Environmental Law; Developments, Setbacks, and Prospects

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US climate law has been weakened in recent years through changes in governance and an emergent pattern of overlapping institutional restraint conceptualized within this paper as the "web of deference." Environmental advocates may currently seem powerless to effect real change, but this is not the case. Advocates can best respond to the current circumstances by engaging in careful venue shopping, seeking to try important cases in state and international courts to sidestep an unreceptive federal judiciary, or by slowing deregulation in federal courts, trying cases that are unlikely to be appealed up to the Supreme Court.

Introduction

This paper provides a narrative overview of environmental law, exploring a pressing central question: How can advocates best respond to recent changes in law and governance that have weakened environmental law? Do environmental advocates still have the power to guide environmental policy, even in spite of these changes? While the legal landscape of environmentalist legal advocacy has been eroded, it would be incorrect to believe that environmental law is no longer capable of improving policy outcomes in the United States. Environmental law is a multifaceted field, but for simplicity's sake, this paper will focus on environmental law related to air pollution. Historically, environmental advocates have found the greatest success when upholding existing environmental regulations, which are enacted through legislation. By contrast, these same advocates have struggled when arguing for implicit protections within constitutional

[1] Brandeis University, Class of 2026; *Brandeis University Law Journa*l

rights.[2] This leaves advocates dependent on past actions in the executive or legislative branches, but not entirely subject to the whims of any current administration or body of Congress. Environmental advocates can always attempt to hold government officials accountable for previously established obligations, and they often succeed in these efforts due to the legal principle of stare decisis, which asserts that courts ought to adhere to past precedent when issuing rulings. However, this principle does not constrain supreme courts (state or federal) to nearly the same degree as it constrains trial and appellate courts. This is because supreme courts are never subject to the binding precedent of a higher court. As a result, the Supreme Court is only bound by stare decisis insofar as the court wishes to adhere to the ideals behind it. This issue is further compounded in environmental law due to the relative novelty of the field. Environmental law has simply had less time than other legal disciplines in which to amass precedents, regulations, and objective standards by which cases may be tried. This means there is still ample room to shape the development of environmental law for the better, but it also means courts that wish to disregard environmental advocates have far more flexibility to do so. For these reasons, this paper draws two central conclusions:

1. Problem Definition: Environmental law is currently in a state of turmoil due to political emphasis on deregulation, and due to overlapping legal precedent which constricts the avenues for redressing environmental issues. This moment in history presents a critical juncture in the development of environmental

[2] (Example: In *Juliana v. US*, the Supreme Court declined to hear a lawsuit arguing that the US government had violated citizens' due process rights through its inaction on greenhouse gases.) Source: Karen Zraick, *A Landmark Lawsuit, Where Kids Sued America, Comes to an End*, Mar. 24, 2025, https://www.nytimes.com/2025/03/24/climate/supreme-court-climate-lawsuit-juliana-children.html?smid=url-share.

law, and advocates must intervene to shape its development for the better.

2. Thesis: Environmental lawyers can best respond to the current crisis by advocating in venues other than the Supreme Court, selectively trying cases in more receptive venues in order to influence state and international law, or pursuing smaller federal cases that are unlikely to be appealed up to the Supreme Court in order to slow deregulation.

Background

The Supreme Court's oldest landmark air pollution case was settled in 1907.[3] *Georgia v. Tennessee Copper Company* held that states "retained the right to make reasonable demands" against private actors situated in other states that emit "noxious fumes" which "cause and threaten damage on a considerable scale" against the well-being of people or vegetation within the complaining state.[4] At the time, these complaints were based on the federal common law of nuisance. The federal common law of nuisance is a form of judge-made federal law that prohibits states from taking unreasonable and preventable actions that interfere with another state's enjoyment of its own property (territory). The final paragraph of the court's opinion began by stating: "If the State of Georgia adheres to its determination, there is no alternative to issuing an injunction."[5] Due to this ruling, states that contained sources of significant air pollution were not the only ones that could stop the emissions from those sources. Other affected states could file claims against the emitters in federal courts, and the courts would resolve the matter by ordering that the emissions

[3] Daniel Farber, *The Supreme Court's Earliest Pollution Cases*, Center for Progressive Reform, Nov. 3, 2022, https://progressivereform.org/cpr-blog/the-supreme-courts-earliest-pollution-cases/.

[4] *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, ¶ 1 (U.S. 1907).

