ENVIRONMENTAL LAW AND REGRESSION UNDER THE ROBERTS COURT

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Abstract

Environmental law in the United States only gained prominence in the 1970s, but three eras of the Supreme Court have examined and undertaken cases on it. This thesis will examine the differences in how the previous two Supreme Courts have ruled on cases involving environmental law in comparison to the current Roberts Court. The cases under study have relatively similar backgrounds, with most involving one of several environmental laws passed in the 1970s or affecting their application. The first part of the thesis introduces the history of environmental legislation, noting key moments that inspired Congress to pass these laws. The second section assesses the cases of both the Burger Court and the Rehnquist Court and provides commentary on the precedent that both eras attempted to establish for environmental law. The third section details how the Roberts Court ruled in environmental cases until the present day, specifically studying which decisions led to the overturning of precedents set by prior Supreme Courts. Lastly, the fourth section assesses how the Roberts Court differs in ruling and what precedents it is attempting to set through a comparison of the key decisions in environmental law throughout the decades, especially as it relates to federal agencies.

Environmental law gained prominence in the late 1960s to the early 1970s with a flurry of legislation passed by Congress. Various high-profile events sparked various movements and outrage, culminating in what is termed the "golden age" of environmental law (Klyza & Sousa, 2010). Rachel Carson's *Silent Spring* and the 1969 Santa Barbara oil spill are such examples, as they propelled environmental awareness in the 1960s. These laws created regulations, agencies, and resolutions to combat pollution and preserve the environment. With such change, there were challenges to most of the acts passed, and each of these came shortly after enactment. Some of the challenges were brought on by those testing the application of the laws to different industries. For example, the National Environmental Policy Act of 1970 requires an environmental impact statement to be created for major federal actions. However, the scope of this was tested through different agencies, like the Interstate Commerce Commission or the Department of Housing and Urban Development, which oversee different industries. Others were pushback from corporations and government entities that sought to limit the regulatory bodies. Almost every challenge of environmental law is against the Environmental Protection Agency's enforcement of such law. The agency sets regulations and guidelines for industries that must be followed, such as a ban on certain emissions, like mercury. All of these challenges resulted in cases that the Supreme Court must solve, as some of the ideas incorporated into the environmental statutes were used in ways that could define the rest of the government or market *(Chevron U.S.A. v. National Resources Defense Council,* 1984; Lazarus, 2001; Klyza & Sousa, 2010; *Michigan v. Environmental Protection Agency*, 2015; *Loper Bright Enterprises v. Raimondo*, 2024; *City and County of San Francisco v. Environmental Protection Agency,* 2025).

Environmental regulations, with the support of the Supreme Court, contributed to the creation of the administrative state (*Chevron U.S.A. v. National Resources Defense Council,* 1984; Lazarus, 2001; Klyza & Sousa, 2010). The Administrative Procedure Act of 1946 gave regulatory agencies the authority to interpret unclear statutes. This was upheld in *Chevron U.S.A. v. National Resources Defense Council* (1984), which established the "Chevron Doctrine," solidifying the ability of regulatory agencies to interpret vague administrative laws. Agency power grew significantly with interpretations by the Supreme Court, allowing more regulations and measures to be implemented. Generally, courts would side with the agency after the *Chevron* ruling when interpreting the statutes. This progress of the administrative state and environmental regulations began to slow with the Rehnquist Court, resulting in more questions about the *Chevron* doctrine and discretion given to agencies. Additionally, further questions and interpretations of how far regulations should go were voiced to counter increasingly stricter regulations initiated by the Environmental Protection Agency. Currently, the Roberts Court has instituted the rollback of governmental powers regarding environmental protections (Howe, 2024).

With the reelection of former president Donald Trump, the composition of the Supreme Court is likely to stay the same, if not shift to be more right-leaning (Dorman, 2024). As such, it is important to analyze how the Supreme Court has ruled on similar issues and to compare it with the current Supreme Court. An analysis of prior laws and regulations can also help to predict how future issues will be resolved, especially as a new administration, which is less environmentally concerned, takes charge. (McDermott & Daly, 2024). In addition, a comprehensive review of past Supreme Courts and the current one will lend some insight into

the progression and regression of environmental law. As time has passed, the state of environmental regulations and statutes has changed, as has the attitude of the Supreme Court.

Lastly, the opinion of the public is important to gauge from these various rulings. The environment is something that everyone must share, regardless of where they are in the United States. Moreover, regulations, legislation, and rulings have widespread impacts that go beyond the parties involved. Industries, individuals, health, markets, and other areas are all impacted by these.

Each era of the Supreme Court is defined in a manner that creates a legacy; for example, a Court may be remembered as supporting business interests, while another Court may be remembered for supporting individual liberties. Equally important is the legacy and impacts of the legislation, rulings, and regulations regarding the environment. As such, this thesis examines the history of environmental legislation and the role of the Supreme Court in addressing this legislation, both before and during the Roberts era. This thesis also examines the impacts of these rulings on wider society and what the future of environmental legislation may hold.

History of Environmental Legislation

Before the 1890s, there were few laws or rulings resembling anything that is in effect today (Hankey, 1980). One of the first rulings regarding the environment was *Willson v. Black Bird Creek Marsh Company* (1829). The state of Delaware had previously authorized the construction of a dam that ran across Blackbird Creek. Black Bird Creek Marsh Company had won the contract and fully finished constructing the dam until Willson, steering a boat, ran into the dam, causing some amount of damage. As a result, Black Bird Creek Marsh Company sued Willson for trespassing and the damages that he caused. However, Willson brought the suit to the Supreme Court, claiming that the state of Delaware did not have the constitutional power to

authorize the construction of a dam. By doing so, Willson claimed that Delaware had infringed upon the powers of Congress under the Commerce Clause. In 1829, the Supreme Court ruled against Willson, stating that Delaware had the power to build a dam, as states can regulate within their jurisdiction if it does not conflict with congressional powers granted by the Constitution. Additionally, states have the power to regulate the health of local communities involving waterways even with the strong interest in doing so from the federal government. Had the construction violated an act of Congress or involved commerce with other states, the decision may have gone the other way. While not legislation, it allows some autonomy over the waterways that flow through their state.

It would not be for another seventy years that environmental legislation would begin to be passed in the United States with the Rivers and Harbors Act of 1899 (Hankey, 1980). Before the Rivers and Harbors Act of 1890 and its subsequent amendments of 1899, private citizens had almost no restrictions in place regarding internal waterways. As a result, individuals dumped waste and built on these internal waterways with little to no regard for navigation. Congress had previously attempted to assume responsibility for navigable waters inside the United States, but the Supreme Court had rebuffed this in *Willamette Iron Bridge Co. v. Hatch* (1888). In this case, the federal government sought to remove state-approved bridges in Oregon. Through the Commerce Clause interpretation created by then-Chief Justice Marshall in *Gibbons v. Ogden* (1824), it was assumed that Congress had the power to regulate the navigable waters of the United States. However, in this case, it was ruled that states could regulate or build structures if there was an absence of legislation from Congress. It was stated that Congress must pass laws, such as federal regulations, against physical obstructions if Congress wished to regulate. With

the express absence of federal regulations, there could not be remedies available to Congress to control the navigation of the internal waterways (Willamette Iron Bridge Co. v. Hatch, 1888).

After several acts restricting private construction in waterways, Congress passed the Rivers and Harbors Act of 1890. This act explicitly prohibited the construction and placement of manmade structures not authorized by law. This act served as the foundation for future regulations (Hankey, 1980). First, criminal penalties were established for refusing to modify structures. Second, it was established that private citizens were prohibited from dumping trash into navigable waters. Third, approval requirements were created for the construction of various structures (Rivers and Harbors Appropriation Act, 1899). Lastly, it established approval powers for the Secretary of War position, meaning that these constructions had to be confirmed through an application process by the Secretary of War. This power was delegated by Congress with the 1890 Act. One exception at this time was waters only accessible in one state, such as a lake or similar body of water. However, it was often unclear what structures states had control over (Hankey, 1980). For example, a boat could travel on the over 2,000-mile-long Mississippi River without interference, but if it were to travel along an offshoot, it could not be guaranteed that there would not be any restrictions.

As a result of the Rivers and Harbors Act of 1899, key provisions granted more power to the federal government. One of these provisions was that the Army Corps of Engineers had authority over a specific type of obstruction, meaning that they had different responsibilities for different categories of obstructions. The 1890 Act gave the Army Corps of Engineers broad authority, which was often too unclear regarding where they actually had authority. Whether removal, editing, or other modification, the Army Corps of Engineers had a defined responsibility over obstructions with the passage of the amendments. It could not make

administrative decisions based on the unclear language of the 1890 Act. Another provision was that structures required approval from Congress, further expanding the power of the federal government. In the Rivers and Harbors Act of 1890, there was no requirement for congressional approval which bypassed their intent of controlling the interstate waterways. With this amendment, congressional approval is now required for bridges, dams, and dikes. The approval power that was formerly granted to the Secretary of War was now stripped, as it was unclear if Congress had the power to delegate this authority.However, not all power was stripped from the states; states controlled bridges over waterways as of the 1890 Act. This was expanded to dams and similar constructions in the 1899 Act.

The history of environmental legislation represents a shift of values from the initial rulings in the nineteenth century to the mid-twentieth century. As previously described, the rulings of *Willson v. Black Bird Creek Marsh Company* (1829) and *Willamette Iron Bridge Co. v. Hatch* (1888) were all attempts by Congress to assert control over the navigation of internal waterways. When it was established in *Willamette Iron Bridge Co. v. Hatch* (1888) that Congress must pass legislation if they wish to expressly control obstructions and other issues in waterways, they quickly passed the Rivers and Harbors Act of 1890 to do so. When there was confusion over responsibility, they amended the act with the Rivers and Harbors Act of 1899. The reasoning behind these decisions and laws was for the federal government to control interstate waterways through the Commerce Clause. Any environmental benefits, such as the prevention of dumping by private citizens and the limitation of new construction in waterways, were purely done for navigation purposes. This changed in the 20th century, as environmental awareness began to spread due to a multitude of factors.

Upon President McKinley's assassination in 1901 and Theodore Roosevelt's assumption of the presidency, attitudes toward the environment began to shift. Shortly after becoming president, Theodore Roosevelt signed the American Antiquities Act of 1906, which protected vast swaths of land across the United States, establishing national parks, monuments, and other forms of preservation (National Center for Cultural Resources, 2006). When compared to the Rivers and Harbors Acts of 1890 and 1899, the American Antiquities Act of 1906 was environmentally focused. This marked a turning point in environmental legislation, as future laws focused on preservation and regulation.

Other laws passed earlier in the 20th century established certain procedures regarding the environment. In 1906, with amendments in 1910, the General Dam Act was passed by Congress, giving more power to the federal government to regulate waterways. Under this act, dams for hydroelectric power must be approved by Congress; however, the government can rescind any contract for a dam at any time. The act, in its original intent, was meant to promote the building of dams, but the actual result was increased restrictions on construction (McFarland, 1966). Similar to the Rivers and Harbors Acts of 1890 and 1899, the General Dam Acts of 1906 and 1910 resulted in increased control over the navigability of interstate waterways.

Next, 1934 marked the next major piece of legislation being passed, with the Fish and Wildlife Coordination Act. This was enacted to protect various forms of wildlife when projects were discussed and created that affected bodies of water. Under the act, all federal agencies are required to consult with the Department of the Interior to determine potential impacts on fish and wildlife (Fish and Wildlife Coordination Act, 1934). It is not the first law to protect wildlife, but it represents a larger attempt at protecting the environment. Previous legislation, such as the Migratory Bird Treaty of 1918, protected some migratory birds, but this was a complete blanket

protection against any modification or projects that the federal government would undertake (U.S. Fish and Wildlife Service, 2016).

