

*(This post was authored by Grayson Peters, a JD candidate at Berkeley Law and CLEE research assistant.)*

Do federal judges appointed by former President Trump rule differently in environmental disputes than judges appointed by other presidents? An [analysis](#) by two Berkeley Law students finds that they do in a few key areas of judicial decision-making.

Between fall 2021 and summer 2022, we read and categorized over 270 judicial decisions across two cohorts: one cohort containing all environmental decisions by Trump-appointed judges and a “control group” cohort containing a random sample of environmental decisions by non-Trump judges between 2017 and 2021.

To identify environmental cases for analysis, we searched the Westlaw database for lead opinions in cases with the “environmental” subject matter keyword during the relevant timeframes. We screened out cases that despite the “environmental” label did not include an environmental basis of decision (such as hostile work environment or insurance cases).

The large number of decisions that involved environmental issues or statutes but were decided partly on procedural or non-environmental grounds, or included multiple bases of decision, required individual evaluation to determine whether including the case in the analytical cohort would inform or cloud the assessment of environmental decision-making. In general, cases in which the core analysis or claim involved environmental considerations (statutory or common law) remained in the analysis; cases where environmental issues were in the background of the central holding were removed.

Our initial findings suggest that, while the Trump-appointed cohort are fairly similar to those of the non-Trump control cohort regarding prevailing parties and a number of analytical criteria, three noteworthy deviations emerged.

- First, Trump-appointed judges appear significantly less willing to grant deference to administrative agencies’ interpretations of governing statutes in their regulatory processes. Judges from the control cohort granted deference to administrative agencies 82% of the time deference was an issue before the court, but Trump-appointed judges granted agency deference only 19% of the time.
- Second, Trump-appointed judges appear more likely to rule in favor of federal agencies in lawsuits brought by nonprofits. Despite their hesitance to grant deference to federal agencies, Trump-appointed judges nonetheless rule in favor of the agencies, and against nonprofits, 8% more frequently than control group judges.
- Third, although Trump-appointed and control judges ultimately found that litigants had

standing to sue at identical rates, standing was more frequently discussed in Trump-appointed judges' opinions (39% of the total) than in control judges' opinions (23% of the total). This might suggest that Trump-appointed judges are sensitive to the threshold issue of standing or that defendants appearing before Trump-appointed judges are more likely to challenge standing.

This analysis will grow more robust as the Trump judges cohort grows with the addition of new decisions. This preliminary analysis already highlights key differences in decision-making-deference and standing in particular-as well as a number of potential differences that may solidify with analysis of more cases. Further analytical refinement may include:

- Distinguishing reversals of agency actions by the presidential administration responsible for the agency action
- Distinguishing reversals of lower court decisions by prevailing party
- Distinguishing between nonprofits, for example to identify national environmental groups, local environmental groups, and other groups with mixed or uncertain alignment
- Analyzing dissents to identify where judges may be telegraphing their decisions to the Supreme Court or adding analytical categories.

Our analysis, "Analyzing Environmental Decision-making of Trump Appointed Federal Judges," is available [here](#).