[5] *Georgia v. Tennessee Copper Co*., 206 U.S. 230, ¶ 8 (U.S. 1907).

be curtailed. This case laid a foundational legal principle, one that later rulings would gradually erode.

In 1970, politicians from both sides of the aisle supported environmental protections. The Environmental Protection Agency (EPA) had just been created, and shortly thereafter, President Nixon signed what is now known as the Clean Air Act (CAA) into law. The CAA authorized the EPA to set national ambient air quality standards, which defined the upper "safe" limit of different pollutants in the air. All states were then required to comply with these standards.[6] Unfortunately, this widespread political support was counterbalanced by the spread of new sources of pollution. These sources were a far more pervasive part of daily life when comparing 1970 against 1907, as both automobiles and electricity became more widespread. Slightly over a month after the CAA was passed, *Boomer v. Atlantic Cement Company* (1970) was settled in the New York Court of Appeals.[7] This case established that there was an alternative to issuing an injunction against emission sources, at least in certain circumstances.

The defendants in *Boomer* operated a large cement plant in Albany, when a group of landowners filed a nuisance complaint over the emitted "dirt, smoke and vibration."[8] This cement plant was producing real air pollutants, with "dirt" and "smoke" being informal layperson language for particulate matter, carbon dioxide, and several other pollutants.[9] The court found that there was a nuisance which caused injury to the plaintiffs. In spite of this, it claimed that issuing an injunction would not be appropriate for an emissions source that served the public interest. The ruling addressed emissions sources that pose a nuisance of a "permanent and unabatable character," but

[6] Pub. Law No. 91-604, 84 Stat. 1676 (1970)
[7] *Boomer v. Atl. Cement Co.*, 26 NY2d 219 (N.Y. 1970).
[8] *Boomer v. Atl. Cement Co.*, 26 NY2d 219, 219 (N.Y. 1970).
[9] European Environment Agency, EMEP/EEA Air Pollutant Emission Inventory Guidebook 2023, at 2.A.1 (2023).

which provide a public benefit to be gained from their continued operation.[10] This case set a significant precedent because it defined what would be done when the impacts of an emission source were impossible to mitigate, yet the prospect of simply shutting the source down proved unappealing. Instead of an injunction shutting down the plant, the court held that the matter ought to be settled by awarding permanent damages; a one-time payment representing the economic harm due to the plant's past, present, and future emissions. Instead of seeking to mitigate the health risks of emissions, this case treated the environmental issues raised within as a simple matter of compensation for property damage.

In 2007, the Supreme Court expanded the CAA to include greenhouse gases, against the EPA's will. In *Massachusetts v. EPA*, the EPA rejected a petition in which Massachusetts asked it to regulate greenhouse gas emissions under the CAA.[11] The EPA argued that the CAA only authorized the regulation of local pollutants and still required deference to the president's climate policy. The court proclaimed that the EPA's narrow definition of which pollutants they were authorized to regulate failed in the face of the expansive term "air pollutant" used in the CAA, which included "'any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive … substance or matter which is emitted into or otherwise enters the ambient air.'"[12] The court further found that the EPA's insistence on deference to the president was "'arbitrary, capricious, or otherwise not in accordance with law.'"[13]

The Supreme Court's interpretation of the CAA has proven inconsistent at times, even disrupting its own precedent on the matter. The cases of *Whitman v. American Trucking*

[10]*Boomer v. Atl. Cement Co.*, 26 NY2d 219, 226 (N.Y. 1970).
[11]*Massachusetts v. EPA*, 549 U.S. 497 (U.S. 2007).
[12]*Massachusetts v. EPA*, 549 U.S. 497, 506 (U.S. 2007).
[13]*Massachusetts v. EPA*, 549 U.S. 497, 534 (U.S. 2007).

Association (2001) and *Michigan v. EPA* (2015) must be considered side by side, as the latter of these two cases breaks from the precedent of the former. In *Whitman v. American Trucking Association*, the Supreme Court ruled that agencies may not consider financial effects such as the costs of compliance when setting environmental regulations.[14] In a unanimous opinion written by Justice Antonin Scalia, the court held that, "We have therefore refused to find implicit in ambiguous sections of the CAA an authorization to consider costs that has elsewhere, and so often, been expressly granted."[15] This excerpt established that sections of the CAA do not require the EPA to consider costs when setting regulations, unless those sections explicitly instruct the EPA to do so.

