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Antonio G. Fraone

*Boston College Law School*, [antonio.fraone@bc.edu](mailto:antonio.fraone@bc.edu)

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# TECHNICAL FOULS: ADJUDICATING STATUTORY VIOLATIONS WITH EQUITABLE RESOLUTIONS

ANTONIO G. FRAONE\*

**Abstract:** In *Weinberger v. Romero-Barcelo*, the United States Supreme Court allowed for an equitable resolution to a lawsuit seeking immediate enforcement, by injunction, of the Federal Water Pollution Control Act (“FWPCA”). In this case, the United States Navy violated the FWPCA by discharging munitions—a pollutant as defined by the statute—during training exercises into the waters surrounding the Island of Vieques. The Navy also failed to obtain a National Pollution Discharge Elimination System permit, which would have made the discharge lawful under the statute. The people of Puerto Rico sought to enjoin the training exercises through the FWPCA. The Navy’s actions, however, had no adverse effects on the area’s waters or the environment. Thus, the Court viewed the violation as only technical and allowed for an equitable resolution to an otherwise valid violation of a statute. This Comment argues that the Supreme Court’s holding was correct in allowing an equitable resolution to a technical violation of a statute.

## INTRODUCTION

On February 15, 1898 the USS *Maine* suffered from an internal explosion while docked in Havana Harbor.<sup>1</sup> At that time Spain controlled all of Cuba, as it had since Christopher Columbus claimed the land.<sup>2</sup> Prior to the destruction of the vessel, the United States and Spain faced growing tensions over the rule of Cuba because the island sought independence.<sup>3</sup> With the USS

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\* Staff Writer, BOSTON COLLEGE ENVIRONMENTAL AFFAIRS LAW REVIEW, 2016–2017.

<sup>1</sup> John M. Dobson, *Spanish-Cuban/American War*, in *THE WAR OF 1898 AND U.S. INTERVENTIONS 1898–1934: AN ENCYCLOPEDIA* 520, 521 (Benjamin R. Beede ed., 1994). A naval team investigating the incident attributed the destruction to an external explosive device placed on the ship by the Spanish. *Id.* at 521–22. A modern analysis of the explosion has cast doubt on this original theory and instead places fault for the explosion on the spontaneous combustion of improperly stored coal. *Id.* at 521. The situation was exacerbated by the nearby placement of shells and gunpowder. *Id.*

<sup>2</sup> RICHARD GOTT, *CUBA: A NEW HISTORY* 13, 39 (2005).

<sup>3</sup> Dobson, *supra* note 1, at 520–21. Public sentiment in the United States formed for rebels in Cuba fighting for independence. *Id.* Cubans involved in the cause also migrated to the United States and bolstered anti-Spanish opinions. *Id.* American newspapers fueled the movement as well by publishing exaggerated reports of human rights atrocities and labeled the Cuban governor a “butcher.” *Id.* at 521. American newspapers published an intercepted letter from a high-ranking Spanish diplomat that called the President of the United States, William McKinley “weak” and a “would-be politician” angering the American public. *Id.* Cuban independence also coincided with

Maine on the ocean floor, tensions rose to an all-time high and American newspapers fueled growing public resentment for Spain.<sup>4</sup> Soon after, on April 20, 1898, the United States sent an ultimatum to Spain calling for Cuban independence.<sup>5</sup> The Spanish government responded two days later by severing diplomatic ties with the United States, which led to the United States Navy (“Navy”) initiating a blockade of Cuba.<sup>6</sup> Spain retaliated by declaring war on April 23, to which the United States responded with its own declaration of war on April 25, beginning the Spanish-American War.<sup>7</sup> After 116 days, the war ended with a victory for the United States.<sup>8</sup> To conclude the conflict, the two nations signed the Treaty of Paris of 1898.<sup>9</sup> This also led to Cuban independence and the United States’ acquisition of Puerto Rico, Guam, and the Philippines.<sup>10</sup>

As a result of the war, Puerto Rico became a territory of the United States.<sup>11</sup> Vieques, an island and civilian municipality located approximately six miles off the southeastern coast of Puerto Rico, was included in the acquisition.<sup>12</sup> Vieques is approximately twenty miles long, four and a half miles wide at its widest point, and consists of about 33,000 acres of land.<sup>13</sup> The total population of Vieques fluctuates—in 1970 the population of the island was estimated to be between 6,000 and 12,000 people.<sup>14</sup>

Between 1939 and 1944, the Navy purchased 26,000 of the 33,000 total acres of Vieques.<sup>15</sup> Since this acquisition, the Navy has used the land for a wide range of training exercises, which have become more extensive with the advancement of military technology.<sup>16</sup> Overall, this naval property is part of a larger military complex known as the Atlantic Fleet Weapons Training

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United States’ interests by growing the nation’s influence and potentially expanding its borders. *Id.* at 521–23.

<sup>4</sup> *Id.* at 521.

<sup>5</sup> DAVID F. TRASK, *THE WAR WITH SPAIN IN 1898*, at 56 (1996).

<sup>6</sup> *Id.* at 57.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 435 (noting that the conflict ended on August 12, 1898).

