Summary

The Supreme Court's opinion in the Trump ballroom case held that the plaintiff probably didn't have standing. This ruling likely won't impact cases brought by environmental law groups to protect public lands or endangered species.

There’s a lot of concern about how the Supreme Court’s opinion in the Trump ballroom case could impact environmental law. The Court allowed Trump to move forward on his gilded monument to himself, despite the strong argument that he was violating the law. In the majority’s view, the problem was that the plaintiff lacked standing. The worry is that the Court may have cut back standing doctrine in a way that will block many environmental cases. My view, however, is that the Court applied the right doctrine to the wrong facts, facts that did not accurately reflect the record.

To be sure, the Court’s opinion is dispiriting. It starts off on the wrong foot by saying the “the federal government launched a project to replace the East Wing.” That’s an odd way to describe a vanity project by a single individual. It seems to buy into the idea the federal government and the President are one and the same. It also sidelines Congress, which never approved the project and was part of the federal government the last time I looked. As Chief Justice Roberts pointed out in dissent, “Congress has explicitly prohibited the construction of any ‘building or structure . . . on any reservation, park, or public grounds of the Federal Government in the District of Columbia without express authority of Congress.’” The White House is on National Park Service grounds, so the illegality of the project seems crystal clear. The Court also gives far too much credence to the government’s national security claim, which was never mentioned until the project ran into opposition. It recites all the government officials who endorsed the claim, ignoring the fact that under the Court’s own unitary executive theory, those officials were just Trump’s servants.

There’s not much about the ruling you could call good news. The one bright spot is that Chief Justice Roberts may have woken up to the threat Trump poses to our system of government. He’s clearly correct in accusing the Court of “allowing the Executive’s likely infringement of the Legislature’s power of the purse and authority to regulate federal property in the District of Columbia to continue.” “Today’s decision,” Roberts concludes, “is no victory for the separation of powers.”

The majority avoided having to decide on the project's legality by denying standing to the plaintiff. The plaintiff had tried to establish standing with an affidavit from one of its members, a woman with a deep interest in historic preservation. She said that she lives in Washington, expects to walk by the Trump's vanity project on occasion, and finds it "distasteful." The Court then breezily dismissed the standing claim on the ground that being offended or upset by a government action isn't an "individualized injury."

The majority had to contend with environmental precedents holding that an aesthetic injury was enough for standing. It distinguished one case by saying that the plaintiff's recreational interest in using a river had been harmed, so the case didn't just involve offense to the plaintiff. It also dodged another case that had said a plaintiff's inability to see an animal due to its extinction was a "cognizable injury." True, the majority in the ballroom case admitted, the woman in question had a cognizable injury. But, the Court said, that injury wasn't "concrete and individualized." Instead, the majority said, the governing rule was that there is no standing when "the only injury a plaintiff asserts stems from offense, disagreement, or distaste."

The point I want to make about the Court's ruling is a bit subtle. The majority distorted the facts to make it appear that the woman in question was just someone who happened to walk by from time to time. I would argue that, if that were true, the Court was probably right about standing. I would be offended by seeing Trump's eyesore from an airplane, but I don't think that would give me standing to sue. However, the Court ignored other facts, including the woman's frequent visits to the White House and the ways that the new building ruins the experience. On those facts, I think that Court's decision was wrong.

That means that we have to evaluate the decision in two ways. I think on the facts, the Court was wrong. But the Court's legal statements applied to the Court's version of the facts. That means, the legal analysis has to be understood on the basis of the facts as the Court found them. If those were indeed the facts, then the Court's decision may not be much of a change in legal doctrine. In other words, the Court gets a passing grade on legal doctrine but a failing grade on its distortion of the facts.

The cases where the Court has accepted an "aesthetic injury" were different from the situation the majority understood to be before it this time. The Court first indicated that an "aesthetic injury" was enough for standing in *Sierra Club v.*

Morton, which involved a plan to build a Disney ski resort on pristine federal land. Sierra Club had failed to allege that any of its members had been injured in any way by the project. Instead, it claimed standing as an organization dedicated to preserving wilderness. Here's what the Court said:

> "The alleged injury will be felt directly only by those who use [the land], and for whom the aesthetic and recreational values of the area will be lessened by the highway and ski resort. …Nowhere in the pleadings or affidavits did the Club state that its members use Mineral King for any purpose, much less that they use it in any way that would be significantly affected by the proposed action."

On remand, the Sierra Club amended its complaint to say that its members did use the land in question for hiking, and the lower court correctly found that to be sufficient to establish standing.

What the majority says in the ballroom case does not seem strikingly different to me than what the Court said over fifty years ago in the *Sierra Club* case. *Sierra Club* represented what I have called place-based standing, which requires some connection between the plaintiff and the land in question. Standing cases since then fit the same pattern.

Roberts may be correct that the woman in question was alleging more than mere offense at a distasteful government action. But as I said, what matters for precedential purposes is the majority opinion and its characterization of the facts. Given that view of the facts, we shouldn't find the majority's statement about doctrine particularly alarming. By distorting the facts, the majority may have felt that it was diplomatically avoiding a clash with an angry President in a relative minor case. But the case is only minor compared to some of the President's other actions. It's a shame that the result was to allow a blatantly illegal presidential action to trash the White House, which belongs to the American people, not to him.