Subsequently, in *Michigan v. EPA* (2015), the court held that the EPA must consider cost when deciding whether to regulate power plants.[16] In a more divisive 5-4 opinion, again authored by Justice Antonin Scalia, the court reasoned that *Michigan* was distinct from the prior *Whitman* case because the section of the CAA which discussed power plants used more "capacious" language.[17] For perspective: the statutory language at issue in *Whitman* was concerned with air quality standards deemed "requisite to protect the public health."[18] By contrast, the language in *Michigan* discussed regulations deemed "appropriate and necessary" when considering a particular study of the hazards posed by power plant emissions.[19] "Requisite" and "necessary" are synonymous, so the two sections are differentiated only by the word "appropriate." Furthermore, the subparagraph under which the EPA acted in this case did not expressly authorize the consideration of cost.

[14] *Whitman v. Am. Trucking Ass'n*, 531 U.S. 457 (U.S. 2001).
[15] Whitman v. Am. Trucking Ass'n, 531 U.S. 457, 467 (U.S. 2001).
[16] *Michigan v. EPA*, 576 U.S. 743 (U.S. 2015).
[17] *Michigan v. EPA*, 576 U.S. 743, 744 (U.S. 2015).
[18] 42 U.S.C. § 7409(b)(1)
[19] 42 U.S.C. § 7412(n)(1)(A)

Interestingly, Justice Scalia instead inferred it from an ambiguous section. The strong language in *Whitman* is difficult to reconcile with *Michigan*, suggesting a shift in the Court's priorities away from environmental stewardship and towards economic pragmatism.

When looking at how environmental law has changed, it is always important to remember that the victories of environmental advocates have been accompanied by defeats. The ambiguities of environmental law make it easier for precedent to be overturned or chipped away, with cases like *Michigan* demonstrating the Supreme Court's willingness to break from past environmental law rulings in response to changing priorities. Environmental law related to air pollution has only been accumulating governing precedent for slightly over a century, which pales in comparison to most fields of law. Since 1907, precedent on air pollution has been subject to persistent change as the balance between environmental, legal, and economic priorities fluctuated across time and circumstance. This historical context can help to inform practical responses for advocates in unprecedented times of crisis, such as the ones faced today.

Unprecedented Times

President Trump's re-election marked a substantial setback for environmental law. During President Trump's first six months back in office, the US Department of Justice (DOJ) filed 11 civil cases against unlawful polluters. Within the same timeframe, the Biden administration's DOJ filed 30. Further, the DOJ reached 18 settlements during President Trump's first six months, to President Biden's 53. This is not just a departure from prior administrations; it is a departure from President Trump's first administration. During his first term, President Trump's DOJ filed 37 civil cases against polluters and reached 55 settlements in the first 6 months.[20] This trend in President

[20] Maxine Joselow & Harry Stevens, *Civil Cases Against Major Polluters Plummet Under Trump*, New York Times, Aug. 8, 2025,

Trump's second term could hypothetically reflect a reduction in the rate at which environmental laws are violated, and thus a reduction in the need to pursue legal action. However, this interpretation is unlikely. The downward trend followed a reduction in the DOJ's environmental enforcement workforce, from 120 attorneys to 80.[21] Further, former government officials and environmental attorneys contend that the reduced enforcement has let polluters off the hook.[22] On top of this, there is a vacuum of reliable data to verify trends in emissions under President Trump's second administration because his EPA has removed long-standing requirements for industrial facilities to publicly report their emissions.[23]

These changes are unsurprising given President Trump's policy focus on shifting away from sustainable energy.[24] But this shift has not been isolated to the executive branch alone. The Supreme Court has emboldened President Trump's environmental deregulation. Since Justice Amy Coney Barrett's appointment in 2020, Republican appointees have constituted a supermajority on the Court.[25] It is within this context that shifts in environmental law have become increasingly pronounced. For example: President Trump's appointed administrator of the EPA, Lee Zeldin, is currently

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https://www.nytimes.com/2025/08/08/climate/pollution-civil-cases-epa-trump.html?smid=url-share.

[21] id.

[22] id.

[23] Lisa Friedman, *E.P.A. Is Said To Plan Deep Cuts to Greenhouse Gas Reporting Program*, New York Times, April 10, 2025, https://www.nytimes.com/2025/04/10/climate/epa-greenhouse-gas-reporting.html?smid=url-share.

[24] Molly Lempriere, *Experts: What Does a Trump Presidency Mean for Climate Action?*, Carbon Brief, Nov. 7, 2024, https://www.carbonbrief.org/experts-what-does-a-trump-presidency-mean-for-climate-action.

