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The Supreme Court is Shrinking its Deferential Strike Zone and the Reach of Key Environmental Laws will Almost Certainly Shrink as a Result

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Regardless of your perspective on the respective roles of Congress, the President and the Courts in creating federal environmental law, an essay by Sam Sankar of EarthJustice is well worth your time.

I agree with Sam that the nearly forty year period of judicial deference to how federal agencies, including EPA, interpret laws passed by Congress is coming to an end now that the Supreme Court has turned to the right. That period of judicial deference, which began only a few years after Congress's passage of most of our federal environmental laws, happens to coincide with the time period in which most of our federal environmental regulations came into existence.

I wouldn't say that the Supreme Court is no longer calling balls and strikes as Sam suggests in his rich essay. I'd say it is materially shrinking its strike zone.

I also agree with Sam that less judicial deference, and strict statutory construction, means EPA is going to be less able to promulgate regulations that expand upon what is said in the laws passed by Congress it is charged with enforcing.

I disagree with Sam's suggestion that the SCOTUS would typically defer to the Courts of Appeals' interpretation of the Clean Water Act, especially when it is the Ninth Circuit involved. The Court's actions in Sackett I and Maui prove otherwise.

But it is a constitutional fact, not an opinion, that the Supreme Court can give or it can take away, we're certainly entering a time of taking, and, when it comes to laws intended to protect the environment like the Clean Air Act and the Clean Water Act, only Congress can do something about that.

Why is the court going beyond calling balls and strikes, as Chief Justice John Roberts memorably described his role, to take a case it arguably doesn't have jurisdiction to hear?

https://www.nytimes.com/2022/06/05/opinion/climate-cha

Opinions expressed are those of the author.

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