The 1960s featured increased awareness of environmental issues. Some high-profile examples are the publication of Rachel Carson's *Silent Spring* in 1962 and the 1969 Cuyahoga River Fire. *Silent Spring* is a book whose core premise is concerned with the poisoning of nature. It describes that if nature is poisoned, then humanity will be poisoned as well because humanity lives with nature. To showcase this effect, she highlighted pesticides and detailed how they eventually would move from insects to human children. The impact that *Silent Spring* had on American society cannot be understated; it immediately became a bestseller and ignited a conscious awareness of activities that could harm the environment. Scientists at the time already knew what Rachel Carson was writing about, yet the general public was unaware of the consequences of using pesticides on such a large level (Griswold, 2012). Shortly after the book's publication, Rachel Carson was called before the Senate Government Operations subcommittee to testify about chemicals and their use by the government. Although she refused to call for a ban on pesticides, she presented the subcommittee with various policy proposals to protect the natural environment. Later that same decade, the Cuyahoga River in Ohio would reportedly catch fire. It was reported across the country, and the public soon became outraged. This single event reached an almost mythological status, with various speculative causes being attributed to it at once (Adler, 2002). It was believed at the time that the neglect by the community had led to such great pollution that the river caught fire. It was speculated that states and local governments could not be trusted to handle pollution on their own, and the federal government was needed to regulate. Scientists now believe that the dumping of flammable materials into the river at various points caused it. However, this single fire was not the sole exception, as other bodies of water

throughout the United States were prone to catching fire as well (Adler, 2002). In combination with *Silent Spring*, the 1969 Cuyahoga River Fire helped inspire the modern environmentalist movement, leading to a series of legislative acts being passed in the 1970s.

What followed in the 1970s is often referred to as the "golden age" of environmental legislation (Klyza & Sousa, 2010). These laws have been ingrained in the United States, and some argue that it would be nearly impossible to repeal or replace them without significant effort. In 1970, the National Environmental Policy Act was created to use Commerce Clause authority to provide broad powers for environmental policy. One of the key provisions is borrowed from the Fish and Wildlife Coordination Act, where federal agencies must provide an assessment of their proposed actions on the environment and allow for public input. It has become one of the most challenged laws regarding environmental legislation. Continuing, the Federal Water Pollution Control Act Amendments of 1972, otherwise known as the Clean Water Act, aims to protect the nation's water. Pollutants, dumping, health, cleanliness, and other provisions are all regulated by this act. Similarly, the Clean Air Act of 1963, with the 1970 and 1977 amendments, enforces the health of the air. Pollutants and emissions are regulated by the Environmental Protection Agency using this act. Furthermore, the Endangered Species Act Amendments of 1973 increased regulations on species at risk of being lost. More species were considered endangered, and the regulations targeted pesticide use that would directly harm certain species. A notable part of these laws is the nature of them, in that they are uncompromising and absolute. Each carries a mandate that agencies must follow, along with aspirational guidelines for future use. As noted by Lazarus (2001), some of these regulations were not based on economic feasibility nor were they based on current technology. Part of the goal was to establish new norms and force technological upgrades across various industries to

meet these norms. Some standards, especially those concerning air pollution, were strict in that they required a termination of an activity rather than transforming it into a more environmentally friendly practice.

After the release of *Silent Spring*, pesticide companies that produced DDT began to funnel money into Congress and various P.R. campaigns to discredit the book and the subsequent movement. Once the laws were passed in the 1970s, large companies, particularly those involved with natural resources, began to lobby Congress members for relaxation of these regulations and to generally oppose the creation of new laws. After the Republican Party won the general elections of 1980, 1984, 1988, 2000, and 2004, environmental statutes were regularly the subject of partisan attacks. However, those opposed to the regulations were unable to successfully repeal these acts, instead directing agencies to not enforce them as strictly. In 2009, the American Recovery and Reinvestment Act was passed, which featured provisions to help the United States economy. Within the act were funds meant to be dispersed for the encouragement of domestic renewable energy growth (U.S. Department of Energy, 2009). It does not contain new language changing the older laws; rather, it tries to reinforce the idea of renewable energy than force industries to comply with new regulations. The politicization of environmental laws has resulted in a split between liberals and conservatives, with conservatives continuing to attempt to repeal or lessen regulations set by these laws. However, it has proven difficult to challenge these laws or replace them, as they have been the industry standard for decades now.

The Role of Previous Supreme Courts in Deciding Environmental Legislation

In terms of general influence, the Burger Court represents the foundation for deciding environmental legislation cases. The Burger Court refers to when Chief Justice Warren Burger succeeded Chief Justice Earl Warren and was the Chief Justice from 1969 to 1986. When

compared to the Warren Court, the Burger Court is found to be an overall shift back to the right. Whereas the Warren Court is most noted for cases like *Brown v. Board of Education* (1954) or *Miranda v. Arizona* (1966) which expand the rights of individuals, the Burger Court is known for restricting these same rights. When President Nixon nominated Chief Justice Burger, it was in an attempt to stop what he and other conservatives deemed "judicial activism" that was present throughout the Warren Court era (Mason, 1974). That is not to say that all rights during the Burger Court were restrained, as showcased by the decisions in the environmental law cases. The following decisions were sometimes made to restrict agency and environmental legislation power at the time, but these powers would be expanded in the future using the reasoning of these cases.

The first challenge that the Burger Court heard was in response to the enactment of the National Environmental Policy Act (NEPA), in *Aberdeen and Rockfish Railroad Company v. SCRAP* (1972). In late 1971, railroad companies across the country proposed a 2.5 percent freight rate surcharge due to increasing costs and decreasing profits. This would be temporary, but there were plans for further rate increases. The Interstate Commerce Commission allowed the surcharge, and, in early 1972, it was in effect. However, a group of law students under Students Challenging Regulatory Agency Procedures (SCRAP), an environmental association, sued for an injunction under NEPA because the Interstate Commerce Commission did not create a suitable environmental impact statement. It was perceived by SCRAP that an injunction was necessary, as a higher surcharge on freight rates would impact the transportation of recyclable materials, and the Interstate Commerce Commission failed to notice this. The Court ruled that the Interstate Commerce Commission had researched the concerns that SCRAP emphasized. Additionally, the Court ruled that NEPA did not require an agency to hold further meetings to

account for an environmental impact statement unless it was part of an agency's usual proceedings. As such, the Interstate Commerce Commission did not need to prepare a new environmental impact statement as requested by SCRAP and the lower courts (*Aberdeen and Rockfish Railroad Company v. SCRAP*, 1972). While this decision may seem to rule against environmental protections, it is noteworthy that the grounds for agency independence are being set for future rulings.

In the following year, the Supreme Court decided *US v. SCRAP* (1973) and granted an extended definition of standing. With the same circumstances that created *Aberdeen and Rockfish Railroad Company v. SCRAP* (1972), the controversy in this case was over SCRAP's standing and the jurisdiction of the district court that ruled the Interstate Commerce Commission must create another environmental impact statement. Regarding the issue of standing, the Supreme Court ruled for SCRAP and determined that they had standing to sue. Normally, standing is determined by an injury that actually occurred and caused harm. However, the Supreme Court ruled that SCRAP had aesthetic interests that were connected to the injury. In other words, the Supreme Court ruled that SCRAP had standing to sue because, if recycling was not used, there would be more trash everywhere. If there was more trash everywhere, it would harm the interests of SCRAP. On the other hand, the Supreme Court ruled that the District Court did not have jurisdiction when they issued the injunction. Congress had exclusively granted the Interstate Commerce Commission the authority to regulate freight rates under the Interstate Commerce Act, and NEPA did not modify this exclusive authority as determined by the Supreme Court. As a result, the Supreme Court decided that the District Court could not issue an injunction because of this exclusive authority. While it may seem like the Burger Court was against environmental

regulations in these two cases, these slow admissions of environmental concern in courts show progress for environmental law.

Several more cases would be decided involving NEPA, all of which would curb the legislation's impact. In *Flint Ridge Development Company v. Scenic Rivers Association of Oklahoma* (1976), it was decided that an environmental study did not have to be conducted when registering a developer's information about a property. Under the Interstate Land Sales Full Disclosure Act, developers must register subdivisions with the Department of Housing and Urban Development by detailing information about a property. The Scenic Rivers Association of Oklahoma requested an environmental impact statement from the Department of Housing and Urban Development, but it was refused. The Supreme Court ruled that NEPA did not apply because the Secretary of Housing and Urban Development had a duty to allow real estate records to go into effect after 30 days unless the record was inaccurate (*Flint Ridge Development Company v. Scenic Rivers Association of Oklahoma*, 1976). To put it simply, NEPA's scope was severely limited, so, if it was an inconvenience to the duties of a department to create an environmental impact statement, it would be considered inapplicable. This decision also shows that not all governmental actions require an environmental impact statement, as shown by both the Interstate Commerce Commission's and the Department of Housing and Urban Development's lack of one. Furthermore, it was ruled in *Kleppe v. Sierra Club* (1976) that legislation or express agency action must occur for an environmental impact statement to be issued. A statement cannot be issued for a region that does not have either of these, as the Supreme Court claims it is impossible to predict private entities in an entire region.

In 1978, these challenges would result in a decision that would ultimately impact agency discretion. *Vermont Yankee Nuclear Power Corporation v. Natural Resources Defense Council*

(1978) was a case that again limited the power of NEPA with the lack of environmental impact statements but boosted the power of agencies. The Supreme Court ultimately ruled that lower courts should not create additional requirements beyond what is detailed in the Administrative Procedure Act regarding regulating agencies. It was encouraged that agencies should have discretion in their processes because they understand their purpose while a court would not. While it may be another blow to NEPA, the Burger Court is establishing agency discretion and independence from the judiciary. This was again reiterated in *Baltimore Gas and Electric Company v. Natural Resources Defense Council* (1983), where the Supreme Court ruled that it was not for a court to decide what it would do with nuclear devices. A court's job is to decide whether or not the statute was followed, which it was under both the Administrative Procedure Act and NEPA. This comes after NEPA was ruled by the Burger Court to only regulate the physical environment rather than any psychological impacts an action may cause in *Metropolitan Edison Company v. PANE* (1983).

The Burger Court may have narrowly defined NEPA after several rulings, but it began to set the precedent of independent agency discretion. NEPA would often impose restrictions on agencies if it were followed according to the statute, with an environmental impact statement required for almost any action. With these rulings, it is clear that the Burger Court wished to limit this restriction by allowing agencies to operate as they wanted to. While that does not mean they are free from statutes imposed by Congress, it does mean that they can make decisions they believe are best.

Other laws were challenged during this time period, including the Clean Air Act, the Clean Water Act, and the Endangered Species Act. *E.I. du Pont de Nemours v. Train* (1977) was the first major challenge to the Clean Water Act and dealt with the effects of EPA regulations.

The EPA wished to set industry-wide regulations on point-source pollution for the different categories of plants rather than on a plant-by-plant basis. The Supreme Court upheld this, as it found that the Clean Water Act could set these regulations because the act explicitly granted the EPA this authority. In several cases, the Burger Court upholds the EPA's actions when defining its own power. The EPA's notice and comment period before rulemaking is upheld regarding water regulations in *Costle v. Pacific Legal Foundation* (1980). Continuing, *EPA v. National Crushed Stone Association* (1980) is about an aspect of the Clean Water Act that requires individual companies to control pollutants using the best available technologies. The EPA was sued because, by following the statute, it did not take the economic circumstances of each individual company into account. However, the Supreme Court ruled for the EPA, claiming that agencies do not have to consider economic factors when regulating.