[25] *Who Are The Justices on The US Supreme Court?*, BBC News, Feb. 8, 2024, https://www.bbc.com/news/magazine-33103973.

seeking to repeal the Endangerment Finding.[26] The Endangerment Finding was the scientific conclusion, spurred by *Massachusetts v. EPA*, that greenhouse gases pose a risk to public health.[27] In seeking to repeal it, Zeldin demonstrated an intent to rescind his agency's authority to regulate greenhouse gas emissions, despite the Supreme Court's prior ruling in *Massachusetts v. EPA* that the EPA must regulate greenhouse gas emissions. While it remains unclear how the court will respond to this break from precedent, the Supreme Court's environmental law record since 2020 has been mountingly dismissive. If Zeldin succeeds, he would shift the EPA's mission away from environmental stewardship, towards a mission statement seeking to "lower the cost of buying a car, heating a home, and running a business."[28] The current court has emboldened actors seeking to deregulate in defiance of standing laws and precedent, and worsened the web of deference; a troubling phenomenon regarding the authority to regulate.

The Web of Deference

The most powerful tool for government figures opposed to environmental regulation is deference. These figures may assert that any avenue by which one seeks to redress climate change is invariably the incorrect one. As shown throughout this section and the next, these figures argue that whichever authority figure is being appealed to must defer to a different authority on the matter, and they are therefore unable to help.

[26] Maxine Joselow & Harry Stevens, *Civil Cases Against Major Polluters Plummet Under Trump*, New York Times, Aug. 8, 2025, https://www.nytimes.com/2025/08/08/climate/pollution-civil-cases-epa-trump.html?smid=url-share.

[27] *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 Fed. Reg. 66496 (2009).

[28] David Gelles & Maxine Joselow, *Inside the 'Radical Transformation' of America's Environmental Role*, New York Times, Aug. 3, 2025, https://www.nytimes.com/2025/08/03/climate/trump-epa-endangerment-finding-climate-change.html?smid=url-share.

In recent years, this phenomenon has culminated in a web of constraining precedent and policy, which has stifled prospects for climate action. By these constraints, greenhouse gas emissions may only be duly addressed through an explicit act of Congress laying out every fine point and minutia of what is to be done. This is troubling because Congress is prone to gridlock. It is not a branch designed to respond quickly or decisively during times of crisis. Because of this self-imposed bind of cumulative institutional inaction, this paper refers to the phenomenon as the "web of deference."

American Electric Power Company v. Connecticut (2011) established that the judiciary would defer to the legislature in setting environmental law.[29] In this case, a group of states sued four private power plants, arguing that their emissions violated the federal common law of interstate nuisance. The court ruled that the CAA displaced any right to address carbon dioxide emissions through federal common law. Generally, federal common law only exists so long as there is a need for a common law answer to a question. The role of the judiciary is to interpret law, not to create it. As an exception, whenever the court must rule on a subject for which there is no statutory law to interpret, it must provide governing common law through the precedent it sets, thereby filling the vacuum of legal authority. Federal common law arises as an unusual exercise of power to dress gaps in the law, and is designed to be replaced by statutory law, as happened in this case.[30] This ruling, understandable for its time, drew directly from the implications of *Massachusetts v. EPA*, but paired with other limitations the government later imposed on itself, it left little room for potential solutions.

Next, the political question doctrine produced further limitations on the judiciary. The political question doctrine is a controversial legal principle which proclaims that courts should refuse to hear matters presenting politically charged questions,

[29] *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410 (U.S. 2011).
[30] *Milwaukee v. Illinois*, 451 U.S. 304 (U.S. 1981).

which are best reserved for the political branches of governance.[31] Generally, a question is only a "political question" if certain criteria are met, the biggest one being explicit delegation to another branch stated within the Constitution.[32] However, the principle can often be interpreted expansively, applying it to issues the court simply does not want to resolve.[33] The Supreme Court has not addressed whether the political question doctrine applies to climate litigation, but in *Kivalina v. Exxonmobil* (2008), the US district court ruled on a lawsuit filed by a native Alaskan village seeking damages for the impact of extreme weather caused by climate change. The court found the issue non-justiciable under the political question doctrine.[34] This decision was then upheld by the Ninth Circuit.[35] Consequently, should the Supreme Court someday rule on a similar case grounded in constitutional rights, the court could dismiss the case simply by citing this precedent.

