



**For Immediate Release**

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**WLF URGES SUPREME COURT TO LIMIT  
FEDERAL JURISDICTION OVER  
ISOLATED WETLANDS**  
*(Rapanos v. United States)*

The Washington Legal Foundation (WLF) filed a brief last week in the United States Supreme Court urging it to reject the federal government's claim that it has regulatory authority under the Clean Water Act over isolated "wetlands" located over 20 miles away from any navigable waterway. The case presents the Court with an opportunity to rein in federal regulators who have seemingly ignored the Court's ruling four years ago that Congress intended the Clean Water Act's jurisdiction to extend only over wetlands that are adjacent to waterways that are navigable, and not over isolated wetlands that are otherwise subject to local control.

In *Rapanos v. United States*, the U.S. Army Corps of Engineers and prosecutors have spent the last decade relentlessly pursuing civil and criminal charges against John Rapanos, a small developer, for placing sand on his own property that the Corps deems to be federally regulated wetlands. The linchpin for the Corp's jurisdiction over the property was the fiction that the property was "adjacent" to a river over 20 miles away.

The court of appeals rejected that novel claim, but allowed the Corps to assert jurisdiction anyway on a more attenuated theory that somehow, the isolated wetlands (which are mostly dry) are "hydrologically connected" to the navigable river. In other words, the court held that eventually, all water drains into the rivers, and therefore, federal jurisdiction can be asserted over isolated wetlands. In the meantime, Mr. Rapanos was resentenced earlier this year by the district court judge to probation for his "crime," despite the Justice Department's vigorous efforts to send him to prison for a substantial term that was *longer* than what they wanted the judge to impose for a drug dealer who was an illegal alien. Incredibly, the prosecutor took issue with the judge's observation that only clean sand was put on the property, arguing that "sand is more toxic and destructive" to wetlands than toxic chemicals.

WLF clients include the Allied Educational Foundation and two environmental scientists, Laurence A. Peterson and Edmond C. Packee, Jr., of Travis/Peterson Environmental Consulting, Inc. of Alaska. WLF's brief was drafted *pro bono* by Mark A. Perry, a partner with Gibson, Dunn & Crutcher, LLP, in Washington, D.C. The case will be heard on February 21, 2006.

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