<sup>9</sup> Treaty of Peace Between the United States of America and the Kingdom of Spain, Spain-U.S., art. XVII, Dec. 10, 1898, 30 Stat. 1754 [hereinafter *Treaty of Paris of 1898*]; *Balzac v. Porto Rico*, 258 U.S. 298, 305 (1922).

<sup>10</sup> *Treaty of Paris of 1898*, *supra* note 9, at arts. I–III; *Barcelo v. Brown*, 478 F. Supp. 646, 654 (D.P.R. 1979); Trask, *supra* note 5, at 483.

<sup>11</sup> *Barcelo*, 478 F. Supp. at 654.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 652.

<sup>14</sup> *Id.* at 654 (“The population of Vieques according to the 1970 census, was 7,767 persons of which 2,378 lived in Isabel Segunda and 620 in Esperanza, the Island’s two towns, and 4,769 were classified as rural inhabitants.”).

<sup>15</sup> *Id.*

<sup>16</sup> *See id.* at 654–61.

Range.<sup>17</sup> Here, the exercises consist of anti-aircraft gunnery exercises, missile exercises, and other combat exercises and training simulations.<sup>18</sup> These exercises involve various weapons, aircrafts, and Navy vessels, which fire both inert and live ordnance at various targets in varying positions on land and sea.<sup>19</sup>

In *Barcelo v. Brown*, the people of Puerto Rico brought a lawsuit against the Navy to obtain an injunction, alleging numerous violations of environmental laws.<sup>20</sup> More specifically, the people of Puerto Rico alleged that the Navy violated the Federal Water Pollution Control Act (“FWPCA”) through the discharge of ordnance on targets located on the waters surrounding Vieques.<sup>21</sup> The purpose of the FWPCA is to protect the integrity of the waters of the United States.<sup>22</sup> The United States District Court for the District of Puerto Rico found that the Navy violated the FWPCA, but refused to issue an injunction, instead ordering the Navy to come into compliance with the law.<sup>23</sup> On appeal, the United States Court of Appeals for the First Circuit vacated the District Court’s order, and remanded the case back to the trial court with orders to issue an injunction to immediately cease the discharge of ordnance into the waters.<sup>24</sup> The United States Supreme Court granted certiorari and reversed the First Circuit’s order, sending the case back to the District Court.<sup>25</sup> This Comment argues that the Supreme Court correctly reversed the First Circuit and properly held a court of equity may use its traditional power of discretion when determining whether to order an injunction for a statute violation, but that power should only be allowed for technical violations.<sup>26</sup>

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<sup>17</sup> *Barcelo*, 478 F. Supp. at 655.

<sup>18</sup> *Id.* at 655–61.

<sup>19</sup> *Id.* at 656.

<sup>20</sup> *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 307 n.1 (1982); *Barcelo*, 478 F. Supp. at 651. The original complaint alleged that the United States Navy violated the National Environmental Policy Act of 1969, the Federal Water Pollution Control Act, the Clean Air Act Amendments of 1977, the Noise Control Act of 1972, the Resource Conservation and Recovery Act of 1976, the Endangered Species Act of 1973, the National Historic Preservation Act of 1966, the Coastal Zone Management Act of 1972, the Marine Mammal Protection Act of 1972, and the Rivers and Harbors Appropriation Act of 1899. *Barcelo*, 478 F. Supp. at 651. The plaintiffs also alleged that the Navy violated the United States Constitution, executive and legislative directives, and various other laws of Puerto Rico. *Id.*

<sup>21</sup> *Weinberger*, 456 U.S. at 306.

<sup>22</sup> 33 U.S.C. § 1251(a) (2012).

<sup>23</sup> *Weinberger*, 456 U.S. at 309.

<sup>24</sup> *Id.* at 310.

<sup>25</sup> *Id.* at 311.

<sup>26</sup> See *infra* notes 114–144 and accompanying text.

## I. FACTS AND PROCEDURAL HISTORY

The United States Navy has conducted training exercises on Vieques since World War II.<sup>27</sup> The island is part of the Atlantic Fleet Weapons Training Range, a military complex that is essential to the training and testing of the Atlantic Fleet.<sup>28</sup> This military system consists of four ranges: the inner range, the outer range, an underwater tracking range, and an electronic warfare range.<sup>29</sup> The inner range is located east of the Island of Vieques.<sup>30</sup> The outer range, which is an ocean range, is located in the waters north, south, and east of Puerto Rico.<sup>31</sup> The electronic range is located on St. Croix in the Virgin Islands, which is east of Puerto Rico and Vieques.<sup>32</sup> The Roosevelt Roads Naval Station in Cieba, Puerto Rico directs the operations and exercises that take place throughout these locations.<sup>33</sup>

Numerous islanders, government officials, and organizations from Puerto Rico filed suit against the Navy in March 1978 for its activities within the inner range.<sup>34</sup> This range consists of artillery, air-to-ground, and ship-to-shore targets located throughout the area.<sup>35</sup> An observation post, located at Cerro Mateias, monitors and controls the activities that take place in the inner range.<sup>36</sup> All training exercises are scheduled and notice is provided through widespread distribution and postings.<sup>37</sup>

There are two targets contained in the inner range, designated as "Target 1" and "Target 2."<sup>38</sup> There is also a strafing target and a stationary water target located in the area, and various other targets located elsewhere.<sup>39</sup> The Navy utilizes both inert and live ordnance during exercises that target these installations.<sup>40</sup> By the end of 1971, all of these targets, with the exception of the

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<sup>27</sup> *Barcelo*, 478 F. Supp. at 707.