American Electric and Kivalina defined the web of deference as it existed prior to the first Trump presidency. At the time, the Supreme Court openly deferred to civil law and the CAA to define climate law. Fortunately, the CAA granted the EPA broad discretion to address emissions, so the court's deference did not prove problematic at the time. However,

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[31] Cong. Rsch. Serv., Overview of Political Question Doctrine, Constitution Annotated, https://constitution.congress.gov/browse/essay/artIII-S2-C1-9-1/ALDE_00001283/ (last visited November 24, 2025).

[32] id.

[33] Example: *Rucho v. Common Cause* (2019) overturned a lower court ruling on partisan gerrymandering by claiming that partisan gerrymandering lawsuits present a political question. The court's ruling was split along party lines, and ignored a wealth of precedent demonstrating that partisan gerrymandering was a justiciable question. Source: *Rucho v. Common* Cause, 588 US _ (2019).

[34] *Native Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863 (N.D. Cal. 2009).

[35] *Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849 (9th Cir. 2012).

President Trump significantly reshaped the Supreme Court during his first term, creating a supermajority of conservative appointees. It was within this context that the court delivered its ruling in *West Virginia v. EPA* (2022), which held that the EPA, much like the federal judiciary, had to afford greater deference to the legislature when shaping climate policy.[36] The court found that the EPA overstepped its authority by attempting to implement a "best system of emissions reduction" that included generation shifting. Generation shifting refers to the gradual transition in the US energy grid away from fossil fuels and towards more sustainable energy sources.[37] While the implications of this ruling are expansive, the key takeaway for this paper lies in its connection with previously formulated limitations on judicial authority.

To summarize: The standing precedent for the federal government defines greenhouse gas regulation as a non-justiciable issue under federal common law and constitutional law. This is because the existence of statutory law addressing the matter of emissions nullifies the need for a judge-made answer for greenhouse gases. Yet the statute that led to this nullification, the CAA, no longer authorizes the EPA to take all the necessary precautions to curb emissions. The only way an act could now do so, according to the holding in *West Virginia v. EPA*, is if Congress fulfilled a vague expectation to "speak clearly" when delegating decisions of "vast economic and political significance."[38] As a result, Congress must state exactly what it is authorizing, or the EPA cannot duly regulate emissions. Notably, when determining whether the CAA repealed the common law, it was treated as an act that accounted for all sources of pollution, past, present, and future. Conversely, when determining whether the CAA authorized generation shifting to regulate greenhouse gases, it was an unforeseen expansion of power precisely because it

[36] *West Virginia v. EPA*, 597 U.S. ___ (U.S. 2022).
[37] *West Virginia v. EPA*, 597 U.S. ___, 2 (U.S. 2022).
[38] *West Virginia v. EPA*, 597 U.S. ___, 11 (U.S. 2022).

attempted to adequately regulate a form of pollution that arose following the CAA. In addition, the current EPA is all too eager to constrain its own authority over climate regulations, as demonstrated by the proposed repeal of the Endangerment Finding. All of this has culminated in a debilitating web of deference to the legislature. When it comes to this web of deference, some states are following in the federal government's example, and others are radically diverging from it.

The States

Some state courts are adopting similar practices to the federal judiciary, responding to environmental litigation with arguments that the matter is beyond their authority. *Charleston v. Brabham Oil Company* was a 2020 lawsuit filed in a South Carolina trial court.[39] The city of Charleston filed the suit against several fossil fuel companies for violations of the South Carolina Unfair Trade Practices Act. In 2025, the suit was dismissed with prejudice.[40] The court provided several legal rationales for its dismissal, ranging from procedural concerns to broad arguments about the authority of the state government. First, the South Carolina court argued that it lacked jurisdiction over the defendants in the case. Charleston's suit mentioned oil giants such as Chevron and Exxon, which are not based in South Carolina. If this were a complaint against those companies for harm caused by their interstate emissions, then it would fall under the jurisdiction of federal courts, not state courts.[41] However, this was not a typical complaint about emissions; it was a complaint about deceptive marketing, a fact the trial court overlooked. As stated within the court's opinion, in dismissing the claim, "the Court concludes that, although Plaintiff's claims purport to be about deception, they are

[39] *Charleston v. Brabham Oil Co.*, 2020-CP-10-03975 (S.C. Ct. Com. 2025).
[40] Prejudice, as a legal term, simply means that a case may not be re-filed with altered language.
[41] U.S Const. Art. III, § 2.

premised on, and seek redress for, the effects of greenhouse gas emissions."[42] Still, the complaint mentioned several local companies, such as Brabham Oil Company, over which the court had clear jurisdiction.

