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U.S Supreme Court rebuffs effort by conservative Austin group to gut endangered species protections

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An effort by a conservative Austin think tank to gut the Endangered Species Act by challenging habitat protections for a cave-dwelling Central Texas arachnid was turned away by the U.S. Supreme Court on Monday.

The Texas Public Policy Foundation, representing Williamson County rancher John Yearwood, had argued that the federal law should not apply to the seldom-seen Bone Cave harvestman because it is known to live only in Texas — specifically, Travis and Williamson counties.

Nearly 70% of endangered species are found in only one state. If Yearwood and his allies — including Williamson County officials and private property advocates — had their way, special federal protections would have disappeared for all of them.

But the foundation had lost its broader constitutional challenge in District Court and then an appeals court panel ruled, on procedural grounds, that the challenge to the Bone Cave harvestman's listing wasn't timely.

The Supreme Court on Monday declined to revive the challenge.

"We're glad this attack on the Endangered Species Act's constitutionality will go no further," Ryan Shannon, an attorney with the Center for Biological Diversity, an environmental group that

joined with Travis Audubon and Defenders of Wildlife as parties to the case, told the American-Statesman.

He said the matter before the Supreme Court was a "narrow procedural one" and the foundation "didn't give (the Court) good reason to be interested in the case" — making it hard to draw conclusions about the Supreme Court's broader approach to issues coming before it.

Robert Henneke, a Texas Public Policy Foundation attorney, told the American-Statesman "this case has come to an end, but the central question to this case remains unresolved."

"After five-plus years of litigation, it's disappointing the merits of our case were never addressed by a court," he said. "The Department of Justice and the environmental groups were successful in bringing procedural tactics to avoid an argument on the merits."

Interstate commerce

When Congress passed the Endangered Species Act, it relied on the Constitution's granting of powers to Congress to regulate interstate commerce, according to legal experts.

But Yearwood's coalition argued the government has no right to regulate single-state species such as the harvestman.

"The Obama administration is abusing its power under the Endangered Species Act by unlawfully listing a species on the endangered list that only lives in the state of Texas and has no impact on interstate commerce whatsoever," Texas Attorney General Ken Paxton said four years ago as he filed his brief in support of Yearwood and Williamson County.

Ethics breach

Meanwhile, the case got wrapped up in a Trump administration ethics kerfuffle.

In 2017, a top Department of Interior official, Douglas Domenech — who formerly worked at the Texas Public Policy Foundation, where he led the group's Fueling Freedom Project, which

fought the Obama administration's efforts to tamp down fossil fuel emissions — met with his former foundation colleagues to discuss the rollback of endangered species protections.

Shortly after one of the meetings, which touched on the harvestman litigation, Domenech sent an email to foundation officials that said: "Keep fighting."

Domenech told investigators that his follow-up email was his way of encouraging the group "to continue to pursue its constitutional rights," the inspector general wrote, "and he denied that he was commenting on the litigation in any way."

The Department of Interior's inspector general in 2019 concluded that Domenech had violated federal rules by improperly meeting with his former employer. Federal ethics laws prohibit government officials from meeting with their former employers for at least a year after they take public office to prevent those employers from improperly influencing the outcomes of public policy.