<sup>28</sup> *Id.* at 655. The Atlantic Fleet is global naval force that includes land, sea, and air forces that are deployed in an integrated and combined unit. *Id.* at 708. The fleet covers a great deal of territory from the Arctic to Antarctica and from Mexico to Turkey. *Id.*

<sup>29</sup> *Id.* at 655.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 650–51.

<sup>35</sup> *Id.* at 655.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 656. (stating that these targets are used for practice and that live ammunition is never used). "Target 1" is made of four concentric tire rings, fifty feet between each ring, with the largest spanning 400 feet in diameter. *Id.* "Target 2" is similar to "Target 1" in design, but consists of only three rings with the largest measuring 300 feet. *Id.* The targets are separated by about two miles. *Id.*

<sup>39</sup> *Id.* at 657.

<sup>40</sup> *Id.* at 656–58.

water target, were active and operational.<sup>41</sup> Some of these targets were in use prior to that date.<sup>42</sup> All of these targets are used for combat and training exercises.<sup>43</sup>

These training activities gave rise to the plaintiffs' claim that the Navy violated the FWPCA and should be enjoined from continuing any exercises.<sup>44</sup> In *Barcelo v. Brown*, the District Court for the District of Puerto Rico found that the Navy violated the statute because the bombings of targets resulted in the accidental and occasionally intentional falling of ordnance into the waters surrounding Vieques.<sup>45</sup> The District Court also found that this situation required the Navy to obtain a National Pollution Discharge Elimination System ("NPDES") permit from the Environmental Protection Agency (EPA), which would allow the Navy to continue its activities.<sup>46</sup> The District Court, however, refused to issue an injunction because it believed that a less prohibitive remedy was the best way for the court to utilize its equitable discretion in order to resolve the situation.<sup>47</sup>

In its refusal to issue an injunction, the court relied on the plaintiffs' lack of evidence and the Navy's motivation for the activities.<sup>48</sup> First, the court found that the plaintiff presented no evidence that the falling ordnance and other materials that went into the water caused any measurable harm to the environment or affected the quality of the water itself.<sup>49</sup> Further, the court considered the national security concern implicated by enjoining training exercises of such caliber and importance.<sup>50</sup> Vieques is the only location that was available for the Atlantic Fleet to conduct such exercises and the only available location that provided conditions that simulated combat.<sup>51</sup> The Atlantic Fleet is of great importance to the United States and to the world because it provides naval support, protection, and monitoring on a global scale.<sup>52</sup> Thus, the court concluded that preventing the Navy from keeping its training regiments running accordingly would harm the strategic advantage that American naval forces have, potentially leading to national and international harm.<sup>53</sup>

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<sup>41</sup> *Id.* at 657.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 656–657.

<sup>44</sup> *Id.* at 651.

<sup>45</sup> *Id.* at 663, 705, 708.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 706–07.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 663.

<sup>50</sup> *Id.* at 707.

<sup>51</sup> *Id.* at 708.

<sup>52</sup> *Id.* (explaining the importance of the Atlantic Fleet). The Atlantic Fleet's resources are limited due to the vast area it covers in its operations; therefore, it is imperative that the combined forces are at peak efficiency. *Id.*

<sup>53</sup> *See id.*

Additionally, the court addressed the plaintiffs' delay in filing their claim against the Navy: Congress passed the FWPCA more than six years prior to the filing of the complaint, and training operations were active before and during that period of time.<sup>54</sup> Although laches did not bar the plaintiffs' claim, the court weighed the time delay in the Navy's favor.<sup>55</sup> Due to these considerations, the court ordered the Navy to come into compliance with the law and file for a NPDES permit to continue its operations lawfully.<sup>56</sup> If the Navy failed to comply or if the permit was denied, then the court would issue an injunction.<sup>57</sup>

On appeal in *Romero-Barcelo v. Brown*, the United States Court of Appeals for the First Circuit vacated the District Court's order and remanded the case with instructions to issue an immediate injunction to stop the Navy from discharging ordnance into the waters surrounding Vieques.<sup>58</sup> The First Circuit held that the Navy could resume its operations only after it obtained a NPDES permit from the EPA.<sup>59</sup> The First Circuit believed that the FWPCA did not allow for the lower court to balance the equities as it had and stated instead that an injunction was the only proper remedy.<sup>60</sup> The First Circuit also disregarded the fact that there was no evidence that the discharged ordnance caused environmental harm.<sup>61</sup> The court believed that the statute clearly indicated that the Navy's actions amounted to a violation of the FWCPA, and that the statute should be enforced with an injunction regardless of the lack of proven harm to the waters of Vieques.<sup>62</sup> The First Circuit also added that any national security concerns could be addressed through a presidential executive exemption to the Navy, as allowed by the statute.<sup>63</sup>

The Navy appealed the First Circuit's decision to the United States Supreme Court.<sup>64</sup> The main issue of the case was whether the FWPCA required the District Court to issue an injunction and immediately enjoin the Navy's operations once it determined that there was a violation.<sup>65</sup> The Supreme Court disagreed with the First Circuit's decision and reversed.<sup>66</sup> The Court held that

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<sup>54</sup> *Id.* at 707.