In dismissing the claims against local firms, the court cited the political question doctrine and the plaintiff's lack of standing, which is a rationale often relied on when dismissing "greenwashing" suits, or other suits where environmental activists attempt to make use of statutes to advance environmental policy.[43] The term "greenwashing suit" refers to a type of lawsuit that leverages regulations on deceptive marketing to challenge companies that misleadingly advertise their products as eco-friendly.[44] The court also made a concerning assertion about the state's authority: "Any resolution to the climate change issues Plaintiff seeks to remedy must rest with the federal political branches that are legally and substantively equipped to address them."[45] This argument represents a troubling expansion of the web of deference to the states. If other states followed this model, US climate law could only be addressed at the federal level, not the state level, further compounding the previously discussed constraints. The trial court asserted not only its own lack of authority on this issue, but also a similar limitation within the state legislature. This may be an understandable claim when it comes to imposing fines on out-of-state companies for their

[42] *Charleston v. Brabham Oil Co.*, 2020-CP-10-03975, ¶ 8 (S.C. Ct. Com. 2025).
[43] Marisa Martin & James Landman, *Standing: Who Can Sue to Protect the Environment?*, 19 Insights on Law and Society (2020) https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-19/insights-vol--19---issue-1/standing--who-can-sue-to-protect-the-environment-/.
[44] Courtney Lindwall, *What Is Greenwashing?*, Natural Resources Defense Council, Feb. 9, 2023, https://www.nrdc.org/stories/what-greenwashing.
[45] *Charleston v. Brabham Oil Co.*, 2020-CP-10-03975, ¶ 11 (S.C. Ct. Com. 2025).

out-of-state emissions, but it is incorrect when it comes to regulating the behavior of companies while they are acting within a particular state. Even if South Carolina lacks the authority to dictate what Exxon can do in Texas, South Carolina absolutely has the authority to dictate what Exxon can do in South Carolina. The court's reasoning is comparable to arguing that states cannot impose their own minimum wage laws on in-state employees of out-of-state companies. The statement that a redress for climate change can only be sought at the federal level is even more concerning when applied to the locally based defendants. Despite the court's claim to the contrary, these defendants can, in fact, be scrutinized and regulated by the South Carolina state government, and the court provides little to substantiate its divergence from this fact. This is just one such case, but the court's opinion described itself as joining a "growing chorus" of similar rulings.[46]

By contrast, in *Held v. State* (2024), the Supreme Court of Montana held that a specific provision of the Montana Environmental Policy Act had violated the Montana Constitution by barring consideration of climate impacts in state energy planning.[47] Plaintiffs argued that this provision had violated their constitutional right to a "clean and healthful environment."[48] In 2023, the trial court found in favor of the plaintiffs.[49] Then, in 2024, the Montana Supreme Court upheld its ruling on appeal.[50] The environmental victory in *Held v. State* can be attributed to a number of factors. First, this outcome was made possible by the Montana justices who willfully chose to defy the "growing chorus" described earlier. The court recognized that the plaintiffs had standing in this

[46] *Charleston v. Brabham Oil Co.*, 2020-CP-10-03975, ¶ 8 (S.C. Ct. Com. 2025).
[47] *Held v. State*, 2024 MT 312 (Mont. 2024).
[48] Mont. Const. Art. II, § 3.
[49] *Held v. State*, CDV-2020-307 (Mont. Dist. Ct. 2023).
[50] *Held v. State*, 2024 MT 312 (Mont. 2024).

case, while other courts often cite the plaintiffs' lack of standing to dismiss climate litigation.[51] This argument is often relied on to dismiss environmental lawsuits, as the diffuse culpability for climate change makes it difficult for plaintiffs to demonstrate a particularized harm. In choosing to recognize that the plaintiffs had standing, the court set the precedent that all people have a legally sufficient personal stake in preserving the safety of the environment in which they live.

