



Judge Kavanaugh sides 89% of the time for less clean air and water

The Heritage Foundation, recently argued ([here](#)) that Judge Kavanaugh was not a predictable vote for industry polluters, but the record tells a very different story. A review of all 26 of his written opinions, concurrences, and dissents involving the Environmental Protection Act (“EPA”) reveals that he almost always takes the side resulting in more pollution and opposes the result that would lead to more clean air, clean water and public protections. For good measure, many of his decisions reveal a judicial philosophy that:

- Sought to constrain EPA’s power to implement the law;
- Attempted to limit the power of laws like the Clean Air Act to protect public health;
- Limit public participation in rule-making;
- Blocked public interest groups from even getting into court;
- Gave more power to judges like him to say what a statute “means,” rather than deferring to scientific experts at agencies – like the EPA.

By the Numbers: *Judge Kavanaugh sides 89% of the time for less clean air and water. In his 26 EPA-related cases, there are 18 cases in which he takes a position on EPA’s rules curbing pollution and protecting the public’s clean air and water (the rest were decisions on procedural grounds). In 16 of these 18 cases, his position would result in less protection, and more pollution, and in only two cases would his position result in less pollution. In these 18 cases, public interest plaintiffs are 0-5 under Kavanaugh’s legal theories, while industry plaintiffs have an 11-2 record.*

Almost never sides with public interest litigants - the Heritage Foundation argued Judge Kavanaugh sided with the public interest environmental plaintiffs’ substantive regulatory arguments at least twice, including in the cases *CBD v. EPA*, and *NRDC v. EPA*. However, in the *NRDC* case, he ruled against public interest groups on all three arguments for stricter air pollution controls. In the *CBD* case, while noting he was bound by Circuit Court precedent to find EPA has authority to limit greenhouse gases under a particular Clean Air Act provision, he then attacks that “prior binding precedent” saying it was *wrongly* decided, and in fact EPA should not have such authority. That means, if Judge Kavanaugh was not bound by precedent, as he wouldn’t if he were on the Supreme Court, he’d have ruled against clean air and water arguments of public interest environmental groups 100% of the time.

Takeaway #1 – *There is no reason to believe that a public interest litigant would ever get a fair shake in Kavanaugh’s courtroom and in fact, they really never have.*

Almost always sides with industry litigants - Conversely, he sides with industry arguments to weaken clean and water protections a whopping 11 times. The two times he does not side with industry, he shapes his arguments to constrain EPA’s statutory power, limit public participation in rule-making, and to give more power to himself as judge to interpret a statute rather than the agency.

Takeaway #2 – *There is every reason to believe that industry litigants will almost always prevail in Kavanaugh’s courtroom, and in fact, almost always have.*

Takeaway #3 – *There is every reason to believe that Judge Kavanaugh’s record of either siding with industry or advancing his judicial philosophy that constrains the EPA’s power to keep Americans safe, and restricts the rights of the people to participate in agency rule-making and access our court system would continue if he were appointed to the Supreme Court. The only difference is there would be no “prior precedent” constraints on his power to do the bidding of corporate polluters.*