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## Defending Local Waters

The U.S. Supreme Court has ruled that the 1972 Clean Water Act does not give local authorities the power to regulate isolated waters. Though the ruling has come up from some environmentalists, it is a small — yet significant — victory for the principle of local control.

The high court's decision comes at a particularly fortuitous time for Michigan, as its wetland program is under scrutiny by the Environmental Protection Agency (EPA). The agency is attempting to determine, among other things, whether the state awards adequate protections to remote wetlands. Should the EPA decide that it does not, Michigan will be forced to forfeit control over the program.

The Supreme Court ruling stemmed from an Illinois case in which a coalition of Chicago-area municipalities sued the Army Corps of Engineers for refusing to grant a permit to convert an abandoned gravel pit into a landfill. The corps argued that water deposited in the pit from winter snow and spring rain had made it home to migratory birds and therefore off-limits to other uses under the 1972 Clean Water Act.

The municipalities, however, disputed the corps' jurisdiction over the pit. (The Army Corps and the EPA are the two main federal agencies entrusted with protecting the nation's waterways.)

The court agreed 5-4 with the municipalities.

The Clean Water Act's regulatory authority stems from that part of the U.S. Constitution that grants Congress the power to oversee interstate commerce. As such, its purview is limited mostly to large or navigable bodies of water, the court ruled.

To be sure, the high court acknowledged that in previous decisions it had allowed waters abutting or hydrologically connected to navigable bodies to be covered by the act. But to extend the act further to permit "federal jurisdiction over ponds and mud flats would result in a significant impingement of the states' traditional and primary power over land and water use." This would raise a host of constitutional issues — indeed, cast doubt on the very constitutionality of the act — which nothing in the language of the legislation suggests that Congress intended to do.

The ruling is likely to offer Michigan's wetlands program some protection from federal interference. According to Michigan Department of Environmental Quality (DEQ) Director Richard Powers, the EPA's review was motivated by concerns that Michigan law t

narrow a view of the interstate commerce clause and prevented the state program from affording the same protection to remote water bodies as the federal program. But if the ruling indicates, EPA regulations are overly ambitious, they can hardly be the basis for a federal takeover of the Michigan program.

Nor is there any reason to fear that protecting Michigan and other states from overzealous federal regulators would damage the nation's wetlands. A 1997 study by the Competitive Enterprise Institute, a free-market think tank, found that wetland loss dropped in recent years, not due to federal regulations but increases in agricultural productivity.

The Supreme Court ruling is a victory for both local control and the environment.

### **The Issue**

How far should the federal government's authority reach in regulating in-land bodies of water?

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