The Burger Court decided one of its most influential cases when it heard *Chevron U.S.A. v. Natural Resources Defense Council* (1984). Before this, in 1977, the Clean Air Act was amended and contained a requirement for states that had not met the previous standards set by the EPA. One subset of this requirement was that these states must create a permit program regulating sources of air pollution. Under this program, a permit cannot be issued unless strict conditions are met. In 1981, the EPA issued regulations for this permit program that allowed states to have a plantwide definition of a "stationary source". If an existing plant contained several pollution-emitting sources or devices, it could install or modify one piece of equipment without meeting the permit conditions. This only occurred if the modification or installation did not increase the total emissions of the plant, meaning it allowed states to treat all of the pollution-emitting sources and devices within the same grouping as if they were a single "bubble". Chevron U.S.A. sued the EPA, claiming that the Clean Air Act amendments of 1977

did not create these “bubble” definitions, only the stationary source definition. The Burger Court ruled that agencies should be given deference by the courts in their rulings when a statute is otherwise ambiguous. Beyond the application of environmental law, this ruling was the background of administrative power in the United States for 40 years. In environmental law, it meant that the EPA could define what Congress did not. If Congress did not specifically detail what it meant in a statute, the EPA was free to be as strict or restrictive regarding regulations as it interpreted what was written in the statute. The impact of this ruling cannot be understated, as this case has been cited more than 18,000 times, according to a report by the Congressional Research Service (Barczewski, 2023). A new landscape for administrative power was created, leading to mass change.

The most impactful ruling on the Endangered Species Act of 1973 came in *Tennessee Valley Authority v. Hill* (1978). The Tennessee Valley Authority's construction of the Tellico Dam threatened an endangered fish population that had been discovered in 1973 – the snail darter. If the dam’s construction was finished, the habitats and environments that the fish species inhabited would be destroyed, as the Little Tennessee River would be flooded. Environmental groups sued the Tennessee Valley Authority to stop the dam's construction, claiming that the Tellico Dam would lead to the extinction of the endangered fish species, and this violated the Endangered Species Act of 1973. The Tennessee Valley Authority argued that, since the dam was nearly completed and Congress continued to fund the project, it should not be stopped. The Supreme Court ruled for Hill, halting the construction of the Tellico Dam, as it was noted the language of the Endangered Species Act of 1973 was unambiguous in its intent. There was no clause dictating exceptions for nearly completed federal projects, and endangered species were to be protected. This case would prove to be the strongest application of environmental law by the

Burger Court, and the Endangered Species Act of 1973's interpretation would only be diluted from this point onward (Ruhl, 2012).

Chief Justice William Rehnquist succeeded Chief Justice Burger in 1986 when President Ronald Reagan nominated him. The Rehnquist Court was a further lean into a conservative majority than the Burger Court and lasted from 1986 to 2005. Environmentally, the Supreme Court continued the trend of lessening the impact of NEPA while further supporting agency independence. Without Congress passing further major legislation for environmental protection, the same laws the Burger Court heard controversies about continued into the Rehnquist Court era.

NEPA was challenged and further mitigated, beginning with *Robertson v. Methow Valley Citizens Council* (1989). As part of its duty to manage national forests for recreational purposes, the United States Forest Service issues recreational special-use permits for development. These are considered a "major federal action," meaning that an environmental impact statement must be prepared before issuing the permit. Methow Recreation Incorporated wished to develop part of a national forest into a ski resort and applied for the special permit, to which the Forest Service prepared an environmental impact statement. This statement fully details emissions, impact on air quality, and the state of wildlife, should development occur. After researching, the Forest Service granted the special-use permit to Methow Recreation, which was sued for an injunction by Methow Valley Citizens Council. They argued that the Forest Service did not adequately follow the requirements of NEPA in its environmental impact statement, as they claimed that NEPA required federal agencies to mitigate environmental effects and provide a plan to do so. The Supreme Court ruled for Robertson, holding that NEPA does not require this duty and that the Forest Service did an adequate job. Furthermore, it held that NEPA serves as a

statute to describe a process that should occur to prevent agencies from making uninformed and unwise decisions (*Robertson v. Methow Valley Citizens Council*, 1989).

The Supreme Court would rule similarly in *Marsh v. Oregon Natural Resources Defense Council* (1989), as NEPA would again be targeted. While an environmental impact statement should be prepared, the Supreme Court ruled that new information learned does not mean another statement needs to be made. NEPA is again relegated to being part of the process for agencies to make good decisions that are informed. Furthermore, this case establishes the "hard look" doctrine, meaning that agencies must carefully consider an action before doing it. NEPA is transformed from its initial statute that required an environmental impact statement for agency actions to a guideline for agencies to make better decisions.

Continuing, in 1982, Congress enacted a moratorium that prohibited motor carriers from Mexico, such as cars or trucks, from obtaining operating authority in the United States. Only the President of the United States could lift this moratorium, which President Bush did in 2001 when new regulations were put in place. The Federal Motor Carrier Safety Administration (FMCSA) provided an environmental assessment, which is similar to an environmental impact statement, but failed to consider the impact of Mexican trucks. With *Department of Public Transportation v. Public Citizen* (2004), the Supreme Court ruled that FMCSA was not required to provide an additional assessment because it lacked the discretion to prevent Mexican vehicles from entering the United States. Therefore, it did not need to consider the environmental impact these vehicles could have.

Even though updated environment impact statements are not required, it does not mean that the environment is neglected. Agencies still need to consider their impacts, but this series of

decisions shows that NEPA is seen by both the Rehnquist Court and the Burger Court as restrictive on the administrative process.

With some of the broad wording involved in these statutes, the scope of how they apply in reality can be difficult to define. For example, the Clean Water Act claims that the scope of the act is "the waters of the United States," which is not clearly defined. There cannot be any discharge into the navigable waters of the United States without a permit, and the Army Corps of Engineers sought to apply this to freshwater wetlands adjacent to waters that are conventionally covered. Riverside Bayview Homes began to place dischargeable materials near the shores of Lake Saint Clair, Michigan, and the Army Corps of Engineers filed a suit for injunction. *United States v. Riverside Bayview Homes, Inc.* (1985) resulted in the Supreme Court upholding the wetlands expansion of the Clean Water Act. The broad scope of the Clean Water Act was meant to protect not only the quality of the water but also the various ecosystems associated with it. As such, it is only natural that the wetlands adjacent to these navigable waters are included, even if they do not flood often.

However, the habitats of land animals of adjacent wetlands are not protected in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (2001). In 1986, the Army Corps of Engineers created a rule for navigable waters called the "Migratory Bird Rule". This rule claimed that if a migratory bird's habitat was an isolated wetland, it fell under the jurisdiction of the Army Corps of Engineers. This rule was overturned, as the Supreme Court believed it gave too much power to the Army Corps of Engineers under the Clean Water Act. These wetlands were not adjacent or connected to navigable waters, which the Supreme Court took issue with.

Regarding the Clean Air Act, the Rehnquist Court supported the EPA in its definition of the regulations that Congress required. An important ruling of the Burger Court, *EPA v. National Crushed Stone Association* (1980), was upheld and reinforced with *Whitman v. Trucking Associations* (2001). It was ruled by the Supreme Court again that the EPA should not consider financial impacts when creating regulations, this time about clean air standards. Another conclusion from this case was that the Clean Air Act did not improperly delegate power to the EPA, as the EPA followed the "intelligible principle" standard from *Hampton and Company v. United States* (1928).

One of the last cases of the Rehnquist Court era proved to be one of the most significant changes in environmental law. A mining company in Alaska wished to install a new generator at the mine, to which the Alaska Department of Environmental Conservation granted a permit. However, a stipulation of the permit was that the company must use low-nitrous-oxide technology. The EPA intervened on this permit, requesting that better technology be used with selective catalytic reduction. The Clean Air Act requires that the "best available control technology" be used and enforced by the EPA. Whether the EPA could overrule the Alaska Department of Environmental Conservation was the core issue of this case. In *Alaska Department of Environmental Conservation v. EPA* (2004), the Rehnquist Court ruled that the EPA had the authority to overrule state agencies if they failed to meet the Clean Air Act's requirement of using the "best available control technology." It marked a significant shift of power in favor of the EPA and other agencies over states if a statute had a specific requirement that states failed to meet.

Lastly, the Rehnquist Court had significant influence over how the Endangered Species Act was interpreted in practice. In *Lujan v. Defenders of Wildlife* (1992), the Supreme Court

implemented stricter requirements for a group to have standing concerning the Act. It made it more difficult for individuals to challenge government actions because they must prove that it actually affects them. The plaintiffs in this case could not prove that the difference in regulations from the United States Secretaries of the Interior and Commerce would directly impact them; therefore, they did not have standing. When a regulation only affects wildlife, it may be much more difficult to challenge a government action because it would not affect people. This is further reinforced by *Bennett v. Spear* (1997), just five years later. An irrigation project in California and Oregon was at risk of affecting endangered fish species in the region, alerting the Fish and Wildlife Service. After research was conducted, the Fish and Wildlife Service issued an opinion that put the project's future in jeopardy. Various ranchers sued due to extensive regulation under the Endangered Species Act, rather than the typical complaint of it not being enforced enough. The Supreme Court ruled that the ranchers, who had sued for the irrigation project to continue, had standing to challenge the opinion, as they had demonstrated enough of a link between economic harm and government actions. Both of these rulings limit the scope of the Endangered Species Act, especially considering how *Tennessee Valley Authority v. Hill* (1978) was ruled. A nearly completed dam was halted because of the potential harm to endangered species, yet 19 years later, an irrigation project predicted to have substantial harm on surrounding wildlife was upheld. The Burger Court neglected the economic link to the Endangered Species Act while the Rehnquist Court drew attention to it.

Before the Roberts Court, several trends were observed in the Burger Court and the Rehnquist Court. First, it is clear that the Burger Court saw environmental problems from an administrative perspective. In other words, the Burger Court saw an expansion of the administrative state, regardless of whether or not the environment was helped. This can be

observed in how the Burger Court treated NEPA, as it continually saw the statute as a burden on agencies and lessened its impact as a result. Additionally, it regularly used its interpretations of NEPA to build up agency discretion before *Chevron U.S.A., Inc. v. NRDC* (1984). Furthermore, rulings under the Clean Water Act, such as *E.I. du Pont de Nemours v. Train* (1977) and *EPA v. National Crushed Stone Association* (1980), allowed the Environmental Protection Agency to define vague regulations in the statutes. It also allowed the EPA to bypass considering economic status when creating regulations. This is expanded when *Chevron U.S.A., Inc. v. NRDC* (1984) was decided, creating the Chevron deference, where courts should defer to the agency's interpretation of vague statutes. Perhaps the only exception to the Burger Court's expansion of agency independence is in *Tennessee Valley Authority v. Hill* (1978), where it halted the construction of a nearly complete dam because it would have a probability of violating the Endangered Species Act. However, other than this decision, the Burger Court's main philosophy regarding environmental statutes was to increase the power of the administrative state. The underlying principles of these statutes, the reason they were enacted, were only considered in some circumstances.

Secondly, it is important to note that the Rehnquist Court continued the trend of agency independence from the Burger Court, sometimes massively expanding it. However, some of the environmental statutes are negatively impacted even with the expansion in agency independence. NEPA was targeted again, this time lowering it to a process that agencies should follow, not to make unwise decisions rather as a requirement before major federal actions are taken. Even with this lessening of NEPA's impact on the administrative process, agencies must still consider how their actions will affect the environment, per *Department of Public Transportation v. Public Citizen* (2004). The Clean Water Act is both expanded for the Army Corps of Engineers and

limited under the Rehnquist Court. In *United States v. Riverside Bayview Homes, Inc.* (1985), adjacent wetlands are covered by the Clean Water Act, but *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (2001) rules that isolated wetlands and their subsequent habitats are not. Agency power was greatly increased when it was ruled that they could overrule state agencies to implement stricter regulations in *Alaska Department of Environmental Conservation v. EPA* (2004). However, the Rehnquist Court made it more difficult for a party to prove standing in regard to the Endangered Species Act and established that regulations could be too strict if they impact the economy in a drastic manner. Overall, the Rehnquist Court expanded agency discretion, independence, and power through decisions based on these environmental statutes. Yet, if these environmental statutes were thought to restrict agency power or pose economic harms, then they would be limited in applicability.

Modern Cases Under the Roberts Court

Chief Justice John Roberts replaced Chief Justice Rehnquist in 2005 after the former Chief Justice died. Initially, John Roberts was intended to replace Sandra Day O'Connor, who was retiring in early 2005. However, the death of then-Chief Justice Rehnquist pushed John Roberts to be renominated for the Chief Justice position, which the Senate subsequently confirmed on September 29, 2005. Currently, the Supreme Court sits at a 6-3 conservative ideological majority.

