

United States Court of Appeals For the First Circuit

No. 19-2095

THE BLACKSTONE HEADWATERS COALITION, INC.,

Plaintiff, Appellant,

v.

GALLO BUILDERS, INC.; ARBORETUM VILLAGE, LLC;
STEVEN A. GALLO; and ROBERT H. GALLO,

Defendants, Appellees.

Before

Howard, Chief Judge,

Lynch, Thompson, Kayatta, Barron, and Gelpí,* Circuit Judges.

ORDER OF COURT

Entered: October 26, 2021

A majority of the active judges who are not disqualified have voted to hear this case en banc. Accordingly, Blackstone Headwaters Coalition, Inc.'s petition for rehearing en banc is granted only as to the issue of whether to overrule the holding in North and South Rivers Watershed Association, Inc. v. Town of Scituate, 949 F.2d 552, 558 (1st Cir. 1991), that citizen suits seeking equitable relief under 33 U.S.C. § 1319 are not permitted when a state has commenced and is diligently prosecuting an action under a state law comparable to § 1319(g). See 33 U.S.C. § 1319(g)(6)(A)(ii). In accordance with customary practice, the panel opinion released on April 26, 2021 is withdrawn, and the judgment entered the same date is vacated. See 1st Cir. I.O.P. X(D).

The en banc court will have copies of the previously filed briefs. The parties and amici are invited to simultaneously file supplemental briefs on, or before, **November 16, 2021**, and shall comply with applicable rules concerning format, service, and other requirements.

By the Court:

Maria R. Hamilton, Clerk

* Judge Gelpí did not vote on this matter.

cc: Hon. Timothy S. Hillman, Robert Farrell, Clerk, United States District Court for the District of Massachusetts, Brian E. Murphy, James Parker Vander Salm, William D. Jalkut, Charles C. Caldart, Jennifer Scheller Neumann, Matthew Oakes