

23-975 SEVEN COUNTY COALITION V. EAGLE COUNTY COLORADO

DECISION BELOW: 82 F.4th 1152

LOWER COURT CASE NUMBER: 22-1019, 22-1020

QUESTION PRESENTED:

In *Department of Transportation v. Public Citizen*, 541 U.S. 752, 770 (2004), this Court held that when an agency cannot prevent an environmental effect "due to its limited statutory authority over the relevant actions," the National Environmental Policy Act does not require it to study that effect. This holding has divided the courts of appeals. Five circuits read *Public Citizen* to mean that an agency's environmental review can stop where its regulatory authority stops. Two circuits disagree and require review of any impact that can be called reasonably foreseeable.

Here, the Surface Transportation Board relied on *Public Citizen* to cabin its environmental review of a new rail line in Utah. But the D.C. Circuit rejected that approach, ruling that the Board "cannot avoid" environmental review "on the ground that it lacks authority to prevent, control, or mitigate" distant environmental effects. As a result, it ordered the Board to study the local effects of oil wells and refineries that lie outside the Board's regulatory authority.

The question presented is:

Whether the National Environmental Policy Act requires an agency to study environmental impacts beyond the proximate effects of the action over which the agency has regulatory authority.

CERT. GRANTED 6/24/2024