Based on ideology for each current justice, there are several key differences between both broader ideological sides and between the individual justices themselves. Justice Clarence Thomas is the first Supreme Court Justice to be associated with the Federalist Society, a campus association of conservative law students at several prominent universities, such as Yale and the University of Chicago. One of the key ideas of the Federal Society is that federal judges were

aggregating too much power amongst themselves, therefore interpreting the Constitution to fit their personal preferences (Elving, 2023). Justice Thomas may have been the first Supreme Court Justice to be associated with the Federalist Society, but all six of the present conservative-leaning justices are current or former members. Chief Justice Roberts's statement during his confirmation hearing shows some insight into how he interprets the law as compared to the Warren, Burger, or Rehnquist Courts, which the Federalist Society took great issue with: "... I will remember that it's my job to call balls and strikes, and not to pitch or bat" (US Courts, 2025). However, some senators, particularly Democrats, were skeptical of these statements, especially as they were echoed roughly a year later during Justice Alito's confirmation hearings. Senator Edward Kennedy of Massachusetts interviewed both justices prior to their confirmation and was unconvinced of their willingness to follow precedent (Elving, 2023; Farrell, 2022). While both assured the senator that they would follow the law and the various precedents of cases containing social issues in the past, there were reasons for the senator to have doubts. First, Chief Justice Roberts was unwilling to talk deeply about any social issues with the senator, instead choosing to be "very cautious". Secondly, Justice Alito had previously written a memo as a lawyer in the Reagan administration's Justice Department, which vehemently opposed *Roe v. Wade* (1973). However, when Senator Kennedy brought up the memo during the interview, Justice Alito dismissed it by claiming that he wrote what he believed his superiors wished to hear (Farrell, 2022).

The first environmental law case that the Roberts Court heard was a challenge to the Clean Water Act's phrasing of "navigable waters of the United States" in *Rapanos v. United States* (2006). Mr. Rapanos planned to fill wetland areas to build a shopping mall, but these were protected under the Clean Water Act. As previously decided in *United States v. Riverside*

Bayview Homes, Inc. (1985) and *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (2001), wetlands are covered under the Clean Water Act if they are adjacent to what are considered traditional navigable waters. The Michigan Department of Environmental Quality issued several warnings to Mr. Rapanos that these were protected, and, when he ignored these, the Environmental Protection Agency sued. Ultimately, the Supreme Court was divided with a 4-1-4 split, meaning they were unable to obtain a majority on most of the issues at hand. Justice Scalia, writing for Chief Justice Roberts and Justices Thomas and Alito, wrote a plurality opinion that interpreted "navigable waters" strictly. The term, under Justice Scalia's interpretation, only applied to permanent, standing, or flowing bodies of water that must have a continuous connection. In his words, it must be "difficult to determine where the 'water' ends and the 'wetland' begins" (Rapanos v. United States, 2006). However, Justice Kennedy joined Justice Scalia with a concurring opinion that disagreed with the stricter interpretation of what "navigable waters" means, instead believing that wetlands did not need a continuous connection. He still ruled for Rapanos, as he believed there was not a demonstrable effect by the wetlands Rapanos was planning to fill on the water quality of navigable waters. Additionally, he stated that Rapanos's wetlands could be covered under the Clean Water Act if this effect were present. This effect, where a surface connection is not needed but something else that might otherwise affect the quality or integrity of waters of the United States, is called the "significant nexus" test. This will be used to determine federal jurisdiction involving wetlands for roughly two decades. On the other hand, Justice Stevens wrote the dissent, which argued for the traditional interpretation of "navigable waters," as it would be most consistent with the Clean Water Act's purpose of controlling pollution. *Rapanos v. United States* (2006) is the beginning of restricting and rescinding prior decisions by limiting what is protected under the Clean Water Act.

Another case involving the Clean Water Act came in the following year, with *National Association of Home Builders v. Defenders of Wildlife* (2007). Part of the Clean Water Act instructs the Environmental Protection Agency to transfer pollution permitting authority to a state if the state's proposal meets certain criteria listed by the Clean Water Act. The state of Arizona issued a proposal, but the EPA became concerned that this transfer may violate the Endangered Species Act. Section 7(a)(2) of the Endangered Species Act specifically prohibits agencies from taking actions that could harm endangered species. On the advice of the Fish and Wildlife Service, the EPA continued the transfer as the Fish and Wildlife Service claimed the EPA had no authority to consider anything outside of the criteria listed by the Clean Water Act when transferring authority. The Defenders of Wildlife challenged this transfer, claiming that the Endangered Species Act is an independent source of authority, meaning that agencies must consider it before making any type of action. The EPA countered this by arguing the Endangered Species Act only applied to discretionary decisions of agencies, and the Clean Water Act's transfer was non-discretionary. In a 5-4 vote, the Supreme Court ruled for the EPA and the Fish and Wildlife Service. If the EPA were to consider Section 7(a)(2) of the Endangered Species Act with the transfer criteria of the Clean Water Act, it would establish another criterion which is not explicitly written in the law (National Association of Home Builders v. Defenders of Wildlife, 2007). While the Clean Water Act was relatively untouched in the ruling, the Endangered Species Act continues to be limited in application, with a new relegation to only applying to discretionary agency actions.

In 2007, one of the most significant cases in environmental law was decided in *Massachusetts v. EPA* (2007). This case involved the Clean Air Act and the EPA's seemingly lax enforcement of it regarding greenhouse gas emissions. Massachusetts, with a coalition of private

organizations and other governmental agencies, initially petitioned the EPA to regulate greenhouse gas emissions, such as carbon dioxide, that can come from vehicles. They argued that these gases contribute to global warming and climate change, and the EPA was required to regulate them due to the Clean Air Act. The Clean Air Act states that Congress has to regulate air pollutants that are reasonably tied or anticipated to harm public health. However, the EPA denied this petition, stating that the Clean Air Act did not apply to greenhouse gas emissions. Additionally, the EPA continued by claiming that, even if the Clean Air Act did apply to greenhouse gas emissions, it did not require immediate action, as further research on greenhouse gas emissions would have to be conducted. The Supreme Court ruled 5-4 in favor of Massachusetts, with Chief Justice Roberts and Justices Scalia, Thomas, and Alito dissenting. Writing for the majority, Justice Stevens claimed that Massachusetts had standing because it is a governmental entity that has an interest in protecting its sovereign interests, even if it is a state rather than the federal government. Furthermore, it was decided that greenhouse gas emissions are covered because the Clean Air Act was purposefully written broadly and with general language. This was done so that the statute would not become obsolete if new pollutants were unknown to be harmful at the time of the writing of the Act. Lastly, the Supreme Court decided that should the EPA continues not to regulate carbon, it must reach that conclusion from research on whether it impacts climate change (Massachusetts v. EPA, 2007). The ideological split that comes from this case, with all ideological conservative justices dissenting, serves as a small glimpse into the near future of how environmental cases will be determined with a conservative majority.

The Clean Air Act was amended in 1997, which created the Prevention of Significant Deterioration program. Part of the program required power companies that want to make

emissions-increasing modifications to their power plants to apply for a permit first. From 1988 to 2000, Duke Energy Corporation made 29 improvements to its power plants without obtaining or applying for the permits. Seeing this, the government, Environmental Defense, and other environmental groups sued Duke for failing to comply with the program. Duke Energy pointed to a clause in the regulation that defined a modification as a change that increased the hourly rate of emissions from a power plant. Though the modifications Duke Energy implemented increased the total emissions of each plant because they could operate for more hours, it did not change the hourly rate of emissions. At this point, the EPA had been operating under the standard that any improvement requiring construction needed a permit to proceed. One important factor of the "modification" definition is that the Prevention of Significant Deterioration program had directly taken it from a 1975 Clean Air Act amendment. This amendment created the New Source Performance Standards program, but the term in this statute explicitly excluded improvements that only increased the hours a facility could operate. In a 9-0 decision, the Supreme Court ruled for Environmental Defense, claiming that the EPA did not need to interpret "modifications" the same way for both statutes (Environmental Defense v. Duke Energy, 2007). Normally, a word is given the same definition if it is the same term, but this term is in two different, broad statutes. The definition for both must be reasonable and tied to the statute, but the EPA can define each instance of the word differently. More authority is given to the EPA and agencies as a whole, as they are given discretion over applying a different definition of the same word for different statutes. Environmentally, power plants may be subject to stricter modifications as increased total annual emissions are counted under modifications for the Prevention of Significant Deterioration program rather than just increased hourly rates.

Between February 2007 and January 2009, the United States Navy was scheduled to carry out training exercises in southern California waters. With the various species of marine mammals present in these waters, the Natural Resources Defense Council and other environmental organizations raised concerns about potential harm that could occur if the Navy held these exercises. As a result, they sought a preliminary injunction to prevent the Navy from continuing. The district court granted this injunction, finding that the Navy had most likely violated the National Environmental Policy Act by not preparing an Environmental Impact Statement in advance of the training. The Council on Environmental Quality attempted to provide other arrangements so that the Navy could continue with the exercises, but the district court denied this as well by claiming these exercises were not due to emergency circumstances. It was argued by the Navy that emergency circumstances may be used to provide alternatives in some cases where there is a required, immediate action, as the National Environmental Policy provides for in the statute. In *Winter v. Natural Resources Defense Council* (2008), the Supreme Court found that federal courts can not grant preliminary injunctions on training exercises based on the possibility of a negative environmental impact when an Environmental Impact Statement is failed to be made. In the decision written by Chief Justice Roberts, the standard for preliminary injunctions is argued to be in cases where irreparable harm is more than likely, rather than a possibility. However, this point was moot in this case, as it is stated that the public benefit of naval training exercises would outweigh the chance of irreparable injury, even if that chance was almost guaranteed. When the Navy fails to complete an Environmental Impact Statement, the Supreme Court ruled that lower courts must find another way to get the Navy to comply rather than an injunction. Chief Justice Roberts was joined by Justices Scalia, Kennedy, Thomas, and Alito in the majority opinion. Concerning the Navy's argument regarding the emergency

circumstances part of NEPA, the Supreme Court did not determine what these circumstances would be that would allow the Navy to conduct exercises without an Environmental Impact Statement. Once again, NEPA is reduced, and Environmental Impact Statements may now be disregarded because alternatives may be filed in place. Courts can not prevent actions from occurring based on a possibility of irreparable injury, these must be concrete and almost certain to occur. Additionally, this case places the interests of the United States military as being above those concerning the environment (*Winter v. Natural Resources Defense Council*, 2008)

In another maritime case, the Exxon Valdez supertanker crashed by beaching in Alaska in 1989. This vessel was under the command of Joseph Hazelwood, who had relapsed recently into alcoholism. Exxon knew that Mr. Hazelwood had begun to drink again but did not remove him from the command of the supertanker. As a result of running aground, the ship spilled eleven million gallons of oil into the Prince William Sound, which had been previously determined to be ecologically delicate. An initial case saw the jury calculating compensatory damages at $287 million and $5 billion in punitive damages. After review by the Ninth Circuit Court of Appeals, the $5 billion eventually turned into $2.5 billion in punitive awards. The Supreme Court was asked in *Exxon Shipping Co. v. Baker* (2008) whether maritime law permits judges to award punitive damages for employee mistakes and if judges could create remedies when Congress has not explicitly stated otherwise. Because Justice Alito owned Exxon stock, so he did not take part in the decision, which left a 4-4 split on the first question and a 5-3 decision on the second. The Ninth Circuit's ruling on employee misconduct was left intact, but seeing as the Supreme Court was evenly split, this cannot be used for precedent. For the second question, it was ruled that judges may create remedies in maritime law if Congress has not stated anything. However, this is lost if Congress does eventually pass legislation covering any gray areas. In terms of its impact

on the environment, this case provides some leeway for punitive awards in civil cases for mistakes caused by corporations. Civil courts are usually one of the few avenues for punishment or correction regarding corporations. Yet, this is not an exceptionally strong reference for precedent because the Supreme Court was evenly divided.

