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At Issue

Rescuing Liberty



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Rapanos: A Victory for Property Rights and Limited Government

The Challenge Now Is to Build on This Latest PLF Win at the Supreme Court

Over the past two decades, the major victories for property rights in the United States Supreme Court have been Pacific Legal Foundation cases. In these rulings, the Court has slapped down overreaching regulators and affirmed the liberties that the Founders intended. The names of these landmark PLF cases are known to every law student and every informed citizen who reveres constitutional protections for private property: *Nollan v. California Coastal Commission*, *Suitum v. Tahoe Regional Agency*, and *Palazollo v. Rhode Island*.

To this honor roll, a new name has now been added: *Rapanos v. United States*. On June 19, the Supreme Court gave PLF, and the cause of limited government, a solid victory, and handed arrogant bureaucrats at the Army Corps of Engineers “another defeat,” as Chief Justice John Roberts wrote. The Court voted 5-4 in favor of PLF client, John Rapanos, who had been bullied for years by the Corps.

The case isn't over—it goes back to the lower courts to reconsider the facts. But the burden has now been placed on the Corps to prove it has jurisdiction. That's a tall order, because Rapanos' property isn't anywhere near a river, lake, or ocean. Lake Huron, the closest body of water on which a boat will float, is 20 miles away.

The Court demanded that, from now on, the feds must show a “substantial” connection between any property that they propose to regulate, and a “navigable” water. In short, five members of the Court found that the Corps was out of control when it insisted on dictating to Mr. Rapanos.

In *Rapanos*, the Court has formally rejected efforts to turn the Clean Water Act into a license for federal micromanaging of practically all private property, anywhere. This result is big—a major triumph for property rights and limited government. Some supporters of unrestrained federal power have tried to spin it differently—as a nonevent, an ambiguous decision, even a win for the government. But none of that squares with what actually happened: The appellate ruling that had gone against Mr. Rapanos—the ruling that accepted the Corps' “boundless view of . . . its power” (as Chief Justice Roberts put it)—was overturned. The *Washington Post's* front-page headline got things right: “Justices Rein In Clean Water Act.”

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However, although PLF and property rights were the winners, *Rapanos* marks the start, not the conclusion, of the battle. The decision gives litigators for limited government the commanding strategic ground, but we must now seize that advantage and press forward.

Already, PLF is planning a post-*Rapanos* courtroom campaign. The Supreme Court has said that Clean Water Act authority extends only to water and land that have a “substantial” connection to a navigable river, lake, or ocean. We must define the scope of the term, “substantial.” As Chief Justice Roberts noted in his concurring opinion, the meaning of this test will emerge “case-by-case,” through a series of courtroom encounters between regulators and the regulated.

PLF intends to be at the center of that process—in fact, we will *drive that process* by launching lawsuits that will strictly limit federal power and vindicate the principle that zoning and land use should be left to state and local officials, not bureaucrats from distant Washington, D.C.

The *Rapanos* decision was a stinging setback for advocates of big government, but freedom’s friends must act quickly and intelligently to build on that victory.

Celebration is in order. But PLF needs your help as we immediately launch ***Beyond Rapanos; Charting a Course to Liberty***, a litigation strategy that will deliver legal victories in the “case-by-case” campaign charted for PLF by no less than Chief Justice Roberts. Your gift, above and beyond your generous annual support of PLF, is essential to create the war chest we will need to face down the Corps of Engineers and the Environmental Protection Agency, two of the most powerful federal agencies. *Rapanos* offers a great opportunity to advance freedom—now we must embrace it, build on it, apply it, and ensure its status as a legal landmark for liberty.

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