

The Fifth Circuit's ruling on Jackson: The courts formalize the right to poison the working class

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A divided US Court of Appeals for the Fifth Circuit has ruled that the Constitution provides no right to clean drinking water and no right to accurate information from public officials. The full bench decision in *Sterling v. City of Jackson* affirms the dismissal of a lawsuit brought by residents of Jackson, Mississippi, who allege that officials deliberately allowed lead to contaminate the city's drinking water. The ruling, written by Judge Kurt Engelhard, a Donald Trump appointee and joined by nine other Republican appointees, declares flatly that "the Constitution does not provide redress for every governmental wrongdoing."

The essential meaning of this decision is unmistakable. It establishes as a matter of constitutional law that a municipality can supply its residents with water that poisons them, lie to them about it and face no liability whatsoever. The residents who drank lead-contaminated water, who bathed their children in it, who cooked with it have no recourse under the highest law of the land. The court's answer to their suffering is an insult: They can file tort claims, Engelhardt suggests, or simply "elect officials who will better manage the water system," as if the residents of Jackson, a city that has been without reliable drinking water for years, had simply failed to vote correctly.

What is most striking about the ruling is what it does not say. Nowhere does the majority engage with the 1974 Safe Drinking Water Act, the federal legislation that establishes binding standards for public water systems and mandates limits on lead and other contaminants. The court simply does not cite it, as though the statutory framework governing the very subject at issue in the case did not exist. This omission

is not an oversight. It is the method of a judiciary that will not acknowledge any legal obligation of the state to protect the population it governs, because to do so would open the door to precisely the claims the ruling class cannot tolerate.

The Jackson catastrophe did not arise from natural causes. As the WSWs documented in September 2022, the city's water and sewage system collapsed under the pressure of heavy flooding, leaving 150,000 people without running water in the wealthiest country on earth—even as Jackson sits on the Ross Barnett Reservoir, the largest source of drinking water in the state. The crisis was years in the making: A \$90 million deal with Siemens produced a failed billing system and \$43 million in unpaid bills; a \$109 million contract with Veolia saw the company dump 4 billion gallons of wastewater into the Pearl River in violation of the Clean Water Act; and a decade of criminal neglect by local, state and federal governments left antiquated infrastructure to rot.

The Fifth Circuit's ruling is reactionary not merely in its outcome but in its reasoning. Judge Engelhardt concedes that the residents have invoked a right to "bodily integrity" but declares that this right "applies in instances like sexual assault by a police officer and forced medication of prisoners," while "mismanagement of a water system" is "wholly different." This is the logic of a court that can conceive of the state harming an individual body but cannot conceive of the state poisoning an entire city.

The dissenting judge, Catharina Haynes, noted that the residents' allegations "mirror in various ways one of the worst public health crises in recent American history—the Flint water crisis"—and observed that the

Fifth Circuit “stands practically alone” in its refusal to even rule on the “state-created danger” doctrine. Her dissent, joined by four liberal appointees, is a reminder that the Democrats offer no fundamental alternative. Their objection is procedural, not principled.

The reference to Flint is unavoidable, and it indicts the entire political establishment. In 2014, officials in Flint, Michigan, switched the city’s water supply to the polluted Flint River to save \$5 million. The acidic river water corroded the city’s lead pipes and poisoned tens of thousands of residents, with children suffering permanent brain damage. At least 10 people died in a Legionnaires’ disease outbreak. Emails later revealed that Governor Rick Snyder’s administration knew of the poisonings and covered them up, dismissing the issue as a “political football.” The Obama administration’s EPA refused for months to respond to tests showing elevated lead. As the WSWS explained at the time, the catastrophe was the outcome of the emergency-manager model—the unelected dictatorship imposed on Michigan cities to restructure them in the interests of Wall Street—which Obama himself promoted.

The Fifth Circuit’s decision is the judicial expression of the contempt for public health that is the hallmark of the Trump administration. It is the same contempt that has sought to dismantle the EPA’s regulatory authority, that has slashed funding for public health agencies and that treats the poisoning of working class communities as a cost of doing business. The ruling does not merely reflect this contempt. It constitutionalizes it, enshrining in legal doctrine the principle that the state owes the population nothing.

The ruling class’s view of water was given its most candid expression years ago by Peter Brabeck Letmathe, then the chairman of Nestlé, who declared that water is a “human right” only up to roughly 25 liters per person per day—enough for drinking and minimal hygiene—but “not a human right” for washing cars, watering gardens or filling swimming pools. This is the ideology of a class that weighs every liter of water against a balance sheet. And it is being implemented in practice. Across the United States, data centers are being offered municipal potable drinking water for their cooling systems, while residents of myriad cities endure boil-water notices, lead pipes, bursting mains and collapsing infrastructure. The

indictment is of capitalism itself.

A system that subordinates all social life to private profit cannot provide clean water, because clean water for all is not profitable. The same ruling class that pours tens of billions of dollars into the proxy war against Russia in Ukraine, that hands trillions to Wall Street at the first sign of trouble, cannot find the funds to replace lead pipes in Jackson or Flint. The courts, the legislatures, and the executives of both parties exist to enforce this order. The right to clean water will never be granted by the Fifth Circuit, by the Trump administration or by any representative of the capitalist social order. It can only be won by the working class, through the socialist reorganization of society to meet human needs rather than private profit.



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