An executive order dating back to Clinton requires all agencies to make environmental justice part of their missions. They are required to consider whether their actions have "disproportionately high" impacts on minority and low-income communities. Those last two sentences were true all the way through Trump's first term and the Biden years. But no more.

President Trump just revoked the Clinton order, making it clear that agencies should no longer consider how their actions impact disadvantaged communities. This radical step follows in the wake of an earlier Trump order eliminating environmental justice offices in agencies.

To implement this order, agencies will have to eliminate their own environmental justice regulations. At that point, the door will be open to judicial review. I think agencies will have a hard time justifying the repeals. Trump's executive order says that its purpose is "ending illegal preferences and discrimination."

As I discuss at length in a recent article, there is no reason to think that the Clinton order violates either the Constitution or any civil rights law. Court have repeatedly upheld rules targeting the disparate impact of regulations on people of color. In addition, even if the environmental justice provisions are problematic in their application to race, there's not even a sliver of a legal argument against their application to low-income communities in general.

Some conservatives have argued that the disparate-impact analysis – the approach taken in Clinton's executive order – is inconsistent with the Supreme Court's ruling against affirmative action. But the two are quite different. Affirmative action is an effort by the government to *benefit* minorities. Disparate-impact analysis is an effort by government to *avoid harming* them. It takes a high degree of sophistry to equate the two.

Also, unlike affirmative action, a gain to one group in environmental protection does not equal a loss to another. Only one person can get a single slot in a college, but stopping a polluter who is harming a minority community does not deny white communities of any opportunities. In fact, quite often, they too will benefit from halting the pollution.

Finally, as I explained in a follow-up paper, affirmative action has been a highly divisive issue on the Supreme Court for decades, so the ruling against it was not a surprise. In contrast, there have been only a couple of complaints by Justices about

disparate-impact analysis in the over forty years it has been part of the law.

Thus, there is little or no basis for Trump's claim that Clinton's environmental justice order violated either civil rights laws or the Constitution. Maybe the Supreme Court will make a radical change in the law with no prior warning, but that is the only hope for Trump's claim that disparate impact analysis to protect minorities is unconstitutional. And not even that would justify eliminating disparate impact analysis to protect the poor.

Trump's embrace of this extremist view is an indication of just how much more radical his second term may be compared with his first. Agencies that follow his order to eliminate their own environmental justice rules are courting judicial reversal.