Kavanaugh’s own frame from his opening remarks – refer back on [#StopKavanaugh](https://twitter.com/hashtag/StopKavanaugh?src=hash) [#WhatAreTheyHiding](https://twitter.com/hashtag/WhatAreTheyHiding?src=hash) [#CourtsMatter](https://twitter.com/hashtag/CourtsMatter?src=hash) [#WhatsAtStake](https://twitter.com/hashtag/WhatsAtStake?src=hash) [@JudiciaryDems](https://twitter.com/JudiciaryDems) [@senjudiciary](https://twitter.com/senjudiciary)

Earthjustice blog “Kavanaugh Guided by Industry, Not Rule of Law”: <https://bit.ly/2NSOuEB>

Chart of 26 EPA related cases: <https://bit.ly/2oICuun>

1-pager of Kavanaugh siding with industry 89% of time: <https://bit.ly/2oJqKry>

Kavanaugh a big win for polluters: <https://bit.ly/2NSwbiv>

***Kavanaugh said, “A good judge must be an umpire — a neutral and impartial arbiter who favors no litigant or policy,” and that he doesn’t “decide cases based on personal or policy preferences.”***

AND SAID TODAY:

Part of being a good judge:

Kavanaugh - First quality is independence

Pay attention to the words that are written in the statute

I want losing party to come out and say Kavanaugh gave me a fair shake – had an open mind

Not based on the party

All equal justice under the law

**Ties his policy agenda to these Environmental topics from Bush White House:**

***Theme:*** *The Bush White House had a robust agenda related to oil and gas industry priorities that touch on many critical issues related to regulating greenhouse gases/climate change, air pollution controls for toxins like mercury, and undercutting the ability of bedrock environmental laws to protect clean air and water. What we do* ***not*** *know, is the role Brett Kavanaugh played during his five years in the Bush White House on these policy agendas. What we* ***do*** *know is that many of the policy agendas that were present then, crop up in his legal opinions during his time on the D.C. Circuit. This goes to the heart of whether Judge Kavanaugh is fair and impartial to all that come into his court by following the rule of law, or whether he in fact is carrying out through his many legal opinions the agenda of the polluting industry, which held huge sway with the Bush White House. This is why it matters so much that the Committee, the whole Senate, and the American public see all his records during his time in the Bush White House.*

* 2003 EPA-Fabricant Memo arguing Clean Air Act cannot regulate greenhouse gases
* 2005 - EPA’s Clean Air Act rule on mercury emissions from stationary sources
* 2002 (?) - OMB scandal over interference with agency rules and imposing non-statutory “cost analysis”
* 2006 - Bush Administration prohibition on states using stricter than federal pollution monitoring standards, if they deemed these to be inadequate, in the issuance of permits for emissions from industrial sources, such as power plants, chemical plants, and refineries.

**Judge Kavanaugh’s relevant decisions –**

**Greenhouse gases/climate change**

1. **Coal. for Responsible Regulation Inc. v. EPA, 684 F.3d 102 (D.C. Cir. 2012) -** [**https://bit.ly/2NG3buY**](https://bit.ly/2NG3buY)Dissent - The CAA term “any air pollutant” does not mean what it says; instead, it excludes greenhouse gases and every other air pollutant except for just six pollutants that Judge Kavanaugh believes should be regulated under the section. He argued that to read the law as Congress wrote it would “impose significantly higher costs on businesses and individuals that are building new commercial or residential property.”
2. **Center for Biological Diversity v. EPA, 722 F.3d 401, 2013 WL 3481511 (2013) -** [**https://bit.ly/2MQLvzG**](https://bit.ly/2MQLvzG)Dissent masquarading as concurrence - he joins the majority on the grounds that controlling precedent dictates it and that EPA lacks the statutory authority to temporarily exempt biogenic CO2 (in this case from ethanol) from permitting programs because the Clean Air Act text is clear (in not distinguishing between sources of CO2), but writes a concurrence that reads more like a dissent to underscore his continued belief that EPA should have a limited ability to interpret the Clean Air Act, and arguing EPA “simply lacks statutory authority” to regulate greenhouse gases at all in the action it took, citing, and re-arguing his anti-environmental dissent Coalition for Responsible Regulation, 684 F.3d at 144 (2012) (“I have mixed feelings about this case…I believe, contrary to this Circuit’s precedent, that the PSD statute does not cover carbon dioxide, whether biogenic or not.”
3. **Texas v. EPA, 726 F.3d 180 (D.C. Cir. 2013)** - <https://bit.ly/2Ck7eeP> dissent - would have struck down EPA permitting requirements for large construction projects of major sources of greenhouse gases, such as factories.

