

# *A String of Supreme Court Decisions Hits Hard at Environmental Rules*

Four cases backed by conservative activists in recent years have combined to diminish the power of the Environmental Protection Agency.

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By Coral Davenport

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A spate of decisions over the past two years by the Supreme Court has significantly impaired the Environmental Protection Agency's authority to limit pollution in the air and water, regulate the use of toxic chemicals and reduce the greenhouse gasses that are heating the planet.

This term, the court's conservative supermajority handed down several rulings that chip away at the power of many federal agencies.

But the environmental agency has been under particular fire, the result of a series of cases brought since 2022 by conservative activists who say that E.P.A. regulations have driven up costs for industries ranging from electric utilities to home building. Those arguments have resonated among justices skeptical of government regulation.

On Friday, the court ended the use of what is known as the Chevron doctrine, a cornerstone of administrative law for 40 years that said that courts should defer to government agencies to interpret unclear laws. That decision threatens the authority of many federal agencies to regulate the environment and also health care, workplace safety, telecommunications, the financial sector and more.

But more remarkable have been several decisions by the court to intervene to stop environmental regulations before they were decided by lower courts or even before they were implemented by the executive branch.

On Thursday, the court said the E.P.A. could not limit smokestack pollution that blows across state borders under a measure known as the "good neighbor rule." In that case, the court took the surprising step of weighing in while litigation was still pending at the

United States Court of Appeals for the District of Columbia Circuit.

The court also acted in an unusually preliminary fashion last year when it struck down a proposed E.P.A. rule known as Waters of the United States that was designed to protect millions of acres of wetlands from pollution, acting before the regulation had even been made final.

Similarly, in a 2022 challenge to an E.P.A. climate proposal known as the Clean Power Plan, the court sharply limited the agency's ability to regulate greenhouse gas emissions from power plants, even though that rule had not yet taken effect.

That kind of intervention has little in the way of precedent. Usually, the Supreme Court is the last venue to hear a case, after arguments have been made and opinions have been rendered by lower courts.

“This court has shown an interest in making law in this area and not having the patience to wait for the cases to first come up through the courts,” said Kevin Minoli, a lawyer who worked in the E.P.A.'s office of general counsel from the Clinton through the Trump administrations. “They've been aggressive on ruling. It's like, we're going to tell you the answer before you even ask the question.”



Recently, the Supreme Court has intervened to stop environmental regulations before they were tested in lower courts. Eric Lee/The New York Times

Collectively, those decisions now endanger not only many existing environmental rules, but may prevent future administrations from writing new ones, experts say.

“These are among the worst environmental law rulings that the Supreme Court will ever issue,” said Ian Fein, a senior attorney with the Natural Resources Defense Council, an advocacy group. “They all cut sharply against the federal government’s ability to enforce laws that protect us from polluters.”

The march of environmental cases is not over: The court has agreed to hear a case next term that could limit the reach of National Environmental Policy Act, the 1970 law that requires federal agencies to analyze whether their proposed projects have environmental consequences. Businesses and industries have long complained that the reviews can take years, inflate costs and be used by community groups to block projects.

For a coalition of industries, conservative advocacy groups and Republican attorneys general and their campaign donors, the recent decisions are a victory in a multiyear strategy to use the judicial system to influence environmental policy.

Many of the petitioners on the cases overlap, including the Republican attorneys general from at least 18 states, the National Mining Association, the American Petroleum Institute and the U.S. Chamber of Commerce.

The lead plaintiff on last year’s wetlands protection case, the Pacific Legal Foundation, is part of the network of conservative research organizations that has received funding from the billionaire Charles Koch, who is chairman of the petrochemical company Koch Industries and a champion of anti-regulatory causes.

“You see much more coordination now than you used to, coalitions of states and trade groups to change administrative law,” said Damien M. Schiff, a lawyer with the Pacific Legal Foundation. “Trade groups, the chamber, P.L.F., we very consciously take cases that we hope will win in a precedent-setting way. The strategy, the tactics are the same. It’s coordinated internally.”