As part of the Clean Water Act, the Army Corps of Engineers is allowed to issue permits for the discharge of fill material, and the EPA is allowed to issue permits for the discharge of any pollutant. Both agencies define "fill material" as any material that may change the elevation of the bottom of water, such as slurry or mining-related materials. Coeur Alaska Incorporated planned to reopen a formerly closed Alaska gold mine using a technique that would produce waste material. It planned to pump this slurry into a lake and discharging purified lake water into a creek. The EPA and the Army Corps of Engineers issued their respective permits, but the Southeast Alaska Conservation Council sued under the Administrative Procedure Act, claiming that the permits were unlawful. On appeal, the Ninth Circuit Court of Appeals voided the permits, siding with the Southeast Alaska Conservation Council by claiming that the Army Corps of Engineers exceeded its powers under the Administrative Procedure Act and wrongly interpreted the Clean Water Act. It was argued by the Ninth Circuit that the discharge the Army Corps of Engineers permitted was strictly prohibited by the Clean Water Act. At the Supreme Court, it was ruled 6-3 in favor of Couer Alaska Incorporated in *Couer Alaska, Inc. v. Southeast Alaska Conservation Council* (2009). Justice Kennedy wrote for the majority and argued that the Army Corps of Engineers did have the power to issue permits. These were lawful under both the Administrative Procedure Act and the Clean Water Act, as the Clean Water Act gave exclusive rights to grant permits relating to the discharge of fill material. This can reasonably be extended to discharging waste at a mine, as the Clean Water Act is not specific about the setting.

Furthermore, the EPA and the Army Corps of Engineers jointly agreed on a definition of what "fill material" meant, and this definition included what was being produced at the Alaska mine. Although this is not explicitly clear by this ruling, the decision created a potential loophole for polluters. As long as polluters dump enough toxic materials into a lake that it becomes "fill material", they may do so legally if they have a permit. This could bypass any regulation set by an agency or government, leading to more potential injury to the environment.

As mentioned prior, *EPA v. National Crushed Stone Association* (1980), *Whitman v. Trucking Associations* (2001), and *Alaska Department of Environmental Conservation v. EPA* (2004) all decided that the EPA did not have to take in the economic circumstances of individual companies when implementing industry-wide regulations and could even overrule state agencies to make sure the best technologies were used. Yet, the EPA in *Entergy Corporation v. Riverkeeper, Inc.* (2009) used a cost-benefit analysis to determine systems of water intake cooling for power plants rather than requiring the best technology on the market. Several environmental groups and corporations sued the EPA, claiming that, first, the EPA had exceeded its federal authority, and, second, the EPA violated the Clean Water Act's requirement of using the most advanced technology for regulations. They argued that using subpar structures could injure or kill aquatic organisms. With a majority opinion written by Justice Scalia, the Supreme Court ruled in favor of the EPA, claiming that it could use this cost-benefit analysis rather than choosing what would be considered the most advanced technology available. In the Clean Water Act, Section 316(b) requires the EPA to issue regulations on the design and operation of cooling water intake systems to promote the best technology available. With this comes discretion for the EPA in choosing what it believes is the best technology. The Supreme Court ruled that the EPA, with this discretion, can determine how much of a factor environmental impact should have

when setting these industry-wide standards. As a result, this discretion and ability for factoring environmental impact allows for the use of cost-benefit analysis. When reviewing the other cases involving the use of the best technology available, it is clear that the prior Supreme Courts did not want the EPA to be swayed by economics when setting standards or regulations. Now, it seems that there is a shift that maintains discretion but moves towards reigning in agency independence. If the EPA can use cost-benefit analysis despite the statute calling for the best available technology, it begs the question of what else could be interpreted economically, even if the intent of the statute was not to consider cost (*Entergy Corporation v. Riverkeeper, Inc.*, 2009)

A challenge involving the National Environmental Policy Act was heard in 2010 in *Monsanto Co. v. Geertson Seed Farms* (2010). The Plant Protection Act provides the Secretary of the Department of Agriculture the ability to issue regulations to prevent the introduction of harmful plants to the United States. Using this authority, the Animal and Plant Health Inspection Service created regulations that presumed genetically engineered plants to be "plant pests" as covered under law until determined otherwise. A person or company may petition the Animal and Plant Health Inspection Service for an evaluation. With this evaluation, the Animal and Plant Health Inspection Service must comply with the National Environmental Policy Act and prepare an environmental impact statement. The Animal and Plant Health Inspection Service approved an unconditional deregulation of a type of alfalfa that had been genetically engineered to tolerate the herbicide Roundup, called Roundup Ready Alfalfa. When the petitioners asked the Animal and Plant Health Inspection Service for deregulation, the agency drafted an environmental assessment that found the alfalfa would not have a significant impact on the environment. Geerston Seed Farms and Trask Family Seeds sought to have an injunction against the alfalfa, as they feared that it would cross-pollinate with their own, and they would no longer have

non-genetically modified alfalfa. A California district court granted this injunction until an Environmental Impact Statement was prepared by the agency. Monsanto Company, the company that created the genetically modified alfalfa, appealed to the Ninth Circuit Court of Appeals, which held in favor of the district court. The Ninth Circuit claimed that the injunction was appropriate and an evidentiary hearing was not required before issuing the injunction. Again, Monsanto Company appealed this time to the Supreme Court, which found for them in a 7-1 decision. In the opinion written by Justice Alito, the Supreme Court found that the district court abused its discretion when it entered an injunction. Both Geerston Seed Farms and Trask Family Seeds were found to have appropriate standing to seek injunctive relief, but the injunction was not supported by evidence (*Monsanto Co. v. Geertson Seed Farms*, 2010). The Supreme Court considers injunctions to be a last resort and should only be granted when there is a great chance of irreparable injury, which was only speculated about before the injunction in this case. This case again strikes at NEPA and introduces a line for environmental law regarding genetically modified plants. Innovation does not take precedence over the environment, but the environmental interests must show evidence that genetically modified plants are an active harm rather than a speculative one. This is a blow to environmental interests as injunctions could only be granted when harm is actively underway, rather than preemptively, as some in the past were.

In 2011, eight states, the City of New York, and several land conservation groups filed suit against four electric power companies and the Tennessee Valley Authority for being public nuisances. These five entities are claimed to be the largest sources of greenhouse gases in the United States and operate facilities in 21 states. They were sued because their greenhouse gas emissions, chiefly their carbon dioxide emissions, contribute to climate change. The utilities argued that the courts did not have jurisdiction over this, as the Environmental Protection

Agency was the only entity that could set emissions standards. In *American Electric Power Company, Inc. v. Connecticut* (2011), the Supreme Court ruled unanimously for the electric companies. Regarding the regulation of carbon emissions, there is the Clean Air Act and the Environmental Protection Agency's regulations. The Supreme Court, in an opinion authored by Justice Ginsburg, argued that federal statutory law overrides federal common law, especially for regulating carbon emissions. Essentially, states and private parties can not sue power companies for emissions under federal common law because the Clean Air Act and the EPA exist. Two dual distinctions can be drawn from this case for the future of environmental law. After this case, it can be argued that the EPA is guaranteed some amount of discretionary power when it comes to regulating under the Clean Air Act. However, it is also true that private parties and states are unable to find relief for climate change through federal common law, denying an avenue for environmental protection. Additionally, the EPA's discretionary power is solely held by the precedent set by *Chevron*, meaning that if the Supreme Court were to ever overturn or limit *Chevron* in future cases, then this avenue is denied as well.

The year 2013 saw two similar cases involving the Clean Water Act, as both dealt with permits and definitions of discharge. The Watershed Rivers in California consist of the Santa Clara River, the Los Angeles River, the San Gabriel River, and Malibu Creek. In 2012, it was discovered that the level of pollution exceeded the permit held by the county of Los Angeles under the National Pollutant Discharge Elimination System. As a result, the Natural Resources Defense Council sued the county for violating the Clean Water Act. Part of the Los Angeles County Flood Control District operates a storm sewer system drainage system that manages storm water, which is usually heavily polluted and is at the heart of the issue. It was alleged that the county was allowing unchecked, polluted storm water to run into the rivers but the county

pushed back, claiming that they were not solely responsible for the high levels of pollution in the rivers. In *Los Angeles County Flood Control District v. Natural Resources Defense Council, Inc.* (2013), the Supreme Court was asked whether the transfer of water from one portion of a river to another via something man-made for the purpose of controlling stormwater runoff was considered "discharge". Unanimously, the Supreme Court ruled that this pumping of stormwater was not considered pollution under the Clean Water Act. The way the county of Los Angeles uses stormwater management is by redirecting stormwater via manmade structures from one part of a river to another river, or further downstream to the same river. Because the county is not adding pollutants, instead merely moving water, it does not count as pollution. Similarly, two roads that are used for logging in Oregon are owned by the Oregon Department of Forestry and Oregon Board of Forestry. These roads run next to rivers, which then uses ditches and other mechanisms to direct storm water into the rivers. This runoff most likely affects the fish and wildlife that relies on these rivers. It was questioned whether these ditches and channels could be classified as "point sources", which if so, would violate the Clean Water Act as Oregon's departments failed to obtain permits under the National Pollutant Discharge Elimination System. The Northwest Environmental Defense Center sued the Oregon State Forester, the Oregon Board of Forestry, and several timber companies. The Supreme Court ruled unanimously that these ditches and runoff channels are exempt from the permit system because they are not industrial activities in *Decker v. Northwest Environmental Defense Center* (2013). Both of these rulings serve to define what discharge means under the Clean Water Act.

The Clean Air Act also creates a federal-state partnership that attempts to regulate air pollution in the United States through national ambient air quality standards. Once the EPA has created these standards, states must submit a State Implementation Plan within three years. One

of the provisions that the Clean Air Act has is that states must abide by the Good Neighbor Provision. This provision is to prevent upwind states from polluting downwind states, as a state could easily misconstrue its pollutant numbers by being upwind. In 2011, the EPA created the Cross-State Air Pollution Rule (Transport Rule), which set emission standards for 27 upwind states based on the air quality standards of downwind states. Several states, local governments, and other third parties sued and argued that the federal standards gave no deference to the states, violating federal law. It was argued that because the Clean Air Act provided for a partial federal government and state relationship on air quality, it was a violation of this. Part of the Clean Air Act details that if a state implementation plan is determined by the EPA to be poorly made, the EPA must create and enforce a federal implementation plan within the next two years unless the state in question revises it. As such, the Supreme Court used this mandate to rule for the EPA in *Environmental Protection Agency v. EME Homer City Generation* (2014). Not only may the EPA enforce federal implementation plans, but it is also not required to notify upwind states of their specific metrics for pollution before enforcing the Transport Rule. Agency power at the EPA is expanded once again to enforce interstate pollution control, notably with a conservative ideology dissent. Although Chief Justice Roberts joined the majority opinion written by Justice Ginsburg, the dissent was written by Justice Scalia and joined by Justice Thomas. One of the main counterpoints in the dissenting opinion that Justice Scalia brings up is that the majority opinion goes beyond a textual justification, granting the EPA extra-statutory authority to take control over states. He believed that it was illogical for the EPA not to provide information regarding emissions standards before those same states were required to have plans centered around those standards. In other words, Justice Scalia is saying that the EPA could withhold information about emissions standards so that states produce insufficient plans, for the EPA to implement its federal

implementation plans. However, there are mechanisms in place to prevent this breach of power, as states can still modify their implementation plans up to two years after the first one is rejected.

