacy of the analysis of downstream (or "downline") and upstream impacts. In light of the railway's stated purpose to increase oil transport, they raised concerns about impacts associated with increased oil drilling, enhanced oilcar traffic, processing, and refinery operations potentially affecting vegetation, wildlife, and refinery-adjacent Gulf Coast communities "[already overburdened by pollution](#)."

The D.C. Circuit Decision

After the STB approved the final EIS and granted the exemption, Eagle County and environmental groups [petitioned](#) for review of the final exemption order in the D.C. Circuit. They [challenged](#) the decision on multiple grounds, including that the STB violated NEPA and improperly granted the exemption, in part due to failure to consider upstream and downstream impacts.

On August 18, 2023, the D.C. Circuit partially found in favor of Eagle County and the environmental groups, [vacating](#) parts of both the EIS and the underlying project approval due primarily to deficiencies in the STB's NEPA analysis. Applying the Administrative Procedure Act's (APA's) standard of review—which [specifies](#) that courts must set aside an agency action if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law—the D.C. Circuit found that the STB [failed](#) to take the NEPA-required "[hard look](#)" at the full scope of environmental impacts. Specifically, it found the STB [deficient](#) in considering various aspects of the project's effects under NEPA, including a failure to adequately analyze upstream and downstream impacts associated with increased oil drilling, increased processing and refining activities on vegetation and wildlife, and Gulf Coast communities "already overburdened by pollution from refining." The court reasoned that because the STB had the authority to deny an exemption where environmental impacts outweighed transportation benefits, it needed to consider these effects even if it could not directly control them, especially as the "[undisputed purpose](#)" of the railway was expanded oil production. The Supreme Court [granted certiorari](#) to consider whether NEPA requires an agency to study environmental impacts beyond the proximate effects of the action over which the agency has regulatory authority.

The Supreme Court's Decision

The Supreme Court [reversed](#) the D.C. Circuit and unanimously found in favor of petitioners Seven County Infrastructure Coalition and the Uinta Basin Railway, reflected in a five-Justice majority and a three-Justice concurrence. (Justice Gorsuch did not participate in the proceedings.) The majority opinion, written by Justice Kavanaugh, clarified that courts have limited authority to second guess agencies' NEPA determinations and upheld the STB's NEPA review for the railway. The Court found that in preparing the EIS, the STB reasonably determined an appropriate scope of impacts analyzed and reasonably excluded upstream and downstream effects further removed in time and place than the project at hand. Although all eight participating Justices upheld STB's decision to allow the railway to proceed, Justice Sotomayor—joined by Justices Kagan and Jackson—would have done so on narrower grounds, [reasoning](#) that none of the upstream or downstream impacts at issue in this case would have provided a valid basis for STB to reject the railway project.

Scope of Agency NEPA Analysis: Action and Effects

At its core, *Seven County* clarifies that it is largely up to an agency to determine the appropriate scope of effects analyzed as part of its environmental review under NEPA. For every project for which an EIS is prepared (i.e., the agency foresees significant impacts), NEPA [requires](#) agencies to provide public notice and receive public comments on how to define the scope of a proposed action's effects and design alternatives. In contrast to an agency's more involved role in defining these parameters, the majority described a court's limited role in reviewing an EIS as more ["straightforward."](#) To wit, a reviewing court is to review the scope and contents of the NEPA document to determine whether the analysis reasonably addresses the environmental effects of "the project at hand." The issue before the Court in *Seven County* was whether more remote upstream and downstream effects must necessarily be included within the scope of the railway project "at hand."

All Justices agreed that the proper scope of an agency's analysis is determined by the relationship between a proposed action and its related effects. However, the majority and concurring opinions framed this analysis differently. The majority first considered the scope of effects in the context of separate future projects that might be made possible by the "project at hand," explaining that the "mere foreseeability" of the future projects or the project at hand being a [but-for-cause](#) for such projects was insufficient for a court to require an agency to include analysis of a future project in an EIS. As a result, the majority [held](#), an agency could "draw what it reasonably concludes is a 'manageable line'—one that encompasses the effects of the project at hand, but not the effects of projects separate in time or place."