<sup>55</sup> *Id.* Laches is an equitable doctrine that prevents a plaintiff from recovering on a claim brought after an unreasonable delay, which if allowed, would be unjust and prejudicial to the defendant. *Laches*, BLACK'S LAW DICTIONARY (10th ed. 2014).

<sup>56</sup> *Barcelo*, 478 F. Supp. at 708.

<sup>57</sup> *Weinberger*, 456 U.S. at 320.

<sup>58</sup> *Romero-Barcelo v. Brown*, 643 F.2d 835, 861-63 (1st Cir. 1981).

<sup>59</sup> *Id.* at 861-62.

<sup>60</sup> *See id.*

<sup>61</sup> *Id.* at 861.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 862.

<sup>64</sup> *See Weinberger*, 456 U.S. at 305, 311.

<sup>65</sup> *Id.* at 306-07.

<sup>66</sup> *Id.* at 307.

the equitable discretion of a court exists in all decisions unless that discretion is removed by statute or law.<sup>67</sup> Through its interpretation of the FWPCA, the Supreme Court found that equitable discretion is allowed and that the statute's organization and compliance scheme supports this finding.<sup>68</sup> Continuing in its reasoning, the Court explained the long tradition of broad equitable discretion has been a part of the American legal system since its inception and should not be hindered or destroyed by automatic or mechanical results and rulings.<sup>69</sup> As a result, the Court ruled that an injunction is not automatically issued for violations of the FWPCA and that balanced equitable orders can be issued by courts, when possible, in order to address competing interests.<sup>70</sup>

## II. LEGAL BACKGROUND

Congress enacted the Federal Water Pollution Control Act ("FWPCA") to protect and restore the physical, chemical, and biological quality of the waters of the United States.<sup>71</sup> Specifically, the statute makes it illegal for any person to discharge any pollutant.<sup>72</sup> The FWPCA's definition of a pollutant is wide and encompasses numerous categories and examples of qualifying substances and materials, such as munitions.<sup>73</sup> The addition of any pollutants

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<sup>67</sup> *Id.* at 313.

<sup>68</sup> *Id.* at 316.

<sup>69</sup> *Id.* at 311–13.

<sup>70</sup> *Id.* On May 1, 2003, the United States Navy ("Navy") ceased training operations and left the island. Frances Olsen, *Civil Disobedience on Vieques: How Nonviolence Defeated the U.S. Military*, 16 FLA. J. INT'L L. 547, 547 (2004). This departure occurred after a Navy aircraft accidentally killed one local citizen and injured four others during a training exercise. *Id.* at 551–55. The accident sparked substantial protests, which obtained widespread support and directly led to the Navy leaving the site. *Id.* Although operations ceased, the land remains contaminated due to the training that occurred on the island. *Id.* at 558. In 2004, the Environmental Protection Agency deemed Vieques a superfund site. Maritza Stanchich, *Ten Years After Ousting US Navy, Vieques Confronts Contamination*, HUFF. POST: THE WORLD POST, [http://www.huffingtonpost.com/maritzastanchich-phd/ten-years-after-ousting-u\\_b\\_3243449.html](http://www.huffingtonpost.com/maritzastanchich-phd/ten-years-after-ousting-u_b_3243449.html) [https://perma.cc/HXU2-8EG5]. A Superfund site is a hazardous area that is harmful or potentially harmful to the public or the environment that needs to be cleaned up and remedied. *Superfund Cleanup Process*, U.S. ENVTL. PROT. AGENCY (Dec. 11, 2017) <https://www.epa.gov/superfund/superfund-cleanup-process> [https://perma.cc/RET7-E7YV].

Decontamination and cleanup of the Vieques Superfund site was originally scheduled to be completed in 2020, but more recent projections say cleanup may proceed until 2029. Stanchich, *supra*.

<sup>71</sup> Federal Water Pollution Control Act, 33 U.S.C. § 1251(a) (2012).

<sup>72</sup> *Id.* §§ 1311(a), 1362(5). The Federal Water Pollution Control Act ("FWPCA") defines a person as "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body." *Id.* § 1362(5). The FWPCA defines pollution as "man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water." *Id.* § 1362(19).

