

It's no secret that Trump is likely to roll back as many environmental regulations as he possibly can, starting with the Biden Administration's climate rules. In pursuit of that goal, he has pushed agencies to adopt high-risk legal arguments for rollbacks rather than more reliable strategies. But he may run into a serious roadblock, given that in May the Administration lost in [26 out of 27](#) district court rulings. Before May, Trump was losing about two-thirds to three-quarters of district court rulings. He'll win some of those cases on appeal, but that's still an unprecedented loss rate for the federal government.

The Administration's "go for broke" strategy is partly due to an ambition to permanently dismantle regulation and partly for practical reasons. And also partly due to an emphasis on drama – "shock and awe" – rather than the more mundane but more substantive actions.

There are basically two ways to challenge a regulation. You can either argue that it was outside the agency's legal authority or that it isn't justified by the evidence. And as to either one, you can either go big or not. On the legal side, you might argue that the particular strategy adopted by the agency has some legal flaws (going small). Or instead, you might argue that the agency has no legal authority to consider the issue or that anything even remotely like the existing rule would be unlawful. On the fact side, you could tease apart the evidence for specific agency conclusions (going small). or you could argue that the evidence doesn't justify doing anything at all (going big).

Going big seems to have intrinsic appeal to the Trump Administration. Just look at DOGE. Going big is partly a scorched earth territory – trying to wipe out so much that a later Administration will never be able to rebuild. It also creates more drama, generating more enthusiasm from supporters and dismay among components. And the Administration seems to like taking big risks with what they regard as big payoffs. The motto seems to be, *GO BIG OR GO HOME!*

The Administration also seems to favor legal arguments over factual ones. To begin with, the science and the economics often don't support the Administration. That's one reason why they're anxious to fire agency scientists and cut off grants to academic researchers.

But there's another, even more important, practical reason. The factual issues involved in environmental regulations are complex and highly technical. The Trump Administration is trying hard to get rid of the civil servants who have the expertise

to undertake the necessary time-consuming analysis. For instance, if EPA wants to justify lower pollution standards for a major pollutant like PM_{2.5}, it's going to need to provide an analysis of the extensive epidemiological literature to justify its conclusions. Many of the offices where people used to do that work are empty now.

Given the depleted technical expertise at agencies, it's easier to rely on broad-gauge legal arguments that any halfway competent member of the Federalist Society can make and hope that a judge appointed by Trump will go for it. The move toward hyper-aggressive legal arguments has been a hallmark of the Trump Administration.

Perhaps the most vivid example is Trump's order that agencies amend existing environmental regulations so that they will automatically expire in a year (except in the unlikely event that the agency decides to retain them). This effort relies on two legal arguments: (1) agencies have the power to amend all their rules at once, without any consideration of the impact of doing so on particular rule, and (2) the President can direct them to do so and leave them no discretion for any other course. These are high-risk legal claims, but if they work, much of the regulatory state can be eliminated at a single blow. But it seems unlikely that this gambit will be successful, since it ignores the impossibility of an agency reviewing hundreds of rules every year to determine whether to continue them.

A tendency to rely on bold legal arguments rather than detailed technical ones is a disadvantage in court, however. Courts defer to agencies on factual matters, especially those that involve technical expertise. Now that *Chevron* has been overruled, however, legal arguments by agencies don't get the same deference. Thus, the chances of a judicial reversal are higher when the agency relies on purely legal grounds. And bold claims are generally tougher to win than more modest ones, whether the claims are legal or factual.

If there's a silver lining here, it is that the Administration is likely to pursue rollbacks in ways that make them more vulnerable to judicial review. In any event, we're heading toward a lot of courtroom dramas. Let's hope they end up in a good place.