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United States Environmental Governance

Environmental governance is achieved through different avenues including:

- Laws
- Regulations
- Policies
- Enforcement

The United States Constitution created **three branches** of government.

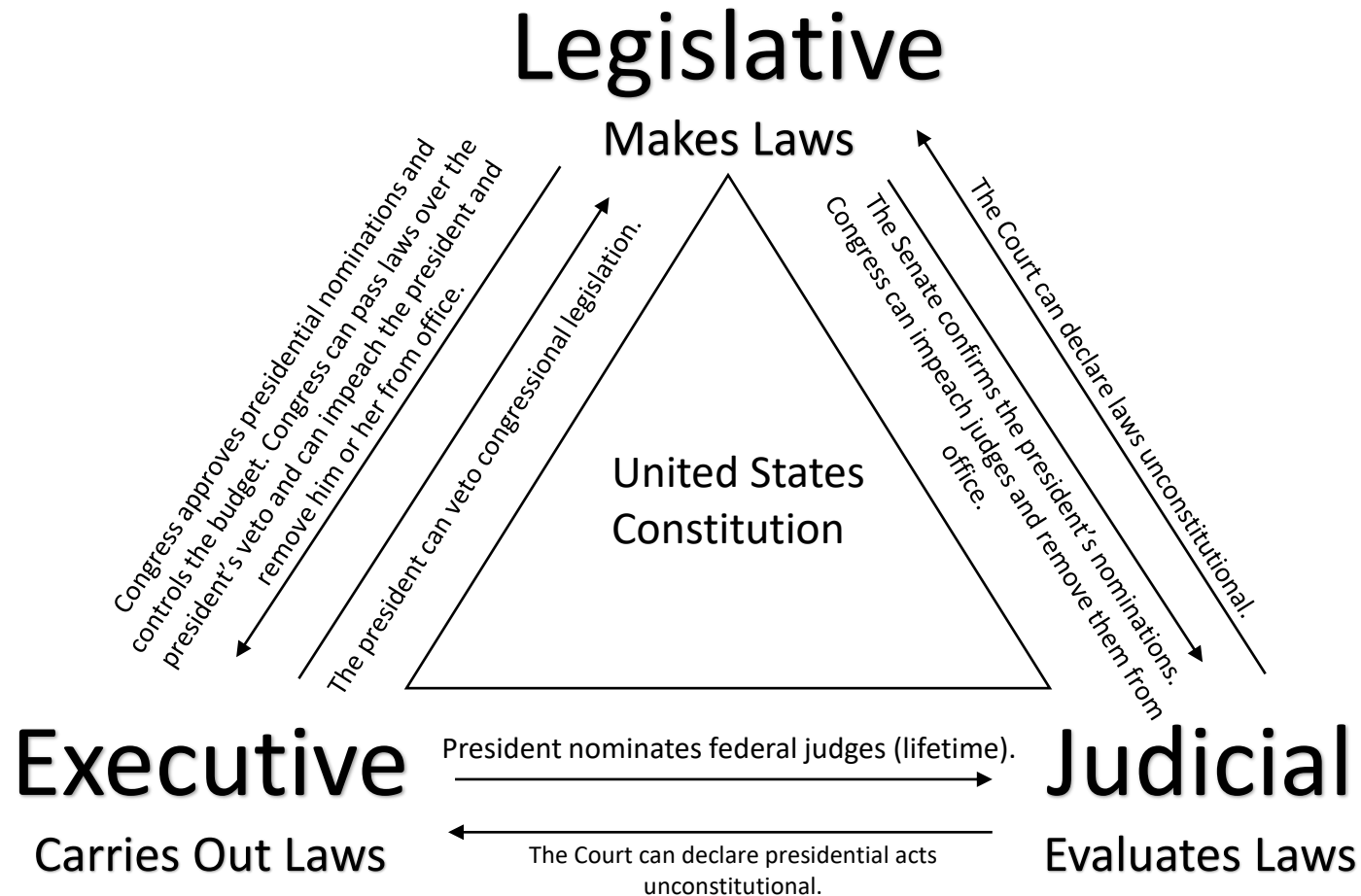
Each branch plays a role in environmental governance.

Understanding the branches is key to understanding how we protect the environment in the U.S.