The Supreme Court has “shown a greater willingness to exercise its authority earlier in the litigation process,” Mr. Schiff said.

The plaintiffs are also strategizing for the future.

President Biden has pledged that the United States will cut its carbon dioxide pollution in half by 2030 and eliminate it by 2050, which scientists say all major economies must do if the world is to avoid the most deadly and costly impacts of climate change. This year, the E.P.A. has rushed to finalize new rules to slash pollution from cars, trucks, power plants

and methane leaks from oil and gas wells.

If he wins a second term, Mr. Biden wants to cut emissions from steel, cement and other heavy industries that have never been required to reduce their planet-warming emissions.

But the string of recent losses before the Supreme Court could make it difficult for the E.P.A. to follow through on those plans.

“There has been a steady erosion of environmental law,” said Patrick Parenteau, an expert on environmental law at Vermont Law School. “These decisions mean that Biden, if he gets a second term, is not going to be able to do much else on the environment, particularly on climate.”



Coal ash at a retention pond in Dumfries, Va., in 2015. Research has shown that the court’s decision would make major river basins vulnerable to pollution. Steve Helber/Associated Press

Christine Todd Whitman, a onetime Republican and former governor of New Jersey who served as the administrator of the E.P.A. during the George W. Bush administration, said that environmental regulations sometimes could go too far and needed to be tempered by courts. But she said she saw the Supreme Court’s recent decisions as an alarming new precedent.

“What this activist conservative court is now doing, which really upsets me, is trying to



implement a political agenda,” Ms. Whitman said. “They are looking for an opportunity to make a statement. And it circumvents and undermines the agencies. It’s as if they take the attitude that all regulations are bad and we’re going to stop them all before they go too far.”

That will have harmful consequences, she said.

“If you don’t have clean air to breathe and water to drink it’s going to cost a lot,” Ms. Whitman said. “This is putting a lot of people’s lives in jeopardy.”

For example, the court’s decision to curtail the E.P.A.’s authority to regulate wetlands and so-called ephemeral streams means that about half the nation’s wetlands could be polluted or paved without federal penalty, potentially harming thousands of species of plants and animals. In addition, new research has shown that the court’s decision also makes major American river basins vulnerable to pollution.

Carrie Severino, president of the Judicial Crisis Network, said in a statement that the legal decisions properly shift authority over decisions with great economic impact from the executive to the legislative branch.

“For too long, unaccountable bureaucrats in D.C. have been imposing destructive regulations that harm farmers, fishermen, and countless small business owners who are already struggling to survive in our global economy, and the Supreme Court has an opportunity to restore accountability to that process by putting power back in the hands of Congress where it belongs,” she said.

On that last point, environmentalists and conservatives say they agree: If the federal government wants to protect the environment, Congress should update existing laws and pass new legislation.

The nation’s bedrock environmental laws, the Clean Air Act and the Clean Water Act, were both written more than 50 years ago, before the effects of climate change and a global economy that has reshaped the environmental and economic landscape.

Since then, Congress has passed one major law to address climate change, the 2022 Inflation Reduction Act. It includes more than \$370 billion in incentives for clean energy technologies, including wind and solar power and electric vehicles. Climate experts call it a strong first step in cutting the nation’s emissions, but say that far more is needed to eliminate them entirely in the next 25 years.

“The agencies for more than 30 years have needed to use old, existing laws to deal with new environmental problems,” said Michael Gerrard, director of the Sabin Center for

Climate Change Law at Columbia University. “And this new court is now making that extraordinarily difficult. Unless Congress is extremely specific, agencies can’t act. But since Congress is largely immobilized, this in turn freezes what they can do.”

**Coral Davenport** covers energy and environment policy, with a focus on climate change, for The Times. More about Coral Davenport

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