It is also worth recognizing the unique circumstances that made Montana's case successful. Montana became a state in 1889. Its first Constitution and subsequent governance were so heavily influenced by the state's mining industry that historians have referred to the state as being a "corporate colony" in its early days.[52] In 1972, Montana revised its state Constitution in light of mounting environmental concerns and added a "green amendment" to its state Constitution.[53] A green amendment is a constitutional amendment that provides explicit protections to certain environmental rights within the plain meaning of its text.[54] Montana's right to a "clean and healthful environment" is a green amendment because it is enshrined within the state's Bill of Rights, and it is "self-executing," meaning that the state courts can enforce it

[51] Marisa Martin & James Landman, *Standing: Who Can Sue to Protect the Environment?*, 19 Insights on Law and Society (2020) https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-19/insights-vol--19---issue-1/standing--who-can-sue-to-protect-the-environment-/.

[52] Evan D. Barrett, *Montana's Need for Change: A Historical Context for "To Make a Better Place."*, 43 Public Land & Resources Law Review 5 (2020) https://scholarworks.umt.edu/cgi/viewcontent.cgi?article=1703&context=plrlr.

[53] Dharna Noor, *'Green Amendments': Advocates Push for Constitutional Guarantees in Face of Climate Crisis*, The Guardian, July 3, 2023, https://www.theguardian.com/us-news/2023/jul/03/montana-climate-trial-green-amendments-state-constitutions.

[54] id.

without needing cooperation from the legislature.[55] As one of only three states (alongside Pennsylvania and New York) with such a provision, the courts of Montana are in a uniquely powerful position to establish how these provisions are to be interpreted.[56] The outcome in *State v. Held* provides information that can be useful in shaping federal environmental policy. The current Supreme Court adopts a limited interpretation of the CAA, yet it would be difficult to adopt a similarly limited interpretation of a green amendment. Statutes may be read to provide only those authorizations which are explicitly stated, while green amendments are effective precisely because they are explicit statements of sweeping obligations. Implicit constitutional protections for environmental rights have rarely held up, but explicit protections for those same rights could prove more influential. While such an amendment may not be adopted any time soon, the case of *Held v. State* provided an uplifting blueprint of success for future advocates.

Little Victories

Despite the recent flurry of setbacks to environmental law, little victories count for far more in the face of great hardships. While most recent environmental victories have been on the state level, cases in federal courts can prove to be crucial in slowing environmental deregulation. *Northeast Organic Farming Association of New York v. U.S. Department of Agriculture* (2025) was one such case.[57] The suit, filed in the Southern District of New York, alleged that the United States Agriculture Department (USDA) had violated the Freedom of Information Act by removing information about climate change from its websites. The USDA began deleting its climate data on January 30th, 2025, when it ordered staff to "identify

[55] id.
[56] id.
[57] *Ne. Organic Farming Ass'n v. United States Dep't of Agric.*, 1:25-cv-01529 (S.D.N.Y. 2025).

and archive or unpublish any landing pages focused on climate change."[58] On May 12th, 2025, the USDA agreed to restore all deleted information and comply with these legal obligations in the future.

This case may not have advanced environmental regulations, but at a time when environmental law seems to be under fire, preventing deregulation is a great victory in and of itself. It proves that capable environmental advocates can play a role in maintaining the environmental gains society has made thus far, and eventually play a role in further environmental gains for future generations. The restored data is not only helpful in enabling farmers to adequately adapt to the consequences of climate change, but it is also useful in enabling the agricultural sector to access "financial and technical assistance" for implementing environmentally conscientious practices into their work.[59] This case provides a crucial piece of wisdom for environmental advocates in federal courts. Appealing to the Supreme Court demands a great deal of time and resources, and even then, it requires the court to allow the case onto its limited docket; there is a great deal of opportunity cost for every case the court agrees to hear. Many federal appellate courts are substantially more responsive to environmentalist arguments than the Supreme Court, and when minor issues of environmental law are brought to these appellate courts, their rulings are far more likely to be left standing due to the costs associated with appealing the ruling. Rather than a single major case, deregulation can most effectively be slowed by responding with a litany of smaller cases, which are more difficult to appeal.

