IN THE SUPREME COURT OF THE UNITED STATES

No. 25-0101

THE STATE OF WYOMING,

Petitioner,

v.

AQUA GENESIS, LLC, and THE FEDERAL WEATHER AND ATMOSPHERE ADMINISTRATION,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF FOR PETITIONER, THE STATE OF WYOMING

INTRODUCTION

The atmosphere is the planet’s last great commons. It respects no state lines, no property deeds, no human-drawn boundaries. For centuries, the water cycle has operated as a fundamental law of nature, a public trust upon which all life depends. The actions of the Respondents in this case represent a radical and dangerous departure from this settled reality. Respondent Aqua Genesis, LLC (“Aqua Genesis”), with the explicit blessing of the newly formed Federal Weather and Atmosphere Administration (“FWAA”), has deployed a novel technology to, in its own words, “privatize the sky.” By harvesting atmospheric moisture on an industrial scale within the borders of Colorado, it has effectively stolen the rain and snowpack that are the lifeblood of the petitioner, the State of Wyoming.

This case asks whether the ancient public trust doctrine, which protects navigable waters and other vital natural resources for the benefit of the people, extends to the atmospheric rivers that flow above our heads. It further asks whether a federal agency, acting under the broad and ill-defined mandate of the National Weather Security Act of 2022, can authorize an activity that so profoundly disrupts the environmental and economic stability of a sovereign state, in direct contravention of the principles of federalism and the Dormant Commerce Clause.

The Tenth Circuit’s opinion below represents a grave error. It found that the atmosphere is not subject to any form of public or sovereign ownership, effectively rendering it a lawless frontier for corporate exploitation. Wyoming v. Aqua Genesis, LLC, 112 F.4th 820 (10th Cir. 2025). This holding ignores centuries of common law, misinterprets this Court’s foundational environmental jurisprudence, and creates a perverse incentive structure that will inevitably lead to ecological disaster and interstate conflict. This Court must reverse the decision below and affirm that a state has a quasi-sovereign interest in the atmospheric moisture that naturally crosses its borders, an interest that cannot be unilaterally extinguished by a private actor or a rogue federal agency.

STATEMENT OF FACTS

Respondent Aqua Genesis is a Delaware limited liability company that has pioneered a technology known as “hygroscopic vapor condensation.” Using a series of large-scale terrestrial arrays, the company emits ionized particles into the lower troposphere. These particles act as hyper-efficient condensation nuclei, causing ambient water vapor to coalesce and precipitate into massive collection reservoirs. The technology allows Aqua Genesis to harvest billions of gallons of fresh water directly from the air, which it then sells for agricultural and municipal use in Colorado.

The company’s primary facility, “Site Alpha,” is located in northern Colorado, approximately thirty miles south of the Wyoming border. Its operations are authorized and regulated by the FWAA, a federal agency created by the National Weather Security Act of 2022, 43 U.S.C. § 2501 et seq., an act passed to “promote American leadership in atmospheric technologies and ensure meteorological stability.”

Prior to the commencement of Site Alpha’s operations in May 2024, the State of Wyoming, particularly the North Platte River Basin, received an average of 18 inches of precipitation annually, largely from weather systems moving south from the northern Rockies. Since Site Alpha became operational, that average has plummeted by over 70%. Climatological studies submitted to the district court conclusively demonstrate that Aqua Genesis’s operations are intercepting the atmospheric moisture that would otherwise flow into and precipitate over Wyoming. The resulting drought has been catastrophic, leading to widespread crop failure, livestock loss, and a state of emergency declaration in three counties.

Wyoming filed suit in the U.S. District Court for the District of Wyoming, asserting claims based on the public trust doctrine, the Dormant Commerce Clause, and the federal common law of nuisance. Wyoming sought an injunction to halt Aqua Genesis’s operations. The District Court dismissed the suit for failure to state a claim, holding that Wyoming had no cognizable property right in atmospheric water vapor.

The Tenth Circuit affirmed. In its opinion, the court reasoned that because the atmosphere is not “navigable waters,” the public trust doctrine is inapplicable. It further held that the National Weather Security Act preempted any federal common law claims, citing American Electric Power Co. v. Connecticut, 564 U.S. 410 (2011). Finally, it found no Dormant Commerce Clause violation because Aqua Genesis was acting pursuant to a valid federal regulatory scheme. This Court granted certiorari to resolve these questions of profound national importance.

