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Supreme Court split on Rapanos decision

Daily News staff and The Associated Press, Midland Daily News
06/19/2006

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The U.S. Supreme Court ruled 5-4 today that regulators might have misinterpreted the federal Clean Water Act in refusing to allow Midlander John Rapanos to build a shopping mall and another Michigan property owner to build condos on separate wetlands they own.

At the same time, justices could not reach a consensus on whether government wetlands protections extended miles away from waterways.

The decision is the first significant environmental ruling for the high court headed by new Chief Justice John Roberts and justices were so fractured that the main opinion only had the votes of four justices.

Roberts, one of those four, said that the result was so confusing that "lower courts and regulated entities will now have to feel their way on a case-by-case basis."

The court heard oral arguments on Feb. 21 in an 80-minute question-and-answer session. Attorneys for Rapanos and a Montcalm County developer told the nine justices that the federal government overstepped its authority under the Clean Water Act.

The court voided rulings against June Carabell and John Rapanos, who wanted to fill their wetlands near Lake St. Clair in Montcalm County. Carabell wanted to build condos on wetlands she 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.

Instead of ruling in the property owners' favor, as they requested, justices said lower courts must reconsider whether ditches and drains near wetlands are waters.

The court's four most conservative members wanted a more sweeping ruling, clearing the way for development of land unless it was directly connected to waterways. The court's four most liberal members said that such a ruling would reject three decades of practice by the Army Corps of Engineers and threaten the environment.

In the middle was Justice Anthony M. Kennedy.

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