Opinion **Climate change**

Supreme Court ruling is bad news for science – and the public

The overturning of the Chevron doctrine means the opinion of experts will count for less

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Amid a flurry of US Supreme Court activity — including this week's granting of partial immunity to ex-president Donald Trump for acts carried out while in office — a SCOTUS ruling on who should pay for government monitors on herring boats seems almost trivial.

In fact, the plaintiffs, who successfully argued that government rather than fishing companies should foot the bill, landed a much bigger catch: overturning a 40-year-old legal principle known as the Chevron deference (or Chevron doctrine). The reversal, by a 6-3 margin with judges split along partisan lines, means the opinions of scientists and technical experts at US federal agencies will no longer reign supreme when it comes to interpreting legal ambiguities.

For companies feeling suffocated by regulation, this will be welcome: the ruling dethrones an unelected, unaccountable technocracy, reins in perceived regulatory over-reach at organisations like the Environmental Protection Agency, and shifts power back to the courts. Though judges will still be expected to take scientific thinking into account, there is no longer an obligation to bow to expert evidence from specialist agencies.

Consumers and citizens, however, should tremble. Deborah Sivas, professor of environmental law at Stanford University, said the ruling will damage the federal government's ability to protect the public from environmental and other harms, describing it as "more than a bit scary to think that federal judges . . . are now more empowered to strike down agency rules and actions they don't like."

It is certainly hard to see how losing the Chevron doctrine serves the public good. Downgrading the scientific and technical expertise that lies in executive agencies like the EPA and Food and Drug Administration is likely to embolden companies to challenge policies meant to protect the public, as well as to inspire timid rule-making. What happens across the pond can influence events elsewhere: policymakers should worry about this official slapping down of expertise.

The Chevron doctrine emerged from a 1984 Supreme Court ruling involving the oil company of the same name. The Reagan-era doctrine gifted regulatory agencies, staffed by experts in their fields, leeway in interpreting ambiguities or gaps in statute. That leeway has been used to interpret old laws in the light of new science. Sivas points out, for example, that Congress has never passed climate legislation; the EPA addresses climate issues by applying certain provisions of the Clean Air Act.

SCOTUS, however, ruled on Friday that the Chevron doctrine conflicts with an older administrative law — and voted to scrap it. Now, its loss might put climate regulations in the line of fire. Democratic lawmakers condemned the reversal, along with three dissenting liberal Supreme Court judges, and consumer and investor groups.

Organisations including the American Association for the Advancement of Science had warned against ditching the doctrine, arguing it would disrupt how scientific information was used in federal policymaking; snarl up courts; and require an urgent scaling up of scientific expertise. Without judges having access to rigorous evidence relating to issues such as clean water and the application of artificial intelligence, the AAAS's Joanne Carney told me, "We risk the safety and health of the public in certain cases."

Given that the Chevron doctrine was all about experts interpreting legal gaps and ambiguities, one solution is for Congress to write more explicit laws for judges to follow. But the highly partisan nature of US politics, coupled with scientific issues such as climate change and Covid vaccines becoming ideological battlegrounds, makes that unlikely.

In addition, flexibly worded legislation can sometimes better accommodate new scientific findings. Dissenting Justice Elena Kagan wrote that judges rather than

scientific findings. Dissenting Justice Elena Kagan wrote that judges rather than scientists would now have to grapple with highly technical questions, such as what qualifies as a protein when it comes to regulating biological products. That does not seem like an improvement.

Cass Sunstein, the Harvard legal scholar who helped to develop nudge theory, predicts that the ruling will spur challenges to health, safety and environmental regulations. He also speculates that whether those skirmishes succeed will depend less on the law and more on whether cases come before Democrat or Republican appointees.

That would be a regressive, anti-scientific state of affairs. Political allegiances should play no role in protecting the public's right to breathe clean air and drink unpolluted water.