Environmentalists need to develop some broad strategies to combat Trump rollbacks, least they become mired in an overwhelming number of details. The Trump Administration seemingly has a million rollbacks going but they rely on a relatively small numbers of strategies. The task will be developing effective counters to these strategies. The responses can then be fine-tuned for application to specific rollbacks. Below, I set out some of the core Trump strategies and discuss their areas of vulnerability.

A successful strategy will involve not only winning individual cases, but building a body of precedent that make the legal ground increasingly shaky for Trump rollbacks. It the Administrative can be forced into the normal rulemaking process and has to rely on scientific and economic justifications for what it is doing, it will have lost more than half the battle.

Trump Strategy 1: Short-circuiting the rulemaking process.

Normally, a regulatory action requires a process of disclosure of relevant data, publication of a proposed rule and its justification, receipt of public comment, and finally publication of the final rule with responses to significant comments. This is a labor-intensive, time-consuming process. To avoid it, the Trump Administration has been using what are called interim final rules, which basically means that the initial proposal becomes immediately effective and the agency then invites comments about why it should make changes. (In other words, sentence first, trial later.). To use this procedure, an agency has to show "good cause," which the Trump Administration defines very broadly. They tried to use the good cause exception to avoid the need for notice and comment in the first Trump Administration. Courts were unreceptive then, and we need to a concerted campaign to reaffirm that this is a narrow exception rather than a blank check for agencies to avoid procedural requirements.

Trump Strategy 2. Reliance on *Loper Bright*.

In the *Loper Bright* case, the Supreme Court overruled the *Chevron* doctrine and replaced it with a new approach to judicial review of agency interpretations of statutes. The Trump Administration likes to quote the language that every statute has a single correct interpretation. It's less fond of reminding readers of other aspects of the opinion:

- The final word on that correct interpretation belongs to the courts, not to the executive branch. Longstanding interpretations by agencies still get weight from the courts.
- The correct reading of many statutes is that they give discretion to an agency – but only within limits established by the courts, and only when the agency can give

reasoned justification for how it exercises its discretion.
- If the courts previously upheld a regulation under the *Chevron* test, that ruling remains valid law unless the normal standards for a court to overrule its own decisions.

Moreover, the Administration isn't terribly good at close readings of statutory text, which are central to the Supreme Court's current approach to statutory interpretation.

In other words, although the Trump Administration wants to paint *Loper Bright* as increasing its power to reject existing interpretations of the law, the reverse is actually true.

Trump Strategy 3. Reliance on the Major Question Doctrine

In West Virginia v. EPA, the Supreme Court held that Congress normally does not delegate to agencies the power to make decisions of vast societal importance, so a court must fine a clear indication that a particular statute is an exception. If you believe the Trump Administration, just about everything significant that agencies did under Obama and Biden presented a major question. This badly overreads the West Virginia opinion, which relied on a series of factors before finding that the major question doctrine applied. It also ignores the argument that regulatory rollbacks can themselves be subject to the major questions doctrine.

Trump Strategy 4. Drive-by Fact Finding

Because Trump Administration actions are often at odds with the scientific or economic literature, the Administration prefers to rely on legal arguments rather than factual ones. In addition, it has fired many of the government experts who would normally be in charge of helping the government make factual arguments. That provides another reason for the Administration to avoid putting too much weight on them. Still, it often includes factual arguments as alternatives to its legal arguments or tries to smuggle factual assumptions into its legal discussions. This provides an opportunity for the other side to really hammer the government. Doing so can be rhetorically powerful because it damages the government's credibility.