Every field has its texts that form part of its intellectual canon, and others that form a kind of anti-canon of rejected ideas. The same is true in environmental law. The issue goes beyond which side wins. From the pro-environmental side of things, some Supreme Court rulings form guideposts to rely on, whereas others represent dangerous pitfalls to avoid.

In reading over this list, it seems to me that there are two factors that determine how these cases get classified. The first is practical impact: some rulings are very helpful to environmental lawyers and others are very unhelpful. The other factor is the relative priority that a decision gives to the environment compared with property rights or economic impact.

Legal evolution is a constant, but there are moments in time when major legal shifts take place. The passage of the post-Civil War amendments to the constitution was one such moment, as was the Civil Rights Era of the 1950s and '60s. So was the "Golden Era" of environmental legislation, the time centering on the 1970s when all of our important federal statutes were passed. In each case, there's been a legal struggle about how to interpret that key period. Was it a fundamental paradigm shift, re-centering the law on new values? Or was it only a limited adjustment, making an important but limited reform while leaving basic principles untouched?

With all this in mind, here are the cases that I see as making up the canon and anti-canons of environmental law. If you're an anti-regulatory conservative, you'd probably flip these designations.

The Canon

Let me start with five opinions that help make up the canon. The environmental side won most of these cases. They lost a few, but the Court's opinions actually turned out to be really helpful in the long run. This dispute, between judges who see a paradigm shift and those who see only a course-adjustment, plays out in the cases below.

1. ***Sierra Club v. Morton***. Sierra Club lost this case but won in the long run. The case was about standing to sue. Sierra Club wanted something broader, but the Supreme Court did define standing very broadly. It gave Sierra Club the power to sue to redress injuries to its members, and it defined "injury" in broad terms to include anyone who uses the lands that would be impacted by a project. Previously, the mere fact that someone liked to hike in a wilderness area might not have been seen as a serious enough justification for filing a lawsuit to protect the area. Until Justice Scalia joined the Court, subsequent environmental rulings were very favorable to environmental

plaintiffs.

2. ***TVA v. Hill.*** This was a case under the Endangered Species Act. The Supreme Court interpreted the statute to place an absolute priority on preserving endangered species, regardless of the impact on the economy or other government goals. The Court also said that injunctions against violation of the statute are mandatory, with no wiggle room to exercise discretion. This decision made the Endangered Species Act the strongest of the environmental statutes. The author of the opinion, by the way, was Chief Justice Warren Burger, not one of the liberal Justices.
3. ***Whitman v. American Trucking Associations.*** The case involved the lynchpin of the Clean Air Act, EPA's power to set national air quality standards. First, he rejected a constitutional attack on the statute. Opponents had claimed that Congress had given EPA so much discretion that the statute was an unconstitutional grant of legislative power to the agency. Second, he rejected the claim that EPA needs to do a cost-benefit analysis when setting air quality standards. He went so far as to say that EPA is actually forbidden to do so; it can only consider public health, not cost.
4. ***Massachusetts v. EPA.*** This is my nominee as the most important Supreme Court environmental ruling of all time. It was the first case in which the Court was confronted with the issue of climate change. In an opinion by Justice Stevens, the Court held that the threat of sea level rise gave a state government standing to bring the suit. The Court then held that greenhouse gases are covered by the Clean Air Act as a type of air pollutant. This gave EPA the power to impose limits on carbon emissions by vehicles and industry.
5. ***Illinois Central Railroad v. Illinois.*** An "old" case is one decided in the late Twentieth Century. This case is a century older. It gave the Supreme Court's approval to the public trust doctrine. In narrow terms, the public trust doctrine gives governments wide power to protect the public interest in waterways and shorelines. Environmentalists view the doctrine as establishing a broader principle elevating the public interest in the environment over private environmental interests.

The Anti-Canon

1. ***Lujan v. Defenders of Wildlife.*** *Sierra Club v. Morton* opened an era of broad standing for environmental plaintiffs. Justice Scalia's opinion in *Lujan* proclaimed the end of that era. The ruling sharply restricted standing for plaintiffs trying to protect endangered species outside the United States. As usual with Justice Scalia, his rhetoric went beyond the facts of the case, trashing expansive visions of standing as a threat to the separation of powers.
2. ***Lucas v. South Carolina Coastal Council.*** This opinion by Justice Scalia was a big

win for property rights advocates over environmentalists. The opinion created a doctrine called the "total taking" rule, elevating the right to development over preservation of nature. *Lucas* appeared at the time to be the start of a sweeping constitutional attack on environmental and land use regulations. Fortunately, it turned out to be the high water mark of Scalia's campaign for property rights, as he found himself consistently in dissent in later cases.

3. ***Solid Waste Agency of Northern Cook County (SWANC) v. Army Corps of Engineers.*** Among other things, the Clean Water Act gives federal protection to wetlands. At the time, a regulation said all wetlands used by migratory water birds were under federal jurisdiction. The Supreme Court struck down this regulation, with hints that the regulation might even be an unconstitutional violation of state's rights.
4. ***Michigan v. EPA.*** Another Scalia opinion. EPA read the Clean Air Act to require it to regulate toxic emissions from power plants if those emissions threatened public health. Scalia said that EPA had to consider whether costs would be excessive compared with benefits. In the case itself, EPA was only able to quantify small benefits from eliminating the toxics. Advocates of cost-benefit analysis see the case as a big victory, while environmentalists were dismayed that the Court required consideration of costs when the statute was silent on the subject.
5. ***Utility Air Resources Group (UARG) v. EPA***. Yet another Scalia opinion. After *Massachusetts v. EPA*, the Obama Administration issued a series of regulations dealing with greenhouse gases. *UARG* involved a regulation that required industry to cut carbon emissions for new facilities. The regulation's coverage was at issue. EPA said that it applied to power plants that emitted a lot of carbon dioxide but not much of other air pollutants. The Supreme Court rejected that interpretation of the law. The practical impact of the decision was less important than the signal it gave: the Supreme Court was not about to let EPA get creative in its efforts to deal with the looming climate crisis. May climate change is a big deal, or maybe not (in the view of some Justices), but either way, it wasn't reason to deviate from legal business-as-usual.

Today's Supreme Court seems certain to add to the anti-canon; the big question is how far the Court will go. Will it simply giving grudging effect to current law? Or will it try to unwind the clock back to the 1950s, before business and property owners were subject all these pesky rules and regulations?