The year 2015 featured one of the most important environmental cases in *Michigan v. Environmental Protection Agency* (2015), representing a great regression for the economic independence of the EPA. In 1990, the Clean Air Act was amended and now requires the EPA to regulate the emissions of hazardous air pollutants from stationary sources. Typically, this meant factories and refineries, but the amendments applied to power plants as well, only if it found that "regulation is appropriate and necessary" after research. Power plant regulation was found appropriate as emissions created potential harm to the environment and public health, and there were means of reducing these emissions. Regulation was found necessary because other requirements of the Clean Air Act did not erase these risks created by the emissions produced by the power plants. Specifically, the mercury emissions were considered a large threat by the EPA research to warrant regulation. However, when the EPA conducted further research, it found that the cost of regulation far outweighed the benefits of reduction. As of prior Supreme Court cases, the EPA does not have to consider costs when regulating, so the EPA refused to consider the costs when implementing these regulations. After being sued by 23 states, a group of corporations, and several non-profits, the Supreme Court took the case. In a 5-4 decision written by Justice Scalia, the Supreme Court ruled that the EPA interpreted the Clean Air Act unreasonably and strayed too far from the language of the statute The phrase "appropriate and necessary", as determined by the Supreme Court, naturally includes cost, and it is irrational to impose regulations that have costs that far exceed the returns. As far as precedent goes, this case reverses *EPA v. National Crushed Stone Association* (1980), *Whitman v. Trucking Associations* (2001), and *Alaska Department of Environmental Conservation v. EPA* (2004). It continues the

Roberts Court trend that began with *Entergy Corp. v. Riverkeeper, Inc.* (2009), where the EPA was tasked with using a cost-benefit analysis to determine the best course of action as a way to choose the statute not relying on cost. This case severs the economic independence from the industries it wishes to regulate, as it must now weigh the harms of the environment versus the harms of the dollars lost due to regulations. If there is an imbalance that is considered "extreme", which is not specifically determined in this Supreme Court's majority opinion, then the regulation is bad.

As part of its duties under the Endangered Species Act, the Fish and Wildlife Service must list species as "endangered" if they are at risk of going extinct. The dusky gopher frog, found in the southern United States around Mississippi and Louisiana, was listed as an endangered species. Part of the process of listing a species requires a "critical habitat" to be named where that species resides, thereby protecting it from development and other factors. To protect the dusky gopher frog, the Fish and Wildlife Service proposed designating a site in St. Tammany Parish, Louisiana, called "Unit 1" where the species had once lived. However, Unit 1 was now a commercial timber plantation, and no frogs had been spotted for several decades. Yet, the Fish and Wildlife Service argued that it met the statutory definition of an unoccupied critical habitat because it contained rare, high-quality breeding ponds and was a considerable distance away from other known frog populations. If it were designated as a critical habitat, Weyerhaeuser Company, which owns Unit 1, would most likely have to cease operations on their private property and restore some necessary features for the survival of the species. The company and the landowners had collectively planned on developing the land for commercial, residential, and timber interests. The Supreme Court was asked in *Weyerhaeuser Company v. United States Fish and Wildlife Service* (2018) whether the Endangered Species Act prohibited

the designation of privately owned property as unoccupied critical habitat that is neither habitat nor essential to species conservation. With a unanimous decision and an opinion written by Chief Justice Roberts, the Supreme Court found for Weyerhaeuser for several reasons. First, the species did not currently reside in Unit 1, yet it was designated as a critical habitat by the Service. While historically this may have been true, it is not currently the case. Secondly, the current habitat would require modification for the species to exist there and survive. The Supreme Court was not convinced that something could be a critical habitat if it required modifications to it, as that could apply to almost anything. A critical habitat listing must first be a viable habitat under the Supreme Court's eyes. Third, the Fish and Wildlife Service's decisions under the Endangered Species Act to exclude economics from designation are considered subject to judicial review. This means that the Fish and Wildlife Service can be sued, as in this case, for property it deems critical habitat for an endangered species that has to be protected. While not explicitly clear, the environmental impacts of this case coincide with the Roberts Court trend of tying economic impact to agency decisions and ending agency independence. The scope of the Endangered Species Act is much narrower than when it was first brought up in the Supreme Court under *Tennessee Valley Authority v. Hill* (1978), but this case is just the most recent in a list of others that have limited its scope. This case also shows how the Supreme Court is setting itself up to end agency independence, as it begins to establish court dominance over agency discretion. Hard limits are being established, which will soon be further restrictive.

Under the Clean Water Act, there may be a discharge of pollutants into navigable waters if these point sources have permits. The point sources are defined in statute as "discernible, confined, and discrete conveyances," and anything else is considered a nonpoint source of pollution, and therefore the responsibility of the EPA. Permits are reviewed and granted by the

National Pollutant Discharge Elimination System, which the Clean Water Act established. Maui has a wastewater reclamation facility that collects the sewage from the community, treats it, and pumps the treated product into the ground through four wells daily. This product, also called effluent, eventually makes its way into the Pacific Ocean through groundwater. Before the effluent is pumped underground into the wells, it must meet the highest water quality standards for Hawaii. Several reports over the decades from Hawaii state agencies and the EPA have indicated that they knew the effluent was entering the Pacific Ocean, but neither believed that it required a permit from the National Pollutant Discharge Elimination System. It is also an important facet of the Clean Water Act that navigable waters and groundwater are statutorily distinct, with navigable waters being waters of the United States and subject to regulation, while groundwater is typically not. Several environmental groups sued, and in *County of Maui Hawaii v. Hawaii Wildlife Fund* (2020), the Supreme Court considered whether the Clean Water Act necessitated a permit if the pollutants came from a point source but reached the navigable waters from a nonpoint source. In a decision authored by Justice Breyer, the Supreme Court found that if it is a "functional equivalent" of a direct discharge, then the Clean Water Act requires a permit. The sewage reclamation plant, by injecting the effluent into the wells, represents a point source that is fairly traceable, but the Supreme Court declined to use its "functional equivalent" test in this case. Under the "functional equivalent" test, there are a seven factors that can be considered: transit time, distance traveled, the nature of the material through which the pollutant travels, the extent to which the pollutant is diluted or chemically changed as it travels, the amount of pollutant entering the navigable waters relative to the amount of the pollutant that leaves the point source, the manner by or area in which the pollutant enters the navigable waters, the degree to which the pollution has maintained its specific identity. Time and distance are considered the

most important factors by the Supreme Court, but this does not apply to every case in this test is used in. Environmentally, this case expanded the reach of the Clean Water Act by addressing nonpoint source pollution that originated from point source pollution. It enhances *Rapanos v. United States* (2006) by building on the precedent this Supreme Court set when it defined what "navigable waters" meant, this time by detailing the protection afforded to these defined waters. This case does balance industry interests by refusing to completely generalize the question of the case as the environmentalists asked, but it does not completely shift to the industry. The County of Maui asked the Supreme Court to consider the case in terms of the point of pollution as a step-by-step process, where permits could only apply if it reached the navigable waters immediately before. To put it differently, if the effluent was in the groundwater and immediately went into the ocean, that is all that would be considered. The original point source pollution, the sewage reclamation facility, and the wells would be completely ignored under the proposal by the County of Maui.

While the Clean Water Act's scope was increased, the EPA's ability to regulate under the Clean Air Act was stripped in *West Virginia v. Environmental Protection Agency* (2022). This case involved the EPA's 2015 Clean Power Plan rule, which attempted to address carbon dioxide emissions from existing power plants. States set the rules governing existing sources, but the EPA determines the emissions limits they have to comply with. They do so by determining the "best system of emission reduction", which under the Clean Power Plan was a suite of alterations for coal-fired plants and natural gas plants. Without these significant alterations, existing coal plants could not achieve the emissions performance rates set by the EPA. In 2016, the Supreme Court upheld the Clean Power Plan, but it was later repealed under the Trump Administration. The Trump Administration determined that the EPA lacked the broad authority set about by the

Clean Power Plan. In its place, the Affordable Clean Energy rule was created, which mandated equipment upgrades and operating practices. Much of the Affordable Clean Energy rule eliminated or deferred the guidelines set by the Clean Power Plan. The United States Court of Appeals for the District of Columbia Circuit vacated the Affordable Clean Energy Rule as arbitrary and capricious. The Supreme Court ruled against the EPA's authority to implement its prior generation-shifting measure under the Clean Power Plan. It stated that there was no clear congressional authorization for the EPA to take this approach and applied the "major questions doctrine" to this case. This means that agencies must have explicit permission or authority from Congress regarding decisions that are economically or politically significant. As a whole, it limits the power of the EPA to regulate emissions on a broad basis because it can not do so without legislative action, whereas before, they could introduce reasonable regulations. The industries and economic interests continue to have their weight balanced in their favor under the Roberts Court, especially when it comes to cases involving the power of the EPA and setting regulations.

Furthermore, the EPA's jurisdiction is limited under the Clean Water Act in *Sackett v. EPA* (2023). The Sackett family in Idaho was planning to build a home near Priest Lake, which is located near a series of wetlands. As they began the process of placing sand and gravel, they were informed by the EPA that they could not build on the property as it would violate the Clean Water Act. The property itself was determined to contain wetlands, and backfilling these violated the Clean Water Act, as it prohibits any discharging of pollutants into the waters of the United States. If they did not restore the site, the EPA would fine the Sackett family $40,000 or more a day. The EPA determined that the wetlands the Sackett property sat were property of the United States because they were located near a ditch that eventually fed into Priest Lake, which is a

navigable, interstate lake. In an almost complete ideological split, the Supreme Court ruled 5-4 for Sackett when asked what the proper test was for determining whether wetlands are waters of the United States under the Clean Water Act. In previous cases involving wetlands, the wetlands had to be adjacent to navigable waters to be considered protected by the Clean Water Act, not isolated or independent. This was applied even further in this case, as the meaning of the word "waters" was debated in the majority opinion written by Justice Alito. Eventually, it was settled on that "waters" represents an indistinguishable, continuous surface that is connected to the bodies of the waters of the United States. To put it differently, the Supreme Court claims that, for a wetland to be protected by the Clean Water Act, it can not be distinguished from a body of water and a wetland. On a federal level, this limits the jurisdiction of agencies such as the EPA and the Army Corps of Engineers to regulate under the Clean Water Act, as this ruling gets rid of adjacent wetlands previously protected. The shift now goes to state and local governments, but a majority of the wetlands that reside on private property will no longer be subject to federal environmental law prohibiting pollution or dumping. Therefore, it is plausible to say that if there is a lack of federal oversight and states do not fill the void, corporations and private entities will develop and pollute these previously protected areas. Concerning the Roberts Court, they reject their own precedent with the "significant nexus" test developed in *Rapanos v. United States* (2006). It was a plurality opinion in *Rapanos,* but it had been used as precedent in the federal courts for almost two decades, and this case emphasized an even narrower view of wetland protection. Even within *Rapanos*, that case was a narrower interpretation of wetlands protection compared to *United States v. Riverside Bayview Homes, Inc.* (1985) and *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (2001). *County of Maui v. Hawaii Wildlife Fund* (2020) was an expansion of the Clean Water Act's jurisdiction similar to the

"significant nexus" test, which makes that ruling seem somewhat inconsistent when applying it to those cases and the continuous surface connection test to wetlands.