<sup>73</sup> *Id.* § 1362(6). A pollutant under the FWPCA "means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." *Id.*



from a point source into navigable waters, waters of the contiguous zone, or the ocean is considered to be discharging pollutants under the statutory framework.<sup>74</sup> The FWPCA defines a point source as essentially anything from which pollutants can or may be discharged.<sup>75</sup>

A party can lawfully discharge pollutants by obtaining a National Pollution Discharge Elimination System (“NPDES”) permit from the Environmental Protection Agency (EPA).<sup>76</sup> This permit system is instrumental to the goals of the statute.<sup>77</sup> Through it, Congress limits the amount of pollutants discharged into the nation’s waters by requiring any person who wishes to do so to seek prior approval from the EPA.<sup>78</sup>

The NPDES scheme monitors discharge and controls the amount of pollutants that reach the water.<sup>79</sup> The permit system also functions to transform general effluent limitations and other environmental standards into obligations, which can include dates for compliance, for approved dischargers of any pollutants.<sup>80</sup> Essentially, a permit effectuates the statute by facilitating compliance while also enforcing individual obligations to reach full compliance.<sup>81</sup> All federal agencies were called upon to lead the national effort towards total compliance by every current and future discharger.<sup>82</sup>

Courts have relied on the FWPCA’s plain and unambiguous language to determine which actions and conduct require a NPDES permit.<sup>83</sup> In order to obtain a NPDES permit, entities first file a permit application with the EPA.<sup>84</sup>

<sup>74</sup> *Id.* § 1362(7)–(10), (12). Under the FWPCA, one discharges a pollutant when one adds “any pollutant to navigable waters . . . waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.” *Id.* § 1362(12). In this context, “navigable waters” are “waters of the United States, including the territorial seas,” and “territorial seas” are the waters within three miles of the United States’ coastline. *Id.* § 1362(7)–(8). The contiguous zone encompasses areas twelve miles from the baseline of a country’s territorial sea, as elaborated in the 1958 Convention of the Territorial Sea and the Contiguous Zone. *Id.* § 1362(9); Law of the Sea: Convention on the Territorial Sea and the Contiguous Zone art. 24, Apr. 29, 1958, 15 U.S.T. 1606, 516 U.N.T.S. 205. The FWPCA defines “ocean” as the areas of the sea “beyond the contiguous zone.” 33 U.S.C. § 1362(10).

<sup>75</sup> 33 U.S.C. § 1362(14) (defining point source).

<sup>76</sup> *See id.* §§ 1323, 1342; *Barcelo v. Brown*, 478 F. Supp. 646, 663 (D.P.R. 1979).

<sup>77</sup> *See Train v. Colo. Pub. Interest Research Grp., Inc.*, 426 U.S. 1, 7 (1976).

<sup>78</sup> *See id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Env’tl. Prot. Agency v. California*, 426 U.S. 200, 205 (1976).

<sup>81</sup> *Id.* at 205.

<sup>82</sup> 33 U.S.C. § 1323 (2012) (stating that all federal agencies must comply with federal, state, interstate, and local laws and regulations governing water pollution and quality control); *Env’tl. Prot. Agency v. California*, 426 U.S. at 205.

<sup>83</sup> *Train*, 426 U.S. at 9; *Minnehaha Creek Watershed Dist. v. Hoffman*, 597 F.2d 617, 625 (8th Cir. 1979) (“The purpose of the Amendments was broad and remedial, with their stated objective being ‘[the] restor[ation] and main[tenance] [of] the chemical, physical, and biological integrity of the Nation’s waters.’”) (alteration in original).

<sup>84</sup> 33 U.S.C. §§ 1323, 1342 (2012); ZYGMUNT J.B. PLATER ET AL., ENVIRONMENTAL LAW AND POLICY: NATURE, LAW, AND SOCIETY 45 (5th ed. 2016).

If the EPA issues a permit, the applicant may proceed with operations that would otherwise violate the statute.<sup>85</sup> States may also create their own permit process.<sup>86</sup> If the EPA accepts a state's process, thereby delegating permitting authority, then the state's limitations and restrictions govern its permit process.<sup>87</sup> States are free to implement the process in any way they see fit, which can lead to stricter rules or a more relaxed policy, so long as the EPA approves the state's process.<sup>88</sup>

The President of the United States may exempt any agency, department, or executive branch organization from the FWPCA's NPDES permit requirement.<sup>89</sup> This power allows the President to excuse any discharging activities not in compliance with the statute.<sup>90</sup> The interest of the country is the only requirement for the granting of this waiver.<sup>91</sup>

If an entity violates this statute by discharging pollutants without a permit, the most effective judicial option is to obtain an injunction to enjoin that activity.<sup>92</sup> To attain an injunction, the complainant must show that there is no other remedy that can abate the current or potential injury faced.<sup>93</sup> Essentially, the party seeking the court order has no other option to avoid the harm that sparked the lawsuit.<sup>94</sup>

Injunctions are not automatically granted for every violation of the law.<sup>95</sup> A judge has no duty to issue such an order in any and all circumstances where compliance is an issue.<sup>96</sup> Further, a court should not order an injunction to prevent potentially harmful or harmful acts that will result in an injury that is insignificant or trivial.<sup>97</sup> Thus, an injunction should be issued only in circumstances where the claimant's injury is irreparable and can only be prevented by the court's intervention.<sup>98</sup> In cases involving statutory violations, injunctions are issued when the order is the only way to ensure compliance.<sup>99</sup> If a violator can come into compliance or at least move towards it,

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<sup>85</sup> 33 U.S.C. §§ 1323, 1342; *Env'tl. Prot. Agency v. California*, 426 U.S. at 205.