United States Government System: An Overview of the Three Branches

- The United States Government Branches are based on a system of **checks and balances**



United States Government System: The Legislative Branch

Congress

House of
Representatives



Senate

- Elected by U.S. Citizens
- Confirms or rejects the President's nominees
- Holds power to impeach the President, Supreme Court judges
- Determines how federal funds will be spent

Bipartisan Infrastructure Bill

Enacted November 15, 2021

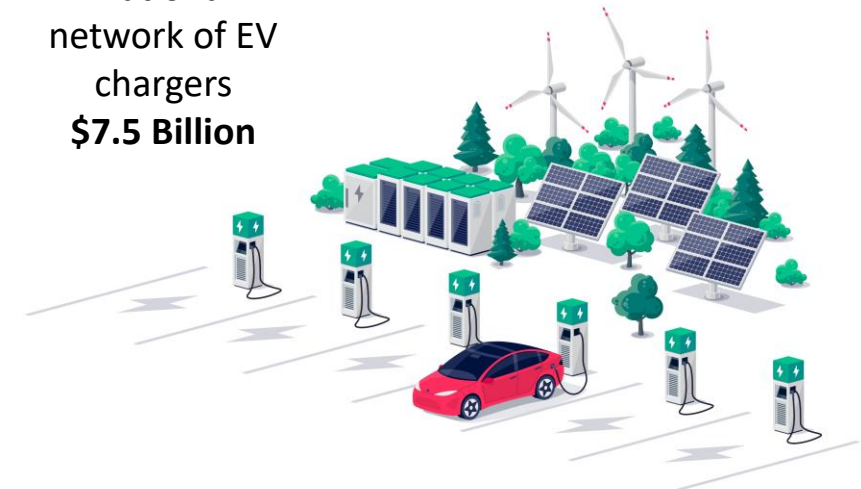
New
transmission
lines to facilitate
renewable and
clean energy
+\$65 Billion

Legacy pollution
cleanup
\$21 Billion

Clean up water
infrastructure and
eliminate lead pipes
\$55 Billion

National
network of EV
chargers
\$7.5 Billion

Improve public
transit and
reduce
greenhouse
emissions
\$89.9 Billion



United States Government System: Executive Branch

The President is the head of the Executive Branch.
The Executive Branch has 25 Cabinet members.



Source: <https://www.whitehouse.gov/wp-content/uploads/2021/04/P20210303AS-1901.jpg>

The President and Vice President are:

- Elected by U.S. Citizens

The President:

- Appoints heads of agencies
- Can issue Executive Orders
- Can change agency regulations through the agency
- Issues and vetoes bills

The Cabinet:

- Includes the Vice President, Secretary of State, U.S. Ambassador to the U.N. and the heads of 15 executive departments including the Environmental Protection Agency and Department of Energy

Executive Orders are presidential declarations and directives.

President Biden has issued 90 Executive Orders.

- President Trump issued 220 and President Obama issued 276.

E.O. 13990: Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis

- Focused on science, environmental priorities, and environmental justice.

E.O. 14007: President's Council of Advisors on Science and Technology

- Once disestablished by President Trump, now reestablished.

E.O. 14008: Tackling the Climate Crisis at Home and Abroad

- Signaled the new administration's goal to take environmental responsibility.

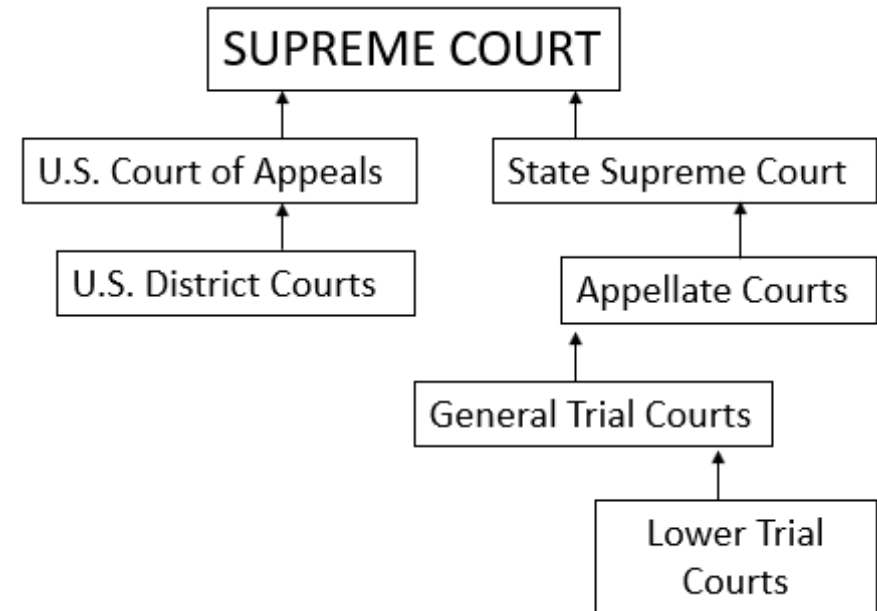
***Executive orders are useful tools, but rules and case law are the foundation and main avenue for laws in the United States.**

