“Do Nothing” Congress Adjoins With Key Bills Unfinished

Congress adjourned on December 8, after a one-week lame-duck session during which little of significance was accomplished. Immediately after the elections, the Republican leadership had signaled their intent to pass several appropriations bills and vote on a few significant pieces of legislation during the lame-duck session, but this plan was squashed when several defeated incumbents indicated that they didn't feel right taking up an ambitious agenda upon their return to Washington.

As a result, much of the federal government is funded under a continuing resolution, which maintains appropriations levels from FY 2006. Only the appropriations bills for the Departments of Defense and Homeland Security have been completed. The continuing resolution, which runs through February, has a negative impact on most agencies, especially those such as the National Science Foundation which are potentially slated for significant budgetary increases. Democrats are still trying to decide when in the new year they want to tackle the funding bills and they may also look to make any increases retroactive to the beginning of FY 2007.

One bill of interest that saw no action during the lame-duck session but is likely to be brought up again once the new Congress convenes is a measure that would grant voting privileges to Eleanor Holmes Norton (D), the delegate from the District of Columbia. Currently, Norton may vote in committees and may address the full House, but she has no floor vote. As the District is overwhelmingly Democratic, the bill would also assign an additional House seat to heavily-Republican Utah, which would in effect maintain the partisan balance in the House. If the bill is eventually signed into law, the AAG would be able to work through Delegate Norton’s office as our “home-state” representative. Stay tuned for future developments on this legislation.

Meanwhile, House Speaker-designate Nancy Pelosi (D-CA) and Senate Majority Leader-designate Harry Reid (D-NV) have indicated that the 110th Congress will open for business on January 4. During simultaneous sessions that day, the entire new House and the thirty-third re-elected and newly-elected Senators will be sworn into office. Pelosi and Reid have indicated that one of their immediate priorities is an increase in the federal minimum wage, which has been frozen in place for nearly a decade. It will be interesting to watch changes in Congress unfold as the Democrats return to power in both chambers for the first time since 1995.

Clouded Supreme Court Wetlands Decision Necessitates Geographic Research

On June 19, the U.S. Supreme Court decided two cases, *Rapanos v. U.S.* and *Carbell v. U.S. Army Corps of Engineers* (hereinafter *Rapanos*), addressing when a wetland falls under federal jurisdiction. Geographers should be aware of how their research might inform the vital issues raised by these cases, as *Rapanos* lies at the nexus of research and environmental policy.

Regulation of rivers and wetlands falls under the 1899 Rivers and Harbors Act and the 1972 Clean Water Act, and hinges on the ambiguous geographic terms “navigable waters,” and “waters of the U.S.” This vague terminology, undefined in statute, has led to multiple Supreme Court cases. In the 1985 unanimous decision in *Riverside Bayview*, the Court affirmed federal jurisdiction over wetlands adjacent to navigable waters, but did not define the spatial limits to such waters. In the 2001 5-4 SWANCC decision, the court rejected federal jurisdiction over hydrologically isolated wetlands and tributaries of navigable waters.

*Rapanos* took up the issue of defining this nexus through the question: “what is a tributary of navigable water?” The Solicitor General suggested that “a tributary is basically any channelized body of water that takes water in a flow down to the traditional navigable water.” A deeply split 4-1-4 decision remanded *Rapanos* to the lower court, with Kennedy's solo opinion considered by most experts to be the holding of the court. Scalia's opinion, the plurality since Kennedy agreed on the issue of remand, was that waters of the United States were “water found in bodies forming geographical features,” including only “relatively permanent standing or flowing bodies of water.” The dissent urged continuation of the current regulatory jurisdiction.

Kennedy's opinion echoed SWANCC on the necessity of a “significant nexus,” but differed sharply from Scalia on the definition of “nexus.” To Kennedy, a nexus exists if the wetlands, either alone or in combination with similarly situated lands in the region, “significantly affect” the chemical, physical, and biological integrity of other navigable waters. This imposes a test which could hinge on the work of geographers in the field.

Kennedy’s approach is complicated and novel, and it is not at all clear how it will be implemented by the government. A critical window has opened for scientific input in this arena of environmental policy. Because the court was so split, no one version of nexus may achieve stability, and the issue will likely be in flux and able to be influenced by scientists over the coming years. Geographers are well-positioned to contribute to these debates by exploring existing types and distributions of tributaries and wetlands, their spatial configurations on the landscape, and which types of cumulations or spatial organizations increase the connection between wetlands, tributaries, and downstream waters.

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Thanks to Martin Doyle, University of North Carolina, and Morgan Robertson, U.S. Environmental Protection Agency, for contributing this piece. You can contact Professor Doyle at mwdoule@email.unc.edu for additional insight on the Rapanos decision and its repercussions.