The Supreme Court declined to hear two cases today. Neither case was earthshaking, but conservative Justices wrote revealing separate opinions.

The case with the greatest import for environmental law was *Paul v. U.S*. The facts of the case had nothing to do with environmental law, but the issue involved has large implications for environmental statutes.

In a case called *Gundy*, Justice Gorsuch wrote an opinion joined by two other Justices calling for stringent restrictions on Congress's ability to delegate authority to administrative agencies. Justice Alito indicate that he was also open to rethinking the current doctrine. That doctrine gives Congress tremendous leeway in deciding how much discretion to give agencies. That makes four Justices. (Here are some additional thoughts about *Gundy* and its implications for environmental law).

Justice Kavanaugh didn't participate in that case. So it wasn't clear whether there was a majority to reexamine nondelegation doctrine.

Today, as you might say, the fifth shoe dropped. Kavanaugh took the occasion of *Paul v. U.S.* to sketch his own views. There's good news and bad news, if you care about environmental protection. The bad news is that he said nice things about Gorsuch's *Gundy* opinion and indicated that he too was willing to rethink the current 85-year-old doctrine. The good news — or at least, less-bad news — is that he proposed limiting changes to "major issues," which have historically been defined as administrative decisions sharply expanding federal regulatory power. Logically, it should also include statutes delegate wide-open deregulatory power. Gorsuch seems ready to prohibit Congress from delegating these major issues to agencies like EPA.

Hopefully, the major issues approach would leave nearly all environmental statutes intact. There are cogent criticisms of the major issues doctrine, but it could be better than the constitution clearcutting advocated by Gorsuch. The doctrine might even be turned against Trump — for instance, by providing a way of attacking the statute that allows waiver of all other laws in order to build border barriers.

The other case was *National Review v. Mann,* which involved a libel suit by the famed climate scientist against the magazine. Justice Alito wanted to hear the magazine's appeal. First, he thought that the court rather than a jury should decide if allegations of scientific misconduct should be read as factual rather merely opinion. Second, he was concerned about allowing libel suits on matters of "scientific or political controversy." Among the current Justices, Alito is the one most willing to upheld restrictions on free speech, so his

opinion in the *National Review* case is a little out of character.  It's dismaying that he regards the reality of climate change as a matter of genuine scientific controversy. It's also disturbing that he's willing to allow intentional lying when controversial issues are debated — surely those high profile issues are the ones where intentional lying is most harmful to society.

In each case, all we have is the view of a single Justice. The majority never explains its reasons for declining to hear a case. But like straws in the wind, the separate opinions by Kavanaugh and Gorsuch may be forewarnings of coming storms.