The concurrence focused on the scope of effects in the context of statutory authority for the underlying action: Agencies [consider those impacts](#) "for which their decisions would be responsible" and not those too [attenuated from or ancillary to](#) the underlying action. Justice Sotomayor's concurrence invoked the Court's prior decision in *Department of Transportation v. Public Citizen*, which also related to the scope of an agency's authority, to reason that "[e]ven a foreseeable environmental effect is outside of NEPA's scope" if, [as was the case here](#), "the agency could not lawfully decide to modify or reject the proposed action on account of that effect." For *Seven County*, the concurring Justices reasoned that common carrier requirements prevented rejection of freight based on content (e.g., oil) and as such the STB need not consider indirect effects of increased oil transport. Because the STB could not have prevented increased oil transport even if it were concerned about these indirect effects, the concurrence would have stopped there.

The majority continued on and expanded on *Public Citizen's* authority-related scope limitations, ruling that courts could not require an agency in its NEPA review to consider ["separate projects"](#) such as upstream and downstream activities yet to be conducted. The majority's focus on the ["project at hand"](#) is a potential departure from traditional consideration of *cumulative impacts* accruing over time and space

across multiple activities for which the proposed action is but one component. Both federal [courts](#) and the NEPA-mandated [Council on Environmental Quality](#) (CEQ)—which helps agencies implement NEPA—have historically required agencies to consider the cumulative impacts associated with a proposed agency action and to avoid “[improper segmentation](#)” of a project by dividing it into discrete, separate actions to “[avoid a more thorough consideration](#) of the impacts of the entire project.” However, such departure is not a given: The majority acknowledged a “[gray area](#)” where the defined scope of the agency action itself could be more limited than the scope of resulting “[indirect effects](#)” removed in time (e.g., more speculative future projects) or place (e.g., located in a different region) but explained that a court’s review must remain deferential in those circumstances.

Agency Discretion and Judicial Deference

The Supreme Court has long recognized that courts generally play a “[limited role](#)” in evaluating agencies’ NEPA determinations. As the majority [explained](#) in *Seven County*, courts typically review agencies’ NEPA analyses under the APA’s deferential arbitrary-and-capricious standard, which applies when an agency exercises discretion pursuant to statutory authority. The majority distinguished this standard from judicial review of agency interpretation of statutes, which, the Court held in *Loper Bright Enterprises v. Raimondo*, generally receives no deference. Instead, *Seven County* limits courts’ reviews in NEPA cases to whether “the agency action was reasonable and reasonably explained.” Building from the principle that courts reviewing NEPA determinations should [not substitute](#) their own judgment for that of an agency, the majority in *Seven County* stressed the need to “[disaggregate](#)” the roles of agencies and courts with respect to NEPA, with agencies “[better equipped](#)” than courts to determine what facts are relevant to decisionmaking. The majority also contemplated potential differences between what an agency might opt to do as a matter of policy and what remedies a [reviewing court](#) may mandate under NEPA and the APA, including with respect to [project outcomes](#).

Courts Afford “Substantial Deference” to Agencies in Determining Effects Under NEPA

“When assessing significant environmental effects and feasible alternatives for purposes of NEPA, an agency will invariably make a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry—and also about the length, content, and level of detail of the resulting EIS. Courts should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness.”

—Justice Kavanaugh, *Seven County Infrastructure Coalition v. Eagle County*

Further, regarding Justice Kavanaugh’s comment in oral argument that NEPA’s 2023 amendments warrant “[deference squared](#),” the majority [reiterated](#) that deference is the “bedrock principle of judicial review” in NEPA cases. This is in part because much of the NEPA process [involves](#) “fact-dependent, context-specific, and policy-laden choices” determining the appropriate scope of an action’s effects and alternatives. Citing NEPA’s inherent “[rule of reason](#),” the Court [maintained](#) that courts should show deference to an agency’s decision on “whether and to what extent to prepare an EIS” based on the agency’s judgment of how the analysis would inform decisionmaking.

