

The Supreme Court announced its decision in *Summers v Earth Island Institute* this morning. The full opinion is on the Supreme Court [site](#).) In a 5-4 split, the Court denied standing in an opinion by Justice Scalia. As Justice Stevens' dissent explains:

The Court holds that the Sierra Club and its members along with other environmental organizations) do not suffer any "concrete injury" when the Forest Service sells timber for logging on "many thousands" of small (250-acre or less) woodland parcels without following legally required procedures-procedures which, if followed, could lead the Service to cancel or to modify the sales. Nothing in the record or the law justifies this counter intuitive conclusion.

Doctrinally, the most significant part of the opinion is the holding that procedural rights do not provide a basis for standing unless the plaintiff can demonstrate a concrete stake in the outcome of the dispute.

This was a predictable holding. Predictable because in many different contexts, the Court has only viewed procedural rights as having utilitarian value in changing the outcome, rather than having any intrinsic value of their own. We see this in decisions involving due process and in the harmless error doctrine. The decision also fits into a line of cases refusing to allow plaintiffs to raise broad programmatic challenges to the administration of government programs.

Nevertheless, the decision does undermine the ability of Congress to impose legally binding procedural requirements on administrators. This could be another context where state governments could be helpful (as in *Massachusetts v. EPA*). Although it may be impossible for any individual plaintiff to prove that she would have visited one of these woodlands, it would be easy for a state to show that the decision would impact some of the woodlands within its borders. Congress might want to consider encouraging plaintiffs to run the standing gauntlet by providing enhanced attorneys fees (for instance, allowing a contingency multiplier).