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### Annotated Bibliography

Adler, J. H. 2005. Judicial Federalism and the Future of Federal Environmental Regulation. *Iowa Law Review* 90 (2):377-474.

Found using Worldwide Political Science Abstracts and searching "commerce clause."

Adler is one of the most important scholars in environmental law, especially concerning the Commerce Clause. This piece provides some theory about the SC approach to federalism and the present limitations the Court has placed on environmental regulation.

Baum, Lawrence. 2003. The Supreme Court in American Politics. *Annual Review of Political Science* 6 (1):161-180.

This review article was found in by searching "precedent" in the annual review of political science. The relevant section addresses the "efficacy" of Court intervention. I hope to address the SC's effect on the lower federal courts and US regulatory bodies, specifically, the EPA.

Baumgartner, Matthew B. 2005. SWANNCC's Clear Statement: A Delimitation of Congress's Commerce Clause Authority to Regulate Water Pollution. *Michigan Law Review* 103 (8):2137-2171.

SWANNCC was a case that affected the constitutionality of the CWA regulation of wetlands.

Benesh, Sara C., and Malia Reddick. 2002. Overruled: An Event History Analysis of Lower Court Reaction to Supreme Court Alteration of Precedent. *The Journal of Politics* 64 (2):534-550.

Found in JSTOR search of articles that cite the work by William Douglas, 1949. This piece may be helpful for my research design. The Commerce addresses the expected effects of contradictory and new precedents.

Coenen, Dan T. 2004. *Constitutional Law: The Commerce Clause Turning Point Series*. New York: Foundation Press.

Found in Summit catalogue. I found this using a key word search: Commerce Clause

Denning, BP, and GH Reynolds. Rulings and Resistance: The New Commerce Clause Jurisprudence Encounters the Lower Courts. *ARKANSAS LAW REVIEW* 55:1253.

This article was found in a footnote reference in Adler 2007.

Douglas, William O. 1949. Stare Decisis. *Columbia Law Review* 49 (6):735-758.

JSTOR Search of "precedent" and "stare decisis."

Fitzgerald, E. A. 2003. Solid Waste Agency of Northern Cook County v. US Army Corps. of Engineers: Isolated waters, migratory birds, statutory and constitutional interpretation. *Natural Resources Journal* 43 (1):11-76.

Graber, Mark A. 2005. Constructing Judicial Review. *Annual Review of Political Science* 8 (1):425-451.

I found this review article in the annual review of political science by searching "environmental regulation." The most helpful section pointed me toward Keck 2004.

Johnson, Charles A. 1987. Law, Politics, and Judicial Decision Making: Lower Federal Court Uses of Supreme Court Decisions. *Law & Society Review* 21 (2):325-340.

This article was referenced by Songer et. al. and also available in ISI.

Keck, Thomas Moylan. 2004. *The most activist supreme court in history: the road to modern judicial conservatism*. Chicago: University of Chicago Press.

This book was referenced by the annual review article on judicial review. I then located the book on Summit. It helps explain the destabilization of jurisprudence of the Commerce Clause. Conservative activism on the Court certainly helps explain the overturn of precedent in *US v Lopez* because it examines the historical sources of conservative judicial activism in the Rehnquist court.

Klein, Christine A. 2003. The Environmental Commerce Clause. *Harvard Environmental Law Review* 21 (1):1-70.

Found using Google Scholar searching “environmental law” and “commerce clause.”

This piece explains why environmental regulation is particularly difficult for the SC from a theoretical and empirical perspective. The case studies deal with water and the CWA specifically.

Klein, Joshua A. 2002. Commerce Clause Questions after Morrison: Some Observations on the New Formalism and the New Realism. *Stanford Law Review* 55 (2):571-606.

Found on Google Scholar in an initial search of “environmental regulation” and “constitutionality.” It is cited by 65 other articles. The case studies used to determine the “environmental commerce clause” are cases on water and CWA

Lazarus, Richard J. 2000. Restoring What's Environmental about Environmental Law in the Supreme Court *Georgetown Law Faculty Publications and Other Works*

Cited 136 times in Google scholar. Found in Web of Science.