In addition to federal victories, there have been recent environmental victories in international courts. However, the United States is not strictly bound by international law, and the

[58] *Ne. Organic Farming Ass'n v. United States Dep't of Agric.*, 1:25-cv-01529, at 1 (S.D.N.Y. 2025).
[59] *Ne. Organic Farming Ass'n v. United States Dep't of Agric.*, 1:25-cv-01529, at 9 (S.D.N.Y. 2025).

current administration does not always abide by its international obligations.[60] In fact, President Trump withdrew from the Paris Agreement on the first day of his second term in office.[61] Much like state and federal courts, international courts lack a strict enforcement mechanism under their control.[62] Instead, the choice whether to adhere to their rulings is little more than a contest of legitimacy. Defying courts would damage the United States' international legitimacy, but little else. This is why the rulings of top U.N. courts are not a panacea to humanity's climate woes. Nevertheless, they are an interesting and unprecedented step in a positive direction. On July 23rd, 2025, the International Court of Justice (ICJ) issued its 29th advisory opinion in 80 years, entitled "Obligations of States in Respect of Climate Change."[63] Advisory opinions offer non-binding legal outlines of international law. These opinions are important for setting precedent and conferring moral and legal authority on particular policies.[64] The ICJ is often reserved in its opinions due to the court's inability to enforce rulings or punish violations, yet the court took a bold stance in its advisory opinion on climate change.

The ICJ found that a state's failure to adhere to its climate obligations would constitute an "internationally

[60]Max Bearak, *Trump Orders a U.S. Exit From the World's Main Climate Pact*, New York Times, Jan. 20, 2025, https://www.nytimes.com/2025/01/20/climate/trump-paris-agreement-climate.html?smid=url-share.

[61]The Paris Agreement was a 2016 multilateral treaty in which 195 countries pledged to keep the change in average global temperatures to no more than 2 °C above pre-industrial levels. The treaty lacked an enforcement clause, so President Trump's withdrawal was largely symbolic. Source: Paris Agreement, April 22nd, 2016, T.I.A.S. No. 16-1104, 3156 U.N.T.S. 79.

[62]U.N. Charter Art. 94, para. 2. (Note: The U.S. holds veto power within the U.N. Security Council.)

[63]Obligations of States in Respect of Climate Change, Advisory Opinion, 2025 General List No. 187 (July 23).

[64]International Court of Justice, *How the Court Works*, (Last Visited Nov. 26, 2025), https://www.icj-cij.org/how-the-court-works.

wrongful act."[65] The court further recognized that all states have an obligation to both uphold any climate treaties they are parties to and prevent significant harm to the environment. Next, the court recognized that the "best available science" identifies human activity as the primary cause of threats to the climate system and acknowledges that the accumulation of greenhouse gases in the atmosphere is currently causing significant harm to the environment.[66] This aspect of the ICJ's opinion made it harder for opponents of climate regulations to cite misleading arguments about scientific uncertainty. Finally, the court proclaimed that just because there are numerous states, organizations, and individuals who greatly contribute to climate change, this does not mitigate the obligations of any given contributor. This final aspect of the ruling, if adopted as meaningful precedent in other courts, could prove fundamental in overcoming the issue of establishing standing in climate litigation.

The implications of the ICJ's opinion are expansive yet feeble. This opinion provides an important source of climate precedent, but this precedent is nearly meaningless if a judge simply does not respect it. It is not binding. Nevertheless, as other countries align their policies with the court's opinion, failure to do so may become increasingly geopolitically isolating. Eventually, the US may either have to respect the court's opinion or be relegated to the geopolitical ranks of a rogue state. For a long time, climate policy has been a race to the bottom. Now, stubborn insistence on deregulation may lead to steepening diplomatic isolation.

Conclusion

While environmental law has been thrust into a period of crisis, it's clear that there remain strong opportunities to

[65]Obligations of States in Respect of Climate Change, Advisory Opinion, 2025 General List No. 187, at 132 (July 23).
[66]Obligations of States in Respect of Climate Change, Advisory Opinion, 2025 General List No. 187, at 87 (July 23).

uphold existing environmental laws and contribute to the positive development of environmental law as a field of practice. The struggles of environmental lawyers primarily arise from advocacy efforts before the Supreme Court, which has proven to be particularly unreceptive to environmental arguments in recent years. Certain states have similarly unreceptive court systems, but others are far more open to environmental advocacy and present promising avenues for advocates to contribute to the environmentalist movement, as demonstrated by *State v. Held*. Additionally, international courts provide a promising opportunity for environmental lawyers to contribute to the development of important norms, standards, and precedents for the burgeoning field of climate law. This enables advocates to set norms on a global scale and shift the conversation surrounding climate regulations without being bogged down by a federal judiciary that currently shows little interest in pursuing these same environmental priorities. Climate advocacy is being constrained and limited by expansive standards of deference and political figures who are opposed to sustainability, but this is no reason for despair. Advocates have a range of methods by which they can effectively respond to these constraints, and the future of environmental law remains promising.