In environmental law, the most significant case since *Chevron U.S.A., Inc. v. Natural Resources Defense Council* (1984) was decided in 2024 regarding the use of observers aboard fishing vessels. The National Marine Fisheries Service issued a rule under the Magnuson-Stevens Act, requiring observers to onboard certain fishing vessels. These observers would collect data necessary for managing and conserving fish species and preventing overfishing, among other activities. However, after budget cuts to the National Marine Fisheries Service, among other factors, the observer costs could no longer be supported by the Service. These costs were now imposed on the fishing vessels at an amount of around $710 a day under the mandatory program. Several fishermen sued the National Marine Fisheries Service for violating the Magnuson-Stevens Act because, when it was originally enacted in 1976, it did not create these industry-funded monitoring requirements. With *Loper Bright Enterprises v. Raimondo* (2024), the Supreme Court was asked two questions, with one that would have massive consequences on both environmental and administrative law: did the Magnuson-Stevens Act allow the National Marine Fisheries Service to create a rule that required an at-sea monitoring program the industry would pay for and should the Supreme Court clarify whether statutory silence on controversial powers creates an ambiguity requiring deference to an agency? In a 6-2 decision with a majority opinion by Chief Justice Roberts, it was decided that the Magnuson-Stevens Act did not allow this power, and *Chevron U.S.A. Inc. v. Natural Resources Defense Council* (1984) was overturned. The Administrative Procedure Act of 1946 gives power to the courts to review agency actions, specifically stating that they "decide all relevant questions of law". As this power, or statutory authority, is explicitly granted to the courts, the Supreme

Court states that it directly contradicts the Chevron doctrine. Courts are meant to interpret the meaning of laws and statutes, and the Supreme Court believes the Chevron doctrine gave agencies some power over courts. If an agency's interpretation of an ambiguous statute, it was required under the Chevron doctrine for a court to defer to that agency's interpretation. Now, in the return to the pre-Chevron era, the Supreme Court says that all cases that used the Chevron doctrine for the last 40 years are not moot unless the merits of the case are in question. For environmental law, the role of the EPA is now in question as it must now seek to prove that it has the best interpretation of an ambiguous statute, not just what is reasonable. Chief Justice Roberts emphasizes that agency interpretations should be an advisory role, not the final interpretation of the law. Courts, under the Constitution, serve as the final interpretation of the law, and Congress should not transfer this constitutional role to agencies because of ambiguity in the statutes. The number of challengers who wish to invalidate regulations set by the EPA will likely rise, as Congress is unlikely to write legislation that is as specific as the Supreme Court wishes would occur.

Though not the final environmental case the Roberts Court will decide, nor even the last one of the term, *City and County of San Francisco v. Environmental Protection Agency* (2025) is the most recent case decided. The city of San Francisco operates several wastewater treatment facilities, which, during particularly heavy precipitation, can dump untreated wastewater into either the Pacific Ocean or the San Francisco Bay. For these discharges, a National Pollutant Discharge Elimination System permit is required, and San Francisco has been implementing a control plan for the overflow since the 1960s. In 2019, the EPA issued a new permit for one of the treatment facilities and added two provisions that San Francisco opposed, claiming the EPA exceeded its statutory authority. These provisions are that San Francisco violated water quality

standards, and it must update its long-term control plan. The EPA did not provide specific limits for which these discharges had to reach in their result, which is why San Francisco is claiming that the agency went beyond its statutory limits and the Clean Water Act. In *City and County of San Francisco v. Environmental Protection Agency* (2025), the Supreme Court ruled against the EPA and found that the Clean Water Act does not allow the EPA to impose generic prohibitions on permits. Specifically, it does not allow the EPA to impose generic prohibitions on permit-holders without first determining the limits their discharges must conform. The Supreme Court, in a majority opinion written by Justice Alito, reasoned that Congress provided the EPA the authority for determining what steps a permit-holder must take to meet these water quality standards. For the EPA to punish permit-holders for actions that it did not take is considered wrong by the Supreme Court, and it is stressed that the EPA create specific rules for permit-holders. Again, the Supreme Court is narrowly tailoring the power of agency independence, this time focusing on how Congress adopted certain terms. Throughout the opinion, Justice Alito draws attention to how the words “limitation”, “implement”, and “meet” are used in the statute and how Congress meant them versus how the EPA has been using them. This case reinforces the precedent they are trying to set after *Loper Bright Enterprises v. Raimondo* (2024), where the courts must look beyond the agency's interpretation of ambiguous statutes to determine the best and final interpretation. Furthermore, this case sets a precedent for regulations that have concrete standards and requirements. Environmental regulations currently are created around outcome-dependent obligations, such as meeting certain criteria by a certain deadline. After this case, the EPA may have to create, with the cooperation of Congress, acting legislation, interested parties, and local governments, a plan for any regulation they wish to implement rather than just implementing outcome-dependent regulations. Undoubtedly, this will

also cause other agencies across the government to shift their outcome-dependent regulations as well.

Discussion

Whereas the prior eras of the Supreme Court have had some clear progression in terms of environmental law, the Roberts Court has been decidedly regressive since its inception. The Burger Court, the first Supreme Court era to deal with a series of environmental law cases, began with challenges to the National Environmental Policy Act. At the time, these were decided against environmental activists and groups, yet they were eventually perceived as wins for those very same causes. Each of those cases, whether it was *Aberdeen and Rockfish Railroad Company v. SCRAP* (1972), *Flint Ridge Development Company v. Scenic Rivers Association of Oklahoma* (1976), *Kleppe v. Sierra Club* (1976), or *Vermont Yankee Nuclear Power Corporation v. Natural Resources Defense Council* (1978), built up the power of agency independence. The Burger Court saw NEPA as burdensome to the agency process, which is apparent in almost every one of those rulings. Under the application of the law that the environmental groups wished for, agencies would almost certainly have to create an environmental impact statement for any action they undertook, regardless of whether it was major or not. Regarding the other major legislation, it was generally upheld and well-represented in the Supreme Court. One of the most important standards that the Burger Court established regarding environmental law that would be eroded is that the EPA did not have to consider economic factors when regulating. This was established in *EPA v. National Crushed Stone Association* (1980) and requires the best available technologies for pollutant control. *Tennessee Valley Authority v. Hill* (1978) saw the strongest version of the Endangered Species Act, where an almost completed dam was halted because it would lead to the reasonable possibility of the extinction of an endangered fish species. After this case, the

Endangered Species Act would never again be this strong, as it would also be weighed against economic interests.

Regardless of whatever else came out of the Burger Court era, the most important ruling regarding the environment was *Chevron U.S.A. v. Natural Resources Defense Council* (1984). Agencies could now interpret ambiguous statutes with their expertise rather than attempting to convince a court on the correct course of action and battling against industry interests. These regulations were still bound within the law, as they must be "reasonable," but they were no longer filling the courts with challenges to regulatory actions. As described earlier, the Burger Court era in environmental law supports agency independence, highlighted by its commitment to striking down NEPA provisions and the creation of the Chevron doctrine. Being the first main era, it began to marry environmental law to administrative law by continually refusing to separate the two. The following eras would continue this trend by tying administrative law to environmental law.

After the Burger Court, the Rehnquist Court began with further mitigation efforts to NEPA under *Robertson v. Methow Valley Citizens Council* (1989) and *Marsh v. Oregon Natural Resources Defense Council* (1989). It continued the trend started by the Burger Court of striking down anything seen as restrictive on the administrative process, or at least limiting the reach of it. Some definitions are provided for especially broad statutory language in the Clean Water Act in *United States v. Riverside Bayview Homes, Inc.* (1985) and *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (2001), where "waters of the United States" is defined and wetlands are restricted in scope. "Waters of the United States" would come up again under the Roberts Court and be further restricted, but, under the Rehnquist Court, it meant freshwater wetlands adjacent to traditionally navigable waters. Using the language and intent of

the Clean Water Act, they believed "waters of the United States" covered the territory, ecosystems, and quality associated with the water. Isolated wetlands are not covered because they are not connected as adjacent wetlands would be to navigable waters. Additionally, the Rehnquist Court upheld the Burger Court creation of the EPA's practice of ignoring economic statuses when regulating in *Whitman v. Trucking Associations* (2001). *Alaska Department of Environmental Conservation v. EPA* (2004) gave the EPA some power over state agencies, which was a large power shift from before the Chevron doctrine. Before the Chevron deference, if an agency such as the EPA had a rule that was challenged by a party, all parties would appear before a court for the dispute. Each side would present its case for its interpretation of the statute, and the court would provide the best interpretation, which would serve as the final one unless it was appealed. After *Chevron*, courts would now defer to the agencies' expertise in the matter and allow them to have the final say in the interpretation of the otherwise vague statute. Now, in *Alaska Department of Environmental Conservation v. EPA* (2004), the Supreme Court is claiming that the EPA has the authority to overrule state agencies if they failed to meet a statute's requirement of using the "best available control technology". Effectively, this places a federal agency above state agencies in terms of power sharing for federalism and administrative law. In both cases that the Rehnquist Court oversaw concerning the Endangered Species Act, *Lujan v. Defenders of Wildlife* (1992) and *Bennett v. Spear* (1997), the scope of the Act was severely limited compared to the Burger Court's interpretation of it. Economic interests were weighed against the preservation of species, something the Burger Court ignored when ruling against the construction of the Tellico Dam in *Tennessee Valley Authority v. Hill* (1978).

Both eras prior to the Roberts Court are marked by similar trends, which are an expansion of agency independence, even at the cost of environmental statutes and the general framing of

environmental cases as an administrative issue. NEPA was transformed from a requirement to a series of guidelines that prevented agencies from making unwise decisions regarding the environment. Similar language was used by the Burger Court and Rehnquist Court in these cases involving NEPA, where the agency was usually protected. Nonetheless, agency independence was built up by the two Supreme Court eras, especially with the *Chevron* decision. When Congress was unable to pass clear legislation, or any modern environmental legislation at all, the EPA could rely on these "golden era" statutes for regulation due to deference (Klyza & Sousa, 2010). This flexibility and maneuverability created by the Burger and Rehnquist Courts, while it did come at the expense of some of the statutes, did allow the EPA and other agencies to continually regulate in the modern era. Without the Chevron doctrine, there would have been many more cases in the courts, leading to a stagnation in progress in the area of environmental law.

Continuing with the Chevron doctrine and the building of the administrative state, there was a marriage between environmental law and administrative law. Anything that impacted administrative law would impact environmental law, and vice versa. Many of the statutes that were being interpreted in environmental law, such as the Clean Water Act, Clean Air Act, or Endangered Species Act, were all subject to agency interpretation under the Chevron deference. As a result, there was not much of a background of environmental law being built up independently alongside these mainly administrative cases.

In the Roberts Court era, there are two apparent trends regarding environmental law: the end of the administrative state and the introduction of industry interests regarding regulation. First, the Roberts Court began to signal the end of agency independence in *Entergy Corp. v. Riverkeeper, Inc.* (2009), when it allowed the EPA to use a cost-benefit analysis when regulating.

This case maintained the discretion of the EPA to choose the methods of promoting the best technology available when regulating, but using a cost-benefit analysis begins to erode the core principles the Burger Court established when it began ruling on environmental law. One of the key reasons that *EPA v. National Crushed Stone Association* (1980) led to the lack of economic considerations when regulating was to maintain agency independence. If agencies had to consider what the industry wanted or could afford, then it would not be a truly separate government. By keeping economic interests and the government separate, regulation becomes detached and easier because there are no ties to consider beyond what the science says. As soon as outside factors begin to have a say in regulating beyond what the experts say, then agency independence begins to fade. *American Electric Power Company v. Connecticut* (2011) may have guaranteed some discretionary power to the EPA in its decision at the time, but it also highlighted the fragility of solely relying on *Chevron* for this power. The case denied the ability of states and private entities to sue for climate change through federal common law, claiming that the EPA exists for that purpose, and it may regulate under the Clean Air Act to set emissions standards. However, because the Roberts Court overturned *Chevron* in 2024, it finally showed this fragility and almost completely denied these two avenues of relief that the parties seek in this particular case.

Agency independence would be limited further with definitions set in the Clean Water Act's meaning of "discharge" and the use of permits in *Los Angeles County Flood Control District v. Natural Resources Defense Council, Inc.* (2013) and *Decker v. Northwest Environmental Defense Center* (2013). Neither of these adversely affected the EPA's discretionary power under the Clean Water Act, but there is an inverse relationship between the Supreme Court and agency independence when it comes to definitions. The more the Supreme

Court has to intervene and interpret definitions, the less independence agencies like the EPA have, as they are unable to provide and work from their definition. They now must abide by a definition set by an outside institution, one that might set a definition that could not have any basis in science or be as specific as it needs to be. Operationally, this can be beneficial to them or the industry, but either way, their level of independence begins to falter. Notably, the EPA's administrative power is increased over states again in *Environmental Protection Agency v. EME Homer City Generation* (2014), as they may enforce interstate pollution control. This is continued from the Rehnquist Court's decision of *Alaska Department of Environmental Conservation v. EPA* (2004), which gives federal agencies power over states and their subsequent agencies.