Lee, M. 2006. Environmental Economics: A Market Failure Approach to the Commerce Clause.

*Yale LJ* 116:456.

found in the ISI, cited by Adler JH. This article argues that, if environmental problems are interpreted as market failures, the commerce clause can be more broadly interpreted and the jurisdiction of the CWA and ESA is less problematic.

Mank, Bradford C. 2007. Implementing Rapanos- Will Justice Kennedy's Significant Nexus Test

Provide a Workable Standard for Lower Courts, Regulators, and Developers? . *Indiana Law Review* 40.

This article was referenced by Adler 2007. It illuminates the importance of the "significant nexus" paradigm for the CWA and also addresses the impact this ruling will have outside the courts. This will be important for my research design because it attempts to measure the effects of SC rulings on the regulatory capacity of the executive branch.

Percival, Robert. 2002. "Greening" the Constitution: Harmonizing environmental and constitutional values. *Environmental Law* 32:809-872.

Reynolds, GH, and BP Denning. 2000. Lower Court Readings of Lopez, Or What if the Supreme Court Held a Constitutional Revolution and Nobody Came? *Wis. L. Rev.* 369.

This article was referenced by JH Adler in "Once More, With Feeling: Reaffirming the Limits of Clean Water Act Jurisdiction." I located the article using Google Scholar. It is cited by 103 in google scholar, indicating that it has been fairly influential. The effect of SC decisions on lower courts is an important determinant of the SC effect on the EPA's regulatory capacity.

Riordan, Katherine F. 2008. Case Comment: Federal Jurisprudence- The First Circuit Construes Plurality Opinions to Expand the Reach of the Clean Water Act- *United States v. Johnson* 41 *Suffolk University Law Review*.

US v. Johnson is the cutting edge of decisions concerning the CWA. This article was located inadvertently in a Lexis Nexis Academic when searching for Mank 2007.

Roberts, Charles Duhigg and Janet. 2010. Rulings Restrict Clean Water Act, Foiling E.P.A. *New York Times*.

This article examines the effects of recent SC rulings on the regulatory jurisdiction of the E.P.A. The uncertainty created by SC decisions has inhibited the EPA and is encouraging Congress to seek the passage of The Clean Water Restoration Act. This article presents questions that are ripe for further investigation.

Saad, Sam. 2003. Commerce Clause Jurisprudence: Has There Been A Change? *Journal of Land, Resources, & Environmental Law* 23 J. Land Resources & Envtl. L. 143:143-172.

The Commerce Clause Jurisprudence of the Supreme Court has yet to be interpreted consistently by lower courts

Songer, Donald R., Jeffrey A. Segal, and Charles M. Cameron. 1994. The Hierarchy of Justice: Testing a Principal-Agent Model of Supreme Court-Circuit Court Interactions. *American Journal of Political Science* 38 (3):673-696.

This article was referenced in the Annual Review of Political Science article as an important piece for understanding the relationship between the SC and the lower federal courts. It was cited 103 times in ISI and over 200 in Google Scholar, indicating its centrality to this literature.

Sullins, Tony A. 2001. *ESA: Endangered Species Act*. Edited by A. B. Association, *Basic Practice Series*: American Bar Association.

Found in Summit searching "endangered species act" and "constitutional law."

Wolf, Michael Allan, and Institute Environmental Law. 2005. *Strategies for environmental success in an uncertain judicial climate*. Washington, D.C.: Environmental Law Institute.

This book contains an important essay by Richard Lazarus, one of the most influential environmental law theorists. It was located on Summit. The authors in this work develop a framework for understanding the scope of phenomena that can be characterized as "environmental" issues under the US constitution.

Wroth, L. Kinvin, ed. 2007. *The Supreme Court and the Clean Water Act: Five Essays on the Supreme Court's Clean Water Act jurisprudence as reflected in Rapanos v. United States*.

Found using an author search in Google Scholar of Jonathan Adler, an important author in constitutional environmental law.