United States Government System: Judicial Branch

Laws are enforced, challenged, upheld, and overturned in the United States Judicial Branch.

The Supreme Court is the highest Court, and evaluates laws based on the Constitution.

State courts evaluate laws based on the Constitution and state laws.



United States Government System: The Fourth Branch

Wait, I thought you said there were only three?

Although not recognized by the Constitution, Independent Agencies are sometimes referred to as the Fourth Branch of Government.

Why?

Independent Agencies promulgate rules and regulations.

Independent Agencies also have enforcement power.

Heads of these agencies are appointed by the President and can be removed by the president.

Are there agencies that promulgate and enforce environmental laws?

Yes! These agencies include the Department of Transportation, Department of Interior, National Oceanic and Atmospheric Administration, Department of Energy, U.S. Army Corps of Engineers and the Environmental Protection Agency.

United States Government System: State and Local Governments

State governments are modeled after the Federal Government and consist of three branches.

Legislative Branch:

Senators and
Representatives

Executive Branch:

Governor

Judicial Branch:

State Supreme Court and
Lower Courts

And yes, **state agencies!**

State Powers

States must follow the
government, but they also have
reserved powers:

- **Regulate Intrastate Commerce**
- **Conduct Elections**
- **Establish Local Governments**
- **Make and Enforce Laws**
- **Establish Courts**
- **Collect Taxes**
- **Land use is reserved to the states**
- **Water allocation is reserved to the states.**

Some states, like California, have more stringent environmental protection laws.

- **Ex. California also has its own NEPA and more stringent air requirements**

Some states, like Florida, assumed CWA programs of Federal Agencies.

- **Ex: 401 and 404 Program**

United States – Environmental Governance:

Example – defining Waters of the United States

LEGISLATIVE

The Clean Water Act (CWA) was enacted by Congress in 1972 to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. 1251(a)

- The Act directs environmental regulators (EPA, Tribes and States) to regulate the discharge of pollutants into **waters of the United States** (WOTUS).
 - Ex: 404 permits
- The CWA defines “navigable waters” as “the **waters of the United States, including the territorial seas.**” 33 U.S.C. 1362(7)
 - The term “territorial seas” means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles. 33 U.S.C. 1362(8)
- The **CWA does not further define Waters of the United States.**

AGENCIES

EPA & Corps:

- **Both** agencies adopted definition of WOTUS by rule in 1986.
- **Obama EPA/Corps** issued updated rule for WOTUS to implement *Rapanos* decision and incorporate updated science.
- **Trump EPA** rescinded Obama rule and issued rule for WOTUS under the narrower test – RPW.
- **Now** Biden EPA and Corps attempting to define WOTUS per *Rapanos* case through **rulemaking** for a third time. According to the EPA’s brief in *Sackett II*, the agencies expect to publish the final regulation before the end of 2022.

State Agencies:

- Florida Department of Environmental Protection has assumed 404 program and is applying the Trump definition of WOTUS as the rule in effect at time of assumption.

