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- Divided Supreme Court Rules on Wetlands Law**
- Listen** by Nina Totenberg
- Read the Court's Decision**
- In *Rapanos v. United States*, the Supreme Court voided rulings against Keith Carabell and John Rapanos, who wanted to fill wetlands they owned near Lake St. Clair in Macomb County, Mich. Carabell wanted to build condos on wetlands his late wife owned about a mile from the lake. Rapanos wanted to put a shopping mall on his property, which is about 20 miles from the lake.
- ['Rapanos v. United States'](#)
- All *Things Considered*, June 19, 2006 · The U.S. Supreme Court rules that regulators may have misinterpreted the federal Clean Water Act when they refused to allow two Michigan property owners to build on wetlands they own. The 5-4 split decision came after debate over whether government can extend protections for wetlands miles away from waterways.
- Before the court was a challenge to the way the federal government, in concert with the states, regulates the nation's wetlands under the Clean Water Act. The law, enacted in 1972, is widely credited with cleaning up and preserving the nation's waterways. But it has been a thorn in the side of developers and some property owners because it requires them to get a permit for filling and dredging wetlands that empty into navigable waters and their tributaries.
- Although 97 percent of permit applications are granted, the process can be cumbersome and expensive. The case ruled on by the court was brought by a Michigan developer named John Paranos, who wanted to build a shopping center and housing development on 700 acres of heavily forested wetland.
- The court fell one vote short of gutting the Clean Water Act as it has been implemented for the past 30 years. Justice Antonin Scalia, writing for himself and Justices Thomas, Alito, and Chief Justice Roberts, said the law only authorizes the federal government to regulate permanent, standing, and continuously flowing bodies of water.
- Scalia said the rule targets rivers, lakes, oceans and streams. Tributaries to those bodies of water are only covered by the law,

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he said, if they are adjacent, meaning that there is a continuous surface connection to the permanent navigable waterway. And that makes it difficult to determine where the water ends and the wetland begins.

Justices Stevens, Souter, Ginsburg, and Breyer argued that enforcement efforts of the past 30 years, led by the Environmental Protection Agency and the Army Corps of Engineers, has proven that Congress got what it wanted.

Facing a 4-4 split, the deciding vote belonged to Justice Anthony Kennedy, whose solo opinion will likely dictate the law of the land -- at least for now. Kennedy wrote that the Clean Water Act was intended to restore and maintain the chemical, physical, and biological integrity of the nation's waters, and that could not be done under the Scalia requirements.

But Kennedy voted with the Scalia group on one important point: sending the case back to the lower courts. Legal experts say the ruling, hinging on Kennedy's interpretation, means that while the analysis of wetlands rules will include the broader idea of pollution, not just navigable water, the challenges will also be evaluated on a case-by-case basis.

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