<sup>86</sup> 33 U.S.C. §§ 1323, 1342; *Env'tl. Prot. Agency v. California*, 426 U.S. at 206–08.

<sup>87</sup> 33 U.S.C. §§ 1323, 1342; *Env'tl. Prot. Agency v. California*, 426 U.S. at 206–08.

<sup>88</sup> 33 U.S.C. §§ 1323, 1342; *Env'tl. Prot. Agency v. California*, 426 U.S. at 206–08.

<sup>89</sup> 33 U.S.C. § 1323.

<sup>90</sup> *See id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Romero-Barcelo v. Brown*, 643 F.2d 835, 861–62 (1st Cir. 1981). Injunction is defined as “[a] court order commanding or preventing an action.” *Injunction*, BLACK'S LAW DICTIONARY (10th ed. 2014).

<sup>93</sup> *Cavanaugh v. Looney*, 248 U.S. 453, 456 (1919).

<sup>94</sup> *See id.* at 456.

<sup>95</sup> *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 193 (1978).

<sup>96</sup> *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944); *Harrisonville v. W.S. Dickey Clay Mfg. Co.*, 289 U.S. 334, 337–38 (1933).

<sup>97</sup> *Consol. Canal Co. v. Mesa Canal Co.*, 177 U.S. 296, 302 (1900).

<sup>98</sup> *Cavanaugh*, 248 U.S. at 456.

<sup>99</sup> *See Tenn. Valley Auth.*, 437 U.S. at 193–94.

without presently disregarding the statute's purpose, there is no need for an injunction unless it is the only viable option for the court to fully enforce the law.<sup>100</sup>

Within disputes, plaintiffs and defendants have competing interests, which can require courts to use their equitable discretion to help the parties reach a compromise.<sup>101</sup> Through its discretionary power, the court balances the interests of the parties while factoring the potential harm that may result from the granting or withholding of an injunction.<sup>102</sup> Thus, courts can arrive at a balanced solution that accounts for the specific circumstances of a dispute.<sup>103</sup>

The parties' interests, however, are not the court's only focus.<sup>104</sup> Rulings should also factor in the public's interest and the effect that an injunction would have on third parties.<sup>105</sup> The United States Supreme Court has stated that if an injunction will adversely affect the public, those interests may be taken into consideration even though a party to the lawsuit may be harmed.<sup>106</sup> Therefore, courts look further than the affected party in determining whether to grant an injunction or resolve a dispute more equitably.<sup>107</sup>

Congress can also affect the equitable relief determination through statutory language that leaves a court no option other than issuing an injunction for a violation of the statute.<sup>108</sup> For that to occur the statute's language must be clear and obvious or a court will freely rely on its discretionary powers.<sup>109</sup> An example of clear language is Section 7 of the Endangered Species Act ("ESA"), which the Court analyzed in *Tennessee Valley Authority v. Hill*.<sup>110</sup> The section requires federal agencies to protect any endangered species or its critical habitats from actions that would harm the species' continued existence.<sup>111</sup> In *Tennessee Valley Authority*, the particular language of Section 7

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<sup>100</sup> *Id.* (discussing the Court's decision in *Hecht Co. v. Bowles*, 321 U.S. at 325–26, 329, 331, not to issue an injunction for a statutory violation). In *Hecht Co.*, the United States Supreme Court did not issue an injunction for a statutory violation because an injunction would have been prejudicial to the violator, gone against the public's interest, and have no effect on the defendant's compliance. *Tenn. Valley Auth.*, 437 U.S. at 193–94; *Hecht Co.*, 321 U.S. at 325–26, 329, 331.

<sup>101</sup> *Hecht Co.*, 321 U.S. at 329.

<sup>102</sup> *Yakus v. United States*, 321 U.S. 414, 440 (1944).

<sup>103</sup> *See Hecht Co.*, 321 U.S. at 329.

<sup>104</sup> *See R.R. Comm'n v. Pullman Co.*, 312 U.S. 496, 500 (1941).

<sup>105</sup> *See id.*

<sup>106</sup> *Yakus*, 321 U.S. at 440.

<sup>107</sup> *See id.*

<sup>108</sup> *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946); *Hecht Co.*, 321 U.S. at 329.

<sup>109</sup> *Porter*, 328 U.S. at 398; *Hecht Co.*, 321 U.S. at 329.

<sup>110</sup> *See* 437 U.S. at 173.

