

# Stop Kavanaugh: Environmental Justice

*Judge Kavanaugh would threaten hard-won environmental protections today and for generations to come.*

Judge Kavanaugh routinely **sides with corporations and polluters** over public health and the environment.

- Two dissents in *Grocery Manufacturers Ass'n. v. EPA* favor corporations challenging EPA's approval of a pollution-reducing gas-ethanol blend<sup>i</sup>
- *Howmet Corp. v. EPA* dissent would have allowed a corporation's unlabeled corrosive chemical shipment to go unpunished<sup>ii</sup>
- *Mingo Logan Coal Co. v. EPA* dissent would have allowed a coal company to continue stream pollution<sup>iii</sup>
- *Mexichem Specialty Resins, Inc., v. EPA* dissent would have delayed an EPA rule limiting hazardous PVC manufacturing emissions<sup>iv</sup>
- *White Stallion Energy Center v. EPA* dissent argues against air pollution regulations targeting mercury and other toxic pollutants<sup>v</sup>
- The list goes on<sup>vi</sup>

Even when he doesn't disagree with the EPA and other agencies, Judge Kavanaugh **nevertheless favors industry** and opposes environmental protections.

- *American Bird Conservancy, Inc. v. FCC* dissent opposes a more complete FCC review of the possible harm to migratory birds posed by Gulf Coast cell towers based on, according to his fellow judges, inappropriate cases and a "mistaken assumption"<sup>vii</sup>
- *Sierra Club v. EPA* dissent favors an improper EPA rule that prevented state and local authorities from adding their own requirements for monitoring factories and other air pollution sources<sup>viii</sup>

Judge Kavanaugh appears likely to side with Trump's first Supreme Court nominee, Justice Gorsuch, in **limiting the EPA** and other agencies' roles regarding the laws they are expressly charged with implementing.

- Argues for limiting judicial deference to agencies' interpretations of the statutes they administer and for the outright reduction or elimination of some agencies<sup>ix</sup>
- Overturned by the Supreme Court in *Environmental Protection Agency v. EME Homer City Generation*, holding that, in attempting to undermine the EPA, he tried to "improve upon" rather than "apply" federal law<sup>x</sup>
- Overturned by his own D.C. Circuit Court in *PHH Corporation v. Consumer Financial Protection Bureau* after he argued that independent agencies like CFPB "pose[d] a significant threat to individual liberty"<sup>xi</sup>

Judge Kavanaugh has a **narrow view of legal standing** for those seeking to defend protections for the environment, public safety, and consumers, but a **broad view of legal standing** for corporate interests.

- *Public Citizen v. NHTSA* ruling holds that increased risk of severe traffic accidents was not "sufficiently 'imminent'" to challenge vehicle safety standards<sup>xii</sup>
- *Carpenters Industrial Council v. Zinke* ruling says that "the amount is irrelevant" when considering economic impact and corporations' standing to challenge environmental regulations<sup>xiii</sup>

The environmental stakes are high in a **number of key pending cases** that may well make their way to the high court.

- The Supreme Court has already agreed to hear:<sup>xiv</sup>
  - *Sturgeon v. Frost*: National Park Service authority to regulate activities on navigable waters within NPS boundaries in Alaska
  - *Virginia Uranium, Inc. v. Warren*: Atomic Energy Act preemption of a Virginia ban on mining uranium on non-federal lands
  - *Weyerhaeuser Company v. United States Fish and Wildlife Service*: Private property rights versus the federal government's designation of critical habitats essential to endangered species
- The Supreme Court may also consider whether the Clean Water Act covers discharges to surface waters through groundwater channels in cases such as *Upstate Forever v. Kinder Morgan Energy Partners, LP* and *Hawaii Wildlife Fund v. City of Maui*<sup>xv</sup>

---

<sup>i</sup> <http://www.pfaw.org/report/the-dissents-of-judge-brett-kavanaugh-a-narrow-minded-elitist-who-is-out-of-the-mainstream/#environment>

<sup>ii</sup> <http://www.pfaw.org/report/the-dissents-of-judge-brett-kavanaugh-a-narrow-minded-elitist-who-is-out-of-the-mainstream/>

<sup>iii</sup> <http://www.pfaw.org/report/the-dissents-of-judge-brett-kavanaugh-a-narrow-minded-elitist-who-is-out-of-the-mainstream/#environment>

<sup>iv</sup> <http://www.pfaw.org/report/the-dissents-of-judge-brett-kavanaugh-a-narrow-minded-elitist-who-is-out-of-the-mainstream/#environment>

<sup>v</sup> <https://www.lcv.org/article/letter-oppose-judge-brett-kavanaugh-supreme-court-united-states/>

<sup>vi</sup> <http://www.pfaw.org/report/the-dissents-of-judge-brett-kavanaugh-a-narrow-minded-elitist-who-is-out-of-the-mainstream/#environment>

<sup>vii</sup> <http://www.pfaw.org/report/the-dissents-of-judge-brett-kavanaugh-a-narrow-minded-elitist-who-is-out-of-the-mainstream/#environment>

<sup>viii</sup> <http://www.pfaw.org/report/the-dissents-of-judge-brett-kavanaugh-a-narrow-minded-elitist-who-is-out-of-the-mainstream/#environment>

<sup>ix</sup> <http://www.bazon.org/wp-content/uploads/2018/07/Kavanaugh-Disability-Report-2018.pdf>

<sup>x</sup> <http://www.bazon.org/wp-content/uploads/2018/07/Kavanaugh-Disability-Report-2018.pdf>

<sup>xi</sup> <http://www.bazon.org/wp-content/uploads/2018/07/Kavanaugh-Disability-Report-2018.pdf>

<sup>xii</sup> <https://www.lcv.org/article/letter-oppose-judge-brett-kavanaugh-supreme-court-united-states/>

<sup>xiii</sup> <https://www.lcv.org/article/letter-oppose-judge-brett-kavanaugh-supreme-court-united-states/>

<sup>xiv</sup> <http://www.pfaw.org/report/key-cases-on-the-way-to-supreme-court-that-kavanaugh-and-others-could-use-to-overturn-precedent-and-harm-our-rights/#environment>

<sup>xv</sup> <http://www.pfaw.org/report/key-cases-on-the-way-to-supreme-court-that-kavanaugh-and-others-could-use-to-overturn-precedent-and-harm-our-rights/#environment>