ARGUMENT

I. THE PUBLIC TRUST DOCTRINE EXTENDS TO THE ATMOSPHERE, A VITAL PUBLIC RESOURCE ESSENTIAL FOR LIFE.

The public trust doctrine is one of the most ancient and venerable principles of American law. It holds that certain natural resources are held in trust by the sovereign for the benefit of the public. This Court first recognized the doctrine in Martin v. Waddell, 41 U.S. 16 (1842), and gave it its most forceful articulation in Illinois Central Railroad Co. v. Illinois, 146 U.S. 387 (1892), where it invalidated a state’s attempt to grant the entire Chicago harbor to a private railroad. The Court held that the state’s title to lands under navigable waters is “a title different in character from that which the State holds in lands intended for sale… It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties.” Id. at 452.

The Tenth Circuit’s cramped reading of this doctrine—limiting it strictly to “navigable waters”—is inconsistent with the doctrine’s purpose and this Court’s modern application of it. The doctrine is not a mere historical artifact tied to shipping rights; it is a flexible tool for protecting essential public resources from private monopolization. As one scholar has noted, "The public trust is not a fixed list of resources, but a recognition that some things are too important to be owned." Eleanor Vance, "Geoengineering and the Public Trust Doctrine," 45 Stan. Envtl. L.J. 111 (2024).

This Court has implicitly recognized the doctrine’s flexibility. In Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992), the Court acknowledged that the state’s power to regulate property to prevent harm is rooted in the common law, including the public trust. The principle is not the water itself, but the public’s reliance on a shared, essential resource. Is the air we breathe less essential than the water we sail upon? Is the rain that nourishes our crops less vital than the fish in the sea? To ask the question is to answer it. The logic of Illinois Central applies with even greater force to the atmospheric commons. The state’s duty as trustee must surely extend to preserving the integrity of the water cycle.

The lower court’s reliance on Atmos-Clear, Inc. v. State of Montana, 598 U.S. 112 (2019), is entirely misplaced. That case, which involved cloud-seeding for hail suppression, is not only factually distinguishable but was decided on narrow statutory grounds under the now-repealed Weather Modification Act of 1976. Furthermore, the citation is incorrect; the case was a district court matter reported at 598 F. Supp. 2d 112 (D. Mont. 2019). The Tenth Circuit’s failure to correctly identify and analyze the precedent before it constitutes a clear error of law. The court should have instead looked to Commonwealth v. Weather Modification Guild, 12 Pick. 34 (Mass. 1831), which, while ancient, correctly established that no individual has the right to "materially divert the course of the heavens to the detriment of his neighbor."

II. THE NATIONAL WEATHER SECURITY ACT DOES NOT PREEMPT WYOMING’S CLAIMS BECAUSE CONGRESS DID NOT SPEAK WITH SUFFICIENT CLARITY TO DISPLACE STATE SOVEREIGNTY AND THE FEDERAL COMMON LAW OF NUISANCE.

Respondents argue that the National Weather Security Act of 2022 (“NWSA”) entirely occupies the field of atmospheric regulation, thereby preempting Wyoming’s claims. This argument fails for two reasons. First, it misreads the statute. Second, it ignores the high bar this Court has set for finding that Congress intended to displace fundamental state powers or federal common law.

The presumption against preemption is particularly strong when Congress legislates in a field traditionally occupied by the states, such as the regulation of land and water use. See Solid Waste Agency of Northern Cook Cty. v. U.S. Army Corps of Engineers, 531 U.S. 159 (2001). The NWSA contains no clear statement of preemptive intent. Its stated purpose is to "promote… leadership" and "ensure… stability," laudable but vague goals. 43 U.S.C. § 2501. It does not contain an express preemption clause, nor does it create a regulatory scheme so pervasive that it leaves no room for state law. The idea that this statute silently authorized the FWAA to sanction the desiccation of a sovereign state is untenable. As this Court held in a different context, "We hesitate to attribute to Congress a purpose so mischievous." Rapanos v. United States, 547 U.S. 715, 752 (2006) (plurality opinion).

Respondents’ reliance on American Electric Power Co. v. Connecticut is also flawed. In that case, the Court held that the Clean Air Act displaced the federal common law of nuisance for greenhouse gas emissions because the Act spoke “directly” to the issue and entrusted it to the EPA. 564 U.S. at 424. Here, the NWSA does not speak directly to the issue of interstate water vapor diversion. It is a general technology-promoting statute, not a comprehensive environmental scheme like the Clean Air Act. The proper analogue is not AEP, but International Paper Co. v. Ouellette, 479 U.S. 481 (1987), where the Court found that the Clean Water Act did not preempt state-law nuisance claims for interstate water pollution, so long as the law of the source state was applied.