<sup>111</sup> 16 U.S.C. § 1536(a)(2) (2012) (stating that "[e]ach federal agency shall . . . insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of endangered species . . . or result in the destruction or modification of habitat of such species"); *Tenn. Valley Auth.*, 437 U.S. at 193–95.

led the Court to determine that an injunction was the only remedy that it could provide, as Congress made it clear that endangered species must be protected and failing to issue the injunction would result in a disregard of the law and its purpose.<sup>112</sup> The takeaway, therefore, is that a court's determination from the clarity, or lack thereof, of a statute's language is key to determining what remedies are appropriate and available.<sup>113</sup>

### III. ANALYSIS

The United States Supreme Court's reversal of the First Circuit Court of Appeals' order, which enjoined United States Navy ("Navy") operations for a technical violation of the Federal Water Pollution Control Act ("FWPCA"), was the proper result in *Weinberger v. Romero-Barcelo*.<sup>114</sup> The Court held that injunctions are not mechanically issued solutions to violations of the law.<sup>115</sup> Rather, the Court explained that injunctions are solutions to issues that require the prevention or end of activities that may cause irreparable harm.<sup>116</sup> Thus, the Court favored the District Court for the District of Puerto Rico's original remedy, which ordered the Navy to take the necessary steps to comply with the FWPCA.<sup>117</sup> Overall, the Court protected the traditional equitable powers of a court, which allows for the court to determine a balanced solution to an issue that factors in both sides of the dispute and outside interests.<sup>118</sup>

The major piece of this case was the fact that the Navy's discharge of munitions violated the FWPCA.<sup>119</sup> Further, this violation could have been avoided if the Navy obtained a National Pollutant Discharge Elimination System ("NPDES") permit from the Environmental Protection Agency (EPA).<sup>120</sup> While steps to FWPCA compliance are clear, another factor was that the Navy's discharge of munitions caused no adverse effects to the environment, the area's waters, or wildlife.<sup>121</sup> Essentially, the Navy's violation was only "technical" in the sense that no harm beyond non-compliance was shown by the complainants.<sup>122</sup>

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<sup>112</sup> See *Tenn. Valley Auth.*, 437 U.S. at 194 ("Once Congress, exercising its delegated powers, has decided the order of priorities in a given area, it is for the Executive to administer the laws and for the courts to enforce them when enforcement is sought.")

<sup>113</sup> See *Porter*, 328 U.S. at 398; *Hecht Co.*, 321 U.S. at 329.

<sup>114</sup> See *Yakus v. United States*, 321 U.S. 414, 440 (1944).

<sup>115</sup> *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 320 (1982).

<sup>116</sup> See *id.* at 312, 320; *Cavanaugh v. Looney*, 248 U.S. 453, 456 (1919).

<sup>117</sup> See *Weinberger*, 456 U.S. at 320. In this context, compliance with the Federal Water Pollution Control Act involved requiring the United States Navy to obtain a National Pollutant Discharge Elimination System permit. *Id.*

<sup>118</sup> See *id.*

<sup>119</sup> See *id.* at 310–11, 315, 320.

<sup>120</sup> See 33 U.S.C. § 1323 (2012); *Env'tl. Prot. Agency v. California*, 426 U.S. 200, 205 (1976).

<sup>121</sup> *Barcelo v. Brown*, 478 F. Supp. 646, 706 (D.P.R. 1979).

<sup>122</sup> See *id.*

Although the Navy violated the FWPCA, the Supreme Court properly reversed the ordered injunction.<sup>123</sup> Congress enacted the FWPCA to protect and restore the physical, chemical, and biological quality of the waters of the United States.<sup>124</sup> Through the statute, the legislature intended to prevent open water pollution by regulating and monitoring those who do so by necessity or illegally.<sup>125</sup> The FWPCA is not an outright ban on the pollution of the Nation's waters because it still allows for pollutants to be discharged with the proper permit.<sup>126</sup> Therefore, the availability of NPDES permits demonstrates that there is some flexibility in achieving Congress's policy goals.<sup>127</sup>

A balanced and beneficial result is achieved by allowing a court to use its discretionary power to resolve statutory violations with broader equitable remedies in certain instances.<sup>128</sup> If courts reviewed violations of the FWPCA mechanically and issued an injunction automatically, it would create a significant injustice to the enjoined party and potentially to outside interests.<sup>129</sup> In this case, enjoining the Navy's operations would essentially end its use of a critical military training installation.<sup>130</sup> Among the repercussions that would result from this action, national security served as the primary factor of the court's determination because of the unique value of Vieques as a naval training ground.<sup>131</sup> Because these exercises caused no environmental harm, the Court balanced the interests of both sides by supporting the District Court's decision not to issue an injunction, but instead ordered the Navy to acquire a NPDES permit to achieve compliance with the FWPCA.<sup>132</sup>

If the Navy's actions caused actual environmental harm, beyond just noncompliance with the FWPCA, the Supreme Court's use of a more flexible equitable remedy would have been inappropriate.<sup>133</sup> In that situation, the Court would be facing a dispute similar to *Tennessee Valley Authority v. Hill*, because the Navy's actions would be an actual violation of the statute and, if not enjoined, would directly contradict Congress' intent to prevent the pollution of the nation's waters.<sup>134</sup> Thus, the Court would have no choice but to enjoin the Navy's actions in order to both enforce the statute and give effect

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<sup>123</sup> See *Yakus*, 321 U.S. at 440.

<sup>124</sup> 33 U.S.C. § 1251(a).

