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Jason J. Czarnezki, Morgan E. Martin, & Barbara Ballan

The field of Environmental, Social, and Governance (ESG) has undergone rapid expansion, followed by political backlash, yet continues to see steady utilization in recent years. Businesses are disclosing social and environmental information, prompting regulatory agencies to propose and set regulations and guidelines. Moreover, ESG is evolving as a tool for investment analysis, a risk management tool, and an approach to corporate social responsibility. Simultaneously, artificial intelligence (AI) is emerging as a possible tool for companies to collect and analyze ESG metrics, including environmental impacts and workplace safety. This Article proposes an approach that companies and their users can employ to leverage AI benefits and adequately minimize risks. This Article addresses (1) the environmental impacts of AI, (2) the numerous ways AI is being used in the ESG space, (3) the legal hurdles companies and their users may face when integrating AI in the ESG space, and (4) best practices to mitigate the risks and leverage the potential of AI in the ESG space. This Article concludes by revealing best practices for companies, which include utilizing blockchain to mitigate risks, implementing adequate procedures and policies, and ensuring adequate oversight over AI use.

Skidmore in the Post-*Loper Bright* Era of Environmental Law... 449
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The Supreme Court's 2024 decision in *Loper Bright Enterprises v. Raimondo* marked the end of the deference afforded to agencies' statutory interpretations for forty years under *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc*. This Article asserts that the framework in the Supreme Court's 1944 decision in *Skidmore v. Swift & Co.*, long treated as a secondary consideration by litigants and courts, now occupies a central role in judicial review of agencies' statutory interpretations. After surveying Skidmore's historical evolution and its interplay with *Chevron* and *United States v. Mead Corp.*, the Article demonstrates how lower courts have applied

Skidmore in the immediate seven months after *Loper Bright*, including initial data demonstrating considerable favor for agency interpretations. Because litigants must engage with *Skidmore* more robustly now than at any point in the last forty years, the Article also considers a practical approach for the post-*Loper Bright* landscape. By analyzing courts' pre- and post-*Loper Bright* considerations of thoroughness, validity, consistency, agency expertise, and statutory purpose, the Article provides strategic guidance for advocates seeking to influence judicial determinations of statutory meaning under *Skidmore*.

The Incoherent Law of Environmental Injunctions…….. 471
Paul Boudreaux

Should an ongoing violation of an environmental statute be enforced by a permanent injunction? The Supreme Court made an injunction a hit-or-miss proposition in *eBay v. MercExchange*. That decision set forth an incoherent four-part test for permanent injunctions. Most notably, the test includes a standalone "irreparable injury" factor, unmoored from the old equitable law principle favoring injunctions when monetary damages are inadequate to the injury. The eBay test conflates a preliminary injunction, which is a procedural mechanism, with a permanent injunction, which is a substantive remedy. The result is that courts struggle to give meaning to the "irreparable injury" element. Some courts treat "irreparable injury" as meaning "significant"—an unwise departure from old equity law. In environmental cases, where injunctions often matter more than damages, courts have denied relief for many reasons without a unifying principle.

The incoherent injunction test is especially troubling to American law, which values certainty and adherence to statutory texts, such as the Administrative Procedure Act, which states plainly that courts "shall . . . set aside agency conduct . . . not in accordance with law." Courts (or Congress) should reverse the mischief of the *eBay* test and revert to textualism or, in statute-driven environmental cases, adopt a presumption favoring injunctive relief absent compelling national reasons to refrain from an injunction.

Groundwater Law and *Texas v. New Mexico and Colorado*…….
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Sean Lyness

In the 2024 Supreme Court decision *Texas v. New Mexico* and *Colorado*, the Court redefined the intersection of groundwater and federal law. The case concerned interstate water compacts for the Rio Grande. In a 5–4 decision, the Court rejected the Special Master's proposed consent decree because it would deny the United States the opportunity to assert its own claims. In sum, the Court is requiring interstate water disputes to give the United States a seat at the table.

Though these interstate water disputes are often viewed as hyper-technical and mundane—they are often assigned, as here, to the most junior justice—*Texas v. New Mexico* and *Colorado* is an important water law case. More specifically, *Texas* is an important

groundwater law case. *Texas* cements in Supreme Court jurisprudence the linkage between groundwater and surface water. It also, for the first time, recognizes the federal government's interest in groundwater.

These holdings have major implications not only for other interstate water disputes (the Colorado River is the greatest example), but also for how the federal government will police state use of groundwater. The case suggests that federal interests significantly undercut state dominion of groundwater. That should incentivize states to modernize their groundwater law, lest the federal government force their hand.

The Limits—and the Creativity Challenge—of Industrial Policy for Climate and Justice..... 539
Emily Hammond

During the Biden Administration, industrial policy became the central means for making progress on both climate change and social justice. This Article, prepared for the Environmental Law Review's Spring Symposium, uses the frame of Joanna Macy's Great Turning to critique the use of industrial policy as a means of promoting enduring systemic change in climate and justice. Although recent major statutes offered possibilities toward such change, they also worked at cross purposes, further entrenching the status quo. Nor is our system of administrative law equipped to meaningfully facilitate such change, given that it too reflects default presumptions and business-as-usual proclivities. Yet there are a host of ways for lawyers, scholars, jurists, and policymakers to participate in both holding actions and efforts to promote structural change. The call of this Article is to keep sight of creativity, working to align activities in this moment with a different vision altogether, in service of a more just and sustainable future.