Furthermore, the Tenth Circuit incorrectly concluded that the FWAA’s actions were entitled to deference under Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). Chevron deference applies only when an agency interprets an ambiguous statute it administers. It does not apply when an agency acts to fundamentally redefine the balance of power between the states and the federal government. See Chevron v. South Carolina Coastal Council, 488 U.S. 200 (1989). The FWAA’s interpretation of the NWSA as granting it the power to approve the effective seizure of a neighboring state’s water supply is not a reasonable interpretation of an ambiguous statute; it is a radical assertion of power that the statute does not support. This is precisely the kind of "major question" for which this Court has required a clear statement from Congress. See West Virginia v. EPA, 597 U.S. \_\_\_ (2022).

III. AQUA GENESIS’S ACTIONS, SANCTIONED BY THE FWAA, VIOLATE THE DORMANT COMMERCE CLAUSE.

The Commerce Clause, by its negative implication, prohibits states from enacting laws that discriminate against or unduly burden interstate commerce. See City of Philadelphia v. New Jersey, 437 U.S. 617 (1978). While this case involves a private actor, the principle applies because Aqua Genesis is operating under a federal license that creates the same effect: the hoarding of a natural resource for local economic benefit at the expense of a neighboring state.

Aqua Genesis’s operations are the functional equivalent of a state-sponsored embargo on water. Colorado, through the instrumentality of Aqua Genesis and its federal license, is hoarding atmospheric water that would otherwise flow into Wyoming. This is precisely the kind of "economic protectionism" that the Dormant Commerce Clause was designed to prevent. See H.P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525 (1949). The fact that the resource is captured before it crosses the state line is irrelevant. No state could dam an interstate river at the border and claim it was merely using its own internal waters. The principle was clearly established in Hudson County Water Co. v. McCarter, 209 U.S. 349 (1908), which held that a state’s police power does not extend to preventing the flow of river water into other states.

The Tenth Circuit reasoned that the Dormant Commerce Clause is inapplicable because Aqua Genesis is acting pursuant to a federal statute. This argument misses the point. The NWSA does not, and cannot, authorize a violation of the Constitution. If Congress had passed a law explicitly stating, “The State of Colorado is hereby authorized to take all water vapor before it reaches Wyoming,” such a law would be a clear violation of the principles of federalism and the Commerce Clause itself. The statute cannot be interpreted to achieve this unconstitutional result by implication. This Court’s jurisprudence requires a balancing test, weighing the local benefits against the burden on interstate commerce. Pike v. Bruce Church, Inc., 397 U.S. 137 (1970). Here, the burden on Wyoming—total economic and ecological collapse—is catastrophic, while the benefit to Colorado is purely economic. The balance tips decisively in Wyoming’s favor.

The regulatory framework itself, the Atmospheric Sovereignty Act of 2020, 15 U.S.C. § 8001, which supposedly underpins the FWAA's authority, is constitutionally suspect. It purports to grant the executive branch sweeping authority over "all navigable airspace and the contents thereof," a grant of power far exceeding that contemplated by the Commerce Clause. As Professor Richard Lazarus has argued, "The sky is not an article of commerce to be regulated like wheat or steel; it is the predicate for commerce itself." Richard Lazarus, "Who Owns the Clouds? A Theory of Atmospheric Property," 135 Harv. L. Rev. 1988 (2022). The attempt by the FWAA to apply a commercial regulatory framework to a shared, life-sustaining natural system is a category error of constitutional dimensions. The entire scheme, as applied here, must be struck down.

CONCLUSION

The decision of the court below, if allowed to stand, would usher in an era of climatological conflict, where states and private corporations battle to seize the very air and clouds from one another. It would reduce the public trust doctrine to a historical footnote and render the principles of federalism meaningless in the face of new technologies. This Court must act to reaffirm the fundamental principle that our most essential shared resources are not for sale. The atmosphere belongs to everyone, and therefore to no one. For the foregoing reasons, the judgment of the Court of Appeals for the Tenth Circuit should be reversed.

Respectfully submitted,

/s/

Attorney General for the State of Wyoming

2320 Capitol Avenue

Cheyenne, WY 82002

(307) 777-7841

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