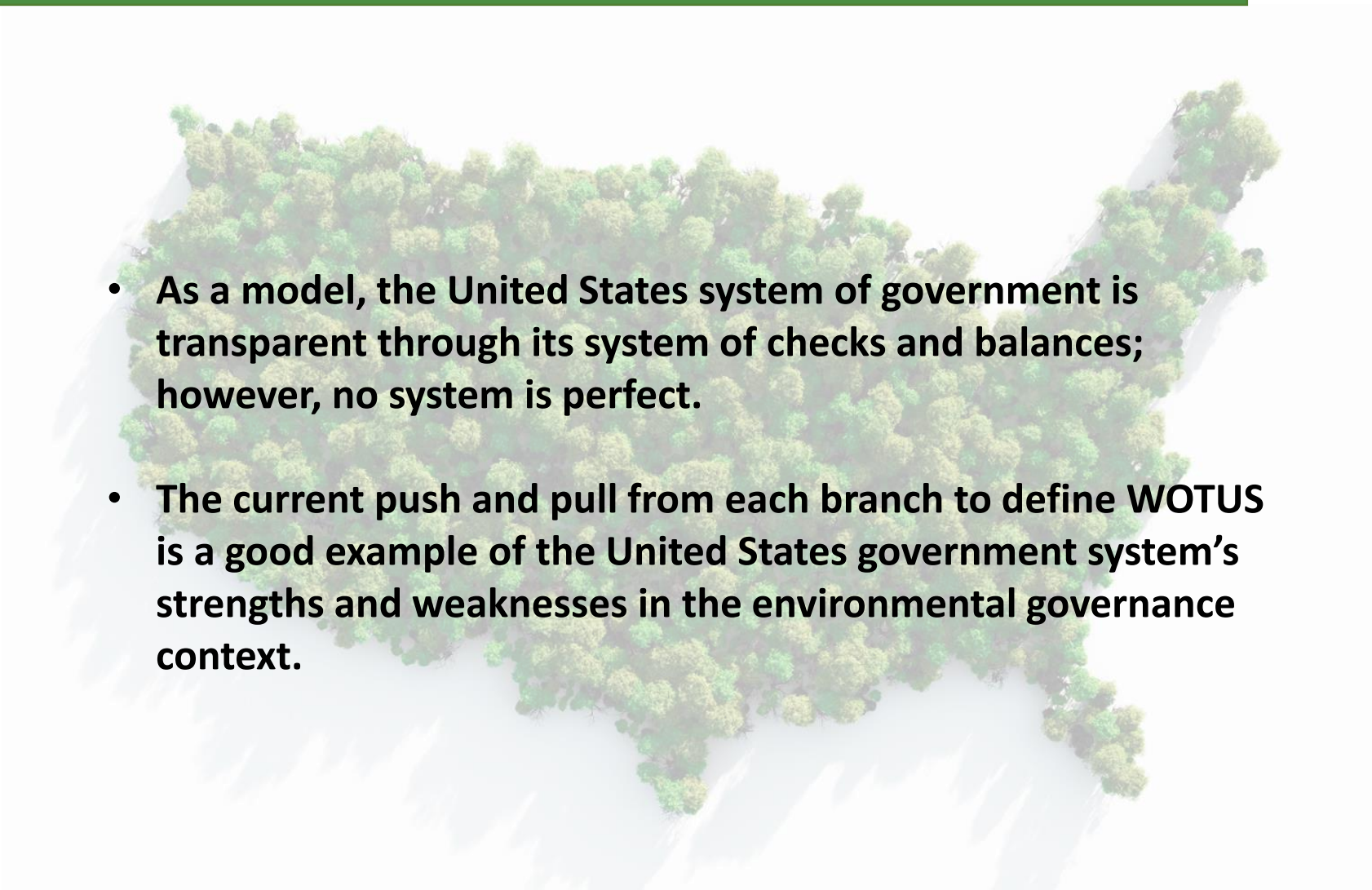
EXECUTIVE

- **President Trump** issues **executive order** to repeal and replace Obama rule & replace with “relatively permanent waters.”
- **President Biden** issues **executive order that prompts agencies** to issue new WOTUS regulation defining it pursuant to both “significant nexus” and “relatively permanent waters” tests per *Rapanos* and other case law.

JUDICIAL

- *Rapanos v. United States*, 547 U.S. 715 (2006)
 - Created two tests for WOTUS: “**significant nexus**” and “**relatively permanent waters**”
- **Federal District Courts have in turn struck down Obama and Trump rules.**
- *Sackett v. Environmental Protection Agency*, case 21-454 (*Sackett II*) (2023)
 - Supreme Court will decide whether the proper method for determining WOTUS is “significant nexus” or “relatively permanent waters” test.

United States Environmental Governance

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- **As a model, the United States system of government is transparent through its system of checks and balances; however, no system is perfect.**
 - **The current push and pull from each branch to define WOTUS is a good example of the United States government system's strengths and weaknesses in the environmental governance context.**