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## THE Buzz FLORIDA POLITICS

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June 17, 2010

### Both sides find something to like about Supreme Court decision on Florida beach

By a unanimous, 8-0 margin, the Supreme Court today decided a complicated case involving renourishment of a Florida beach, drawing close scrutiny from legal scholars and providing both left and right with something to cheer.

In the case, Stop the Beach Renourishment v. Florida Department of Environmental Protection, the court sided with a Florida Supreme Court ruling that a group of property owners in the Florida Panhandle had no right to expect compensation after a government-funded project added sand to beaches, blocking their property's access to the water.

Though the case turned on complex facets of Florida law, court-watchers said the decision will help shape a long-running battle between conservatives and liberals. On one side are those who want to expand the government's responsibility for compensating property owners who are adversely affected by government actions, or "takings." On the other are those who believe that doing so would adversely impact the government's ability to do things like protecting the environment.

Property-rights advocates, including many conservatives, were eager to use the Florida case as a precedent for compensating property owners hurt by a type of "taking" that had not been eligible for compensation before -- one prompted by judicial action, rather than actions by the legislative or the executive branch.

Associate Justice Antonin Scalia, who authored the ruling, said that in a takings case, "the particular state actor is irrelevant. If a legislature or a court declares that what was once an established right of private property no longer exists, it has taken that property, no less than if the state had physically appropriated it or destroyed its value by regulation."

But Scalia was unable to persuade a majority of the court to go that far. Three other justices -- conservatives John Roberts, Samuel Alito and Clarence Thomas -- joined Scalia on that point, while the rest of the justices joined in a web of concurring opinions that agreed on the final ruling but not every argument. Retiring Justice John Paul Stevens sat out the case, presumably because he owns beach property in Florida and as a result could have faced a conflict of interest.

"While the vote on the court was a close, it represents a significant defeat for the activist wing of the Supreme Court that seeks to develop a more expansive property rights doctrine," said John Echeverria, a Vermont Law School professor who specializes in property rights issues. "The decision also represents an important victory for community-based democracy over narrow special interests represented by the small majority of property owners who

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sought to challenge this project under the U.S. Constitution."

But Ilya Shapiro, a senior fellow in constitutional studies at the libertarian Cato Institute in Washington, D.C., said that the unanimous decision hinged on some fairly narrow points of Florida law, and that the more expansive vision outlined by Scalia is ready to be picked up by a future Supreme Court.

"It's the most positive unanimous decision against me that I've ever seen," Shapiro said. "The party in the case obviously lost, but there's a lot of great language in the decision supporting the idea of judicial takings."

Shapiro said that none of the four justices who decided against joining Scalia's call for a new judicial takings doctrine laid down a firm line against the idea, with Breyer and Ginsburg arguing mainly that there was no need to decide that larger issue in the current case.

It's unclear how soon Scalia and his allies will have another opportunity to press their cause. Dwight Merriam, a Hartford, Conn.-based attorney who specializes in land-use cases, said that based on past patterns of the Supreme Court, he doesn't think the justices will rush to take up another judicial takings any time soon.

"Scalia had his chance," Merriam said. "I think issue is done for time being."

For local reaction, read the St. Petersburg Times story [here](#).

Posted by Louis Jacobson at 08:44:14 PM on June 17, 2010 in [Current Affairs](#) , [Environment](#) | [Permalink](#)

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