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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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SOLID WASTE AGENCY OF NORTHERN COOK COUNTY *v.* UNITED STATES ARMY CORPS OF ENGINEERS ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 99–1178. Argued October 31, 2000– Decided January 9, 2001

Petitioner, a consortium of suburban Chicago municipalities, selected as a solid waste disposal site an abandoned sand and gravel pit with excavation trenches that had evolved into permanent and seasonal ponds. Because the operation called for filling in some of the ponds, petitioner contacted federal respondents, including the Army Corps of Engineers (Corps), to determine if a landfill permit was required under §404(a) of the Clean Water Act (CWA), which authorizes the Corps to issue permits allowing the discharge of dredged or fill material into "navigable waters." The CWA defines "navigable waters" as "the waters of the United States," 33 U. S. C. §1362(7), and the Corps' regulations define such waters to include intrastate waters, "the use, degradation or destruction of which could affect interstate or foreign commerce," 33 CFR §328.3(a)(3). In 1986, the Corps attempted to clarify its jurisdiction, stating, in what has been dubbed the "Migratory Bird Rule," that §404(a) extends to intrastate waters that, *inter alia,* provide habitat for migratory birds. 51 Fed. Reg. 41217. Asserting jurisdiction over the instant site pursuant to that Rule, the Corps refused to issue a §404(a) permit. When petitioner challenged the Corps' jurisdiction and the merits of the permit denial, the District Court granted respondents summary judgment on the jurisdictional issue. The Seventh Circuit held that Congress has authority under the Commerce Clause to regulate intrastate waters and that the Migratory Bird Rule is a reasonable interpretation of the CWA.

Held: Title 33 CFR §328.3(a)(3), as clarified and applied to petitioner's site pursuant to the Migratory Bird Rule, exceeds the authority

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granted to respondents under §404(a) of the CWA. Pp. 5–14.

(a) In *United States* v. *Riverside Bayview Homes, Inc.,* 474 U. S. 121, this Court held that the Corps had §404(a) jurisdiction over wetlands adjacent to a navigable waterway, noting that the term "navigable" is of "limited import" and that Congress evidenced its intent to "regulate at least some waters that would not be deemed 'navigable' under [that term's] classical understanding," *id.,* at 133. But that holding was based in large measure upon Congress' unequivocal acquiescence to, and approval of, the Corps' regulations interpreting the CWA to cover wetlands adjacent to navigable waters. See *id.,* at 135–139. The Court expressed no opinion on the question of the Corps' authority to regulate wetlands not adjacent to open water, and the statute's text will not allow extension of the Corps' jurisdiction to such wetlands here. Pp. 5–7.

(b) The Corps' *original* interpretation of the CWA in its 1974 regulations– which emphasized that a water body's capability of use by the public for transportation or commerce determines whether it is navigable– is inconsistent with that which it espouses here, yet respondents present no persuasive evidence that the Corps mistook Congress' intent in 1974. Respondents contend that whatever its original aim, when Congress amended the CWA in 1977, it approved the more expansive definition of "navigable waters" found in the Corps' 1977 regulations. Specifically, respondents submit that Congress' failure to pass legislation that would have overturned the 1977 regulations and the extension of the Environmental Protection Agency's jurisdiction in §404(g) to include waters "other than" traditional "navigable waters" indicates that Congress recognized and accepted a broad definition of "navigable waters" that includes nonnavigable, isolated, intrastate waters. This Court recognizes congressional acquiescence to administrative interpretations of a statute with extreme care. Failed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute, *Central Bank of Denver, N. A.* v. *First Interstate Bank of Denver, N. A.,* 511 U. S. 164, 187, because a bill can be proposed or rejected for any number of reasons. Here, respondents have failed to make the necessary showing that Congress' failure to pass legislation demonstrates acquiescence to the 1977 regulations or the 1986 Migratory Bird Rule. Section 404(g) is equally unenlightening, for it does not conclusively determine the construction to be placed on the use of the term "waters" elsewhere in the CWA. *Riverside Bayview Homes, supra,* at 138, n. 11. Pp. 7–11.

(c) Even if §404(a) were not clear, this Court would not extend deference to the Migratory Bird Rule under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U. S. 837. Where an

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administrative interpretation of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless the construction is plainly contrary to Congress' intent. *Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Building & Constr. Trades Council,* 485 U. S. 568, 575. The grant of authority to Congress under the Commerce Clause, though broad, is not unlimited. See, *e.g., United States* v. *Morrison,* 529 U. S. 598. Respondents' arguments, *e.g.,* that the Migratory Bird Rule falls within Congress' power to regulate intrastate activities that substantially affect interstate commerce, raise significant constitutional questions, yet there is nothing approaching a clear statement from Congress that it intended §404(a) to reach an abandoned sand and gravel pit such as the one at issue. Permitting respondents to claim federal jurisdiction over ponds and mudflats falling within the Migratory Bird Rule would also result in a significant impingement of the States' traditional and primary power over land and water use. The Court thus reads the statute as written to avoid such significant constitutional and federalism questions and rejects the request for administrative deference. Pp. 11–14.

191 F. 3d 845, reversed.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, in which SOUTER, GINSBURG, and BREYER, JJ., joined.