Considerations for Congress

Congress has numerous options to address NEPA review and litigation in light of the *Seven County* opinion. Though NEPA itself has been amended only a handful of times since its inception, Congress typically [considers](#) hundreds of bills each congressional term with provisions addressing NEPA. Some of those bills would amend provisions of NEPA itself relevant to this case, while others would amend individual agencies’ environmental review processes, which may be relevant notwithstanding a more limited application than NEPA’s government-wide applicability. Introduced bills have offered various approaches to clarify the scope of environmental effects an agency considers in its decisionmaking, changes to how courts would review an agency’s NEPA documents in the context of a proposed action,

and potential remedies a court may order if an agency's NEPA review has violated the law. The case of *Seven County* itself has also been of interest to Congress, with various Members of Congress filing amicus curiae briefs with the Supreme Court in [support](#) of or [opposition](#) to the petitioners.

Scope of Analysis

Congress could amend NEPA to alter the scope of what agencies are required to consider when analyzing environmental effects. For example, [some bills](#) introduced in the 118th Congress, such as [S.Amdt. 1911](#) to H.R. 3935 or [H.Amdt. 272](#) to H.R. 3935, would have limited consideration to effects the agency has the authority to directly regulate (as opposed to effects of actions an agency has the authority to take). Others would direct an agency to expressly consider certain effects [independent of a NEPA analysis](#) or [incorporate consideration of certain effects](#) into substantive decisionmaking. If Congress disagrees with the Court's decision, it could direct agencies to consider the upstream and downstream effects of a proposed federal action and may wish to further specify how far those effects extend, such as whether to include geographically distant effects such as the Gulf Coast refinery activities at issue in *Seven County*.

Agency Discretion to Implement NEPA

Pursuant to [Executive Order 14154](#), CEQ issued an [interim final rule](#) effective April 2025 that rescinded all government-wide regulations implementing NEPA. CEQ's rescission of NEPA regulations and the *Seven County* opinion have shifted the onus more squarely onto individual agencies to navigate NEPA implementation. Congress may wish to consider enacting legislation in response to NEPA's evolving regulatory landscape. For example, if Congress is concerned that a lack of binding government-wide CEQ regulations may lead to inconsistencies in agency implementation of NEPA, Congress could authorize and direct CEQ to issue binding NEPA regulations. In light of recent court opinions such as [Marin Audubon Society v. FAA](#), explicit congressional authorization for CEQ to issue binding NEPA implementing regulations would resolve outstanding questions about CEQ's legal authority to do so.

Congress could codify some or all of the elements of the NEPA process that were previously found only in CEQ regulations, including how to scope the effects of agency actions. For example, CEQ regulations previously specified how to scope the [affected environment](#) for a given action and the [types of effects](#) that should be considered, although these requirements still left room for interpretation, as evident in *Seven County*. In 2023 [NEPA amendments](#), Congress codified some of the procedural elements of the NEPA process that were previously specified in the regulations but declined to codify other elements of CEQ's regulations. Incorporating specific procedural requirements into statute would provide federal agencies and stakeholders with clarity on the environmental review requirements Congress intends for agencies to apply. Alternatively, if Congress believes NEPA is best implemented via a less standardized approach, Congress could consider directing agencies to promulgate or update regulations detailing their NEPA procedures based on any additional parameters that Congress believes to be warranted.

Judicial Review

Some Members of Congress have introduced bills that would affect the availability of judicial review of an agency's NEPA analysis, such as [H.R. 471](#) in the 119th Congress and [S. 4753](#) in the 118th Congress. Congress has considerable latitude to specify when and under what circumstances courts would review an agency's NEPA analysis. Congress may also specify a more or less deferential standard of review of the merits of an agency's NEPA analysis. For more information on judicial review and NEPA, see CRS IF11932, [National Environmental Policy Act: Judicial Review and Remedies](#), by Kristen Hite (2025).

Author Information

Kristen Hite
Legislative Attorney

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