**MATS – clean air- mercury**

1. **EME Homer City Generation, L.P. v. EPA, 696 F.3d 7 (D.C. Cir. 2012) rev’d EPA v. EME Homer City Generation, L.P., 134 S. Ct. 1584 (2014) remanded EME Homer City Generation, L.P v. EPA, 795 F.3d 118 (2015) -** [**https://bit.ly/2znRKoE**](https://bit.ly/2znRKoE)Majority Opinion – reversed by Supreme Court). EPA cannot impose reasonable and achievable pollution reduction obligations on upwind states whose pollution discharges contribute to dangerous air quality in downwind states. (After Supreme Court reversal, he again rejected this life-saving rule in state-by-state “as-applied” challenges).
2. **EME Homer City Generation, L.P v. EPA, 795 F.3d 118 (2015) -** [**https://bit.ly/2znRKoE**](https://bit.ly/2znRKoE)Majority opinion - on remand, again rejected this life-saving rule in state-by-state “as-applied” challenges

**OMB scandal on imposing non-statutory “cost analysis”**

1. **Mingo Logan Coal Co. v. EPA, 829 F.3d 710 (D.C. Cir. 2016)** - Dissent – <https://bit.ly/29Rr8QV> Arguing that EPA should have considered cost to coal companies when vetoing a permit that would have allowed those companies to dump mining wastes into waterways -- even though the legal provision does not mention costs, and such dumping is in direct conflict with the law’s goal of protecting America’s rivers and streams.
2. **White Stallion Energy Ctr., LLC v. EPA, 748 F.3d 1222 (D.C. Cir. 2014), rev’d sub nom. Mich. v. EPA, 135 S. Ct. 2699 (2015) -** [**https://bit.ly/1R3a1Vd**](https://bit.ly/1R3a1Vd)Dissent - EPA is required to consider costs to industry in each step of its decision-making process for regulations, including whether to regulate a pollutant at all, even where the statute makes no mention of cost. Judge Kavanaugh further argues that agencies should be forced to ignore certain of the real world benefits of regulatory actions when weighing the costs and benefits.

**Bush White House imposing prohibition on states using stricter pollution monitoring standards**

1. [Sierra Club v. EPA](http://pacer.cadc.uscourts.gov/common/opinions/200808/04-1243-1133914.pdf), 536 F3d 673 (D.C. Cir. 2008) - <https://bit.ly/2Co2CV3> - the DC Court of Appeals in a 2-1 decision with Brett Kavanaugh dissenting overturned a 2006 Bush Administration prohibition on states using stricter than federal pollution monitoring standards, if they deemed these to be inadequate, in the issuance of permits for emissions from industrial sources, such as power plants, chemical plants, and refineries. In 1990, amendments to the Clean Air Act had mandated that the government set minimum standards for monitoring but allowed states to enact more restrictive rules as these became outdated or were found to be insufficient. The prohibition by the Bush EPA was seen as a major rollback of the nation’s clean air laws and a gift to polluting industries. Kavanaugh wrote - Dissent -argued state and local authorities could not impose more stringent air-quality monitoring requirements