<sup>125</sup> See 33 U.S.C. §§ 1251(a), 1311(a), 1323.

<sup>126</sup> See *id.* § 1323; *Env'tl. Prot. Agency v. California*, 426 U.S. at 205.

<sup>127</sup> See 33 U.S.C. § 1323 (2012); *Env'tl. Prot. Agency v. California*, 426 U.S. at 205.

<sup>128</sup> See *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944).

<sup>129</sup> See *Weinberger*, 456 U.S. at 320; *Yakus*, 321 U.S. at 440; *Hecht Co. v. Bowles*, 321 U.S. at 329; *Barcelo*, 478 F. Supp. at 708.

<sup>130</sup> *Barcelo*, 478 F. Supp. at 707–08.

<sup>131</sup> *Weinberger*, 456 U.S. at 306–07.

<sup>132</sup> See *id.* at 311–15, 320.

<sup>133</sup> See *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 194 (1978).

<sup>134</sup> See *id.*

to its purpose.<sup>135</sup> Further, there would be no room for an equitable balance in such a situation because the environmental harm cannot be ignored due to Congress' intent to prevent and control pollution.<sup>136</sup> Additionally, any national security concerns in this situation can be handled by obtaining a permit, or by invoking the FWPCA's provision allowing the President to issue a compliance waiver.<sup>137</sup>

Therefore, *Weinberger's* precedential weight should be isolated to statutory violations that are "technical" in nature.<sup>138</sup> Although courts have the power to balance the interests of disputing parties to reach an equitable solution, they do not have the power to veto a law that is clear and constitutional, such as the FWPCA.<sup>139</sup> The power to legislate is held by Congress, and an enacted law must be enforced so that its purpose is upheld.<sup>140</sup> Allowing an equitable balance for actual violations of a statute would effectively enable courts to choose when to enforce the law based on the circumstances of each dispute.<sup>141</sup> To grant courts such broad power would effectively make courts, and not Congress, the final arbiters of legislative intent and such a scheme would offend the bedrock doctrine of separation of powers.<sup>142</sup> Therefore, courts should remain obligated to enforce a statute when violations occur, but reserve the right to balance the equities in disputes involving "technical" violations of the law.<sup>143</sup> This allows for an efficient system where actual environmentally harmful violations are enjoined and "technical" violations are brought into compliance without disrupting any parties' interests.<sup>144</sup>

## CONCLUSION

Since its acquisition of large portions of Vieques, the United States Navy ("Navy") has used the land for strategic training exercises. The Navy heavily relies on this training installation, which is part of a wider military complex known as the Atlantic Fleet Weapons Training Range. The training exercises involved the use of ordnance, resulting in the accidental and intentional bombing of the waters surrounding the area. The Federal Water Pollution

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<sup>135</sup> *See id.* at 194–95.

<sup>136</sup> *See id.*

<sup>137</sup> 33 U.S.C. § 1323 (2012); *Env'tl. Prot. Agency v. California*, 426 U.S. at 205.

<sup>138</sup> *See Tenn. Valley Auth.*, 437 U.S. at 194–95; *Hecht Co.*, 321 U.S. at 326, 329; *Consol. Canal Co. v. Mesa Canal Co.*, 177 U.S. 296, 302 (1900).

<sup>139</sup> *See Tenn. Valley Auth.*, 437 U.S. at 194–95.

<sup>140</sup> *See id.*

<sup>141</sup> *See id.*

<sup>142</sup> U.S. CONST. art. I, § 1, art. III, §§ 1, 2; *see Tenn. Valley Auth.*, 437 U.S. at 194–95.

<sup>143</sup> *See Tenn. Valley Auth.*, 437 U.S. at 194–95; *Hecht Co.*, 321 U.S. at 326, 329; *Consol. Canal Co.*, 177 U.S. at 302.

<sup>144</sup> *See Tenn. Valley Auth.*, 437 U.S. at 194–95; *Hecht Co.*, 321 U.S. at 326, 329; *Consol. Canal Co.*, 177 U.S. at 302.

Control Act (“FWPCA”), which Congress passed to prevent and control water pollution, indicates that the discharging of munitions is a violation of the statute. Without a permit, the Navy failed to comply with the FWPCA. Its actions, however, caused no environmental harm, making the Navy’s acts a “technical” violation.

The United States Supreme Court’s ruling is proper because it serves both parties’ interests. The Court also expressed heavy support for a court of equity’s discretionary powers to reach a balanced resolution. Although this may undermine the enforcement power of the FWPCA, it allows for “technical” violations to be adjudicated and brought into compliance without interfering with a party’s activities. In *Weinberger v. Romero-Barcelo*, the statute was violated, but the law’s purpose was not undermined because there was a lack of actual environmental harm. A court’s discretionary use of their equitable powers needs to be limited to these situations. If not, the holding of *Weinberger* could be interpreted as giving all courts hearing statute violations the ability to choose when to enforce the law. This cannot be allowed, as a court cannot disregard a valid law and its purpose or serve as a legislature. Overall, allowing for equitable resolutions to “technical” violations creates efficiency and logical results.