One of the largest reversals of agency independence in environmental law was *Michigan v. EPA* (2015), as the Burger Court's principle of economic separation was all but eliminated. Rationalizing the phrase "appropriate and necessary" to dictate all factors, including cost, means that the EPA can no longer be severed from the private sector when regulating. A government agency, such as the EPA, which is primarily responsible for regulating, covers many industries. As a result, it faces the many interests of the various industries that it attempts to regulate. Particularly, there are a select few industries that the EPA faces more than others, such as the energy sector and local governments. When these industries and local governments are faced with regulations, they are paying the cost of complying with them to make sure that the wider society is healthy. However, when the EPA and other agencies are tasked with looking at the cost versus the overall health benefits, these are not necessarily comparable numbers. There is an imbalance between the private sector and the public, and the public relies on the government to regulate the private sector. When the Burger and Rehnquist Courts established these rulings,

ignoring the economic statuses of the industries being regulated, it was again to establish agency independence so that they could protect the public without influence. Now, the EPA must rely on the industries to create and meet these half-measures under these decisions by the Roberts Court.

Limiting the Endangered Species Act again, the Roberts Court used *Weyerhaeuser Company v. United States Fish and Wildlife Service* (2018) to also limit agency independence. If the United States Fish and Wildlife Service were found to have excluded economic impact from any zone it designated a critical habitat, it could be subject to judicial review. It continues this trend of setting up the courts for reviewing agency actions again, as was the case before *Chevron* was decided. Similarly, the EPA's ability to regulate under the Clean Air Act was heavily curtailed in *West Virginia v. Environmental Protection Agency* (2022), signalling the Roberts Court's intent to strike down *Chevron*. By claiming that agencies must have permission or authority from Congress regarding decisions that are economically and politically significant, it removes much of the discretionary power from the EPA and similar environmental agencies. There is no clear definition of what could be considered economically or politically significant, especially what would be so that Congress would have to grant permission or clear authority to the agency. Much of what the EPA and similar agencies do affects industries, governments, and the public all the time; the EPA and other agencies' actions constantly have political and economic effects that could be considered significant to some but not others. If the EPA can no longer perform what used to be its basic functions before, agency independence and environmental law have regressed.

Both *Rapanos v. United States* (2006) and *Sackett v. Environmental Protection Agency* (2023) narrowly defined what wetlands meant, but the latter almost single-handedly got rid of the EPA or the Army Corps of Engineers' jurisdiction outside of navigable waters under the

Clean Water Act. Federally, the EPA and the Army Corps of Engineers no longer have jurisdiction over adjacent wetlands as they did in *United States v. Riverside Bayview Homes, Inc.* (1985) and *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (2001). Wetlands covered under the Clean Water Act must now be indistinguishable from the navigable waters. The *Sackett* decision also overturned *Rapanos*, an earlier era Roberts Court decision, to implement a more restrictive definition of wetlands. Not only is the regression present over the prior two Supreme Court eras, but it is also present within the same Supreme Court era.

One of the legacy-defining cases of the Roberts Court era will be *Loper Bright Enterprises v. Raimondo* (2024), which overturned *Chevron* and 40 years of administrative law precedent. While explicitly looking at the Administrative Procedure Act of 1946, the Supreme Court claims that it only gives the courts the ability to decide all relevant questions of law concerning agencies. With this grant of authority, the law contradicts the Chevron doctrine because the Supreme Court claims that courts deferred to agencies so long as they had a "reasonable" interpretation. It is emphasized that agency interpretations should merely be advisory, and courts should consider all factors when interpreting a vague statute. Effectively, this ends agency independence, and all momentum from previous cases is erased. To regulate the environment, the EPA must have a clear statute from Congress, and it must be able to have the best interpretation of that statute. If the law is ambiguous and its interpretation is challenged, then it must appear before a court, and the court gets the final say, unless it is appealed. In other words, agencies operate as an extension of the legislative and judicial branches, but to a point where they can not do much without being specifically told. They are no longer this quasi-branch that helps to regulate and run everyday items, such as the environment, without constant input

and formal control from the branches. This is further upheld in *City and County of San Francisco v. Environmental Protection Agency* (2025), and it changed how agencies can regulate. Instead of agencies using outcome-dependent regulations, the Supreme Court has decided that if Congress grants the authority, with certain phrases or words in a statute, for an agency to regulate, then it must create a plan for regulation and implementation. Essentially, an agency such as the EPA must plan alongside local governments, courts, Congress, and other potential parties when creating regulations. In the Burger and Rehnquist Courts, there was no such cooperation between the EPA or other agencies and those they wished to regulate. Rather, economics was not taken into consideration, and agencies even had some power, if limited, over states and their agencies. Now, these agencies are tied together with those they are regulating, which has led to a total loss of independence and the administrative state.

Second, the Roberts Court has introduced industry interests to environmental regulations, a principle that the two prior Supreme Court eras were against. One of the first examples of this behavior is *Winter v. Natural Resources Defense Council* (2008), where the Supreme Court claimed the interests of the United States military are above the safety of the environment. It is fair to assume that the other Supreme Court eras would rule in a similar manner, especially considering this case involved NEPA. However, this case does place restrictions on granting injunctive relief, which had been a key part of environmental activism in other cases. A loophole was created in *Coeur Alaska, Inc. v. Southeast Alaska Conservation Council* (2009) after the Supreme Court ruled for the Army Corps of Engineers. Polluters could, theoretically, dump enough pollutants into a lake that it would reach the bottom and begin to raise the floor. At this point, it becomes “fill material” and is legal if they obtain a permit from the Army Corps of Engineers.

As with the previous point about the Roberts Court, *Entergy Corporation v. Riverkeeper, Inc.* (2009) also represents the first real time that they ruled for and mentioned economic interests. By allowing the EPA to use cost-benefit analysis, the Supreme Court is directly going against the precedent set in *EPA v. National Crushed Stone Association* (1980) and *Whitman v. Trucking Associations* (2001). They are introducing industry interests, which have led to the regressive nature of the administrative state and environmental law as a consequence. As minor a case as this might seem, where the EPA is given further discretion for choosing the best available technology, it represents the beginning of the Roberts Court's economic influence being tied to environmental law.

As discussed before, *Michigan v. Environmental Protection Agency* (2015) represents one of the core principles of the Roberts Court era because of the regression it was for the economic independence of the EPA. Health and regulations must be weighed against cost, as well as any other factors that would come under the phrase "appropriate and necessary". Naturally, costs will be higher than any risks involving health or the environment because costs are concrete, whereas health or the environment would be purely speculative. Installing filters in a smokestack at a power plant has an attached price, but the long-term effects of pollution are not quite as quantifiable. A regulation will be null if there is an imbalance that is considered unreasonable, but the Supreme Court refused to say what specifically is considered unreasonable in this balancing equation. *Weyerhaeuser Company v. United States Fish and Wildlife Service* (2018) also shows this in effect with another agency aside from the EPA, where the United States Fish and Wildlife Service must take the economic impact of declaring critical habitats for endangered species. Otherwise, the Service can be sued, and the action will fall under judicial review. The final case involving industry interests is *West Virginia v. Environmental Protection Agency*

(2022). Any decision that has significant economic or political effects must have had explicit authority granted to the agency by Congress beforehand. Almost all environmental law involves regulating the industry in some capacity, which is sure to cause economic effects. For example, the timber industry may consider water quality standards to be an insignificant factor, while the local mining industry would argue the opposite, as they would have to monitor their discharge closely. Overall, tying the private sector into environmental law is a key principle observed in these cases.

Currently, the status of environmental law and regulations remains tenuous under the administration of President Trump. It was predicted before his inauguration that many Biden-era regulations would be subject to termination once he entered office, whether that was through the passage of legislation or executive orders (McDermott & Daly, 2024) Once he entered office, he began using executive orders and general orders to agencies to deregulate. On March 12, 2025, the EPA issued 31 separate actions for deregulation (Shah, 2025). These ranged from rolling back carbon dioxide emissions standards to challenging research that previously supported greenhouse gas reductions.

For the future of the courts and the Roberts Court, there are several clear outcomes from the current decisions. First, courts will begin to hear more challenges to agency actions, especially from an emboldened private sector. With the end of the administrative state and agency independence under *Loper Bright Enterprises*, the private sector can argue its perspective to courts to challenge any regulation it believes is harmful. There is no deference given to the agencies, especially the EPA, about the regulations they impose for ambiguous statutory language. Secondly, the Supreme Court in *Loper Bright Enterprises* and *City and County of San Francisco* expected Congress to write clearer and more specific statutes. This will not occur as

ambiguity occurs for several reasons, whether that is due to anticipating future issues, a lack of expertise in the laws or subject matter, or the beneficiary of vagueness in the legislative process. Additionally, the polarization of Congress can lead to ambiguity in lawmaking so that agreements can be made (Ruge et al., 2024). Third, it is somewhat unrealistic to expect the legislature, the judiciary, the public, the private sector, and other parties to agree to work together with agencies like the EPA to self-regulate. With that many vested interests, it will become nearly impossible to have any meaningful agreement that results in a regulation that resembles the past ones.

Conclusion

From the Burger Court and the Rehnquist Court to the Roberts Court, there is a clear timeline of regression in environmental law. It was explored how the United States initially did not have federal control over its internal waterways until the passage of legislation in 1890 and 1899, allowing individuals and states to freely build and dump as they wished in navigable waterways (Hankey, 1980). The passage of these laws was necessary, as pollutants and structures would continue to block navigation to key parts of the United States. Smaller legislation was passed between 1899 and 1970, such as the American Antiquities Act of 1906 or the General Dam Act (McFarland, 1966; National Center for Cultural Resources, 2006). When the “golden age” of legislation was passed, it established a foundation for environmental law (Klyza & Sousa, 2010). It has been close to unthinkable for opposition parties to repeal or replace these laws, as they are instilled in American society and have many rulings based upon them.

When these laws were passed, the Burger Court began to immediately rule upon them and started the process of building an administrative state, separate from outside factors. These rulings transformed the landscape of environmental law from a relatively unknown factor to

being tied into administrative law. However, the Burger Court also ruled on making environmental law able to stand on its own accord, with several rulings that did not depend on the EPA or other agency discretion to enforce. When *Chevron* was decided, it changed everything in environmental law for 40 years. Around 19,000 cases have cited the case and it represents one of the most cited civil cases in Supreme Court history (Egelko, 2023). The Rehnquist Court continued building upon the precedents set by the Burger Court, oftentimes expanding the powers of the environmental agencies in extreme ways, such as some power over states. It would also continue to restrict legislative efforts that burdened agencies, such as the National Environmental Policy Act's environmental impact statement requirements.

When the Roberts Court took effect, it immediately began to impose restrictions on the efforts of environmental regulations set forth by agencies in *Rapanos v. United States* (2006) and has continued to regress ever since. Many of the core principles that the Burger Court established for environmental agencies have been deteriorated or outright abandoned. Industry interests are now a key factor of regulations, as of *Michigan v. EPA* (2015), *Entergy Corporation v. Riverkeeper, Inc.* (2009), *Weyerhaeuser Company v. United States Fish and Wildlife Service* (2018), *West Virginia v. Environmental Protection Agency* (2022), and *City and County of San Francisco v. Environmental Protection Agency* (2025). Additionally, the Roberts Court fully ended the Chevron deference afforded agencies after slowly chipping away at it in *Loper Bright Enterprises v. Raimondo* (2024). Much of the Burger and Rehnquist Courts' longstanding legacy regarding environmental law has been wiped clean, with many of the decisions the Roberts Court has made returning the law to a pre-1970s era.

Analyzing the decisions of the Supreme Court, past and present, is important because it provides a chance to see potential trends. As discussed above, the trends seen are those of

regression regarding the field of environmental law. With the dismantling of the administrative state and deregulation, it is certain that there will be challenges to the law for and against these measures as they begin to take effect. The future of environmental law under the Roberts Court will depend on how the private sector sees it, as their interests have considerable weight in the process in comparison to the agencies. When it comes to the legacy of the Roberts Court and environmental law, it has led to a complete dismantling of everything that was previously established under precedent, destroying decades of progress for those seeking to protect the environment.

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