

Climate Denial Crock of the Week

New Justice Nominee will Aim to Kill Climate Protection, People, and Planet

with Peter Sinclair - July 10, 2018

Good Catholic though, so I've heard.

Bloomberg News:

Judge Brett Kavanaugh is President Donald Trump's nominee for the U.S. Supreme Court to replace retiring Justice Anthony Kennedy.

During his time on the U.S. Court of Appeals for the District of Columbia Circuit, the former clerk for Kennedy and staff secretary for President George W. Bush earned a reputation for thwarting the Obama administration on climate change. Trump announced his intent to nominate Kavanaugh July 9 at the White House.

Kavanaugh wrote the opinion in a 2017 case ruling that the Environmental Protection Agency has no authority to require companies to replace refrigerant chemicals that are also greenhouse gases with more sustainable alternatives.

He also wrote the opinion that struck down portions of the agency's Cross-State Air Pollution Rule in *EME Homer City Generation, LP v. EPA*.

Environmental groups were quick to criticize the pick: The League of Conservation Voters, in response to media reports in advance of Trump's official announcement, tweeted the organization will "fight this every step of the way."

Even his dissents in clean air cases have impact. The Supreme Court has relied on them multiple times in ruling against the EPA.

In a partial dissent, Kavanaugh said the agency should have considered the cost to the power industry before regulating toxic air pollution in the 2014 case *White Stallion Energy Ctr. LLC v. EPA*. The Supreme Court cited that dissent in *Michigan v. EPA*, when it reversed the D.C. Circuit's decision upholding the standards.

"In administrative law cases, he generally takes a very strict reading" of the Administrative Procedure Act, said Kathryn Kovacs, a law professor at Rutgers University in Camden, N.J. "He could have a big influence in administrative law."

The first case that the nation's high court will hear Oct. 1 is *Weyerhaeuser Co. v. U.S. Fish and Wildlife Service* out of the U.S. Court of Appeals for the Fifth Circuit.

The case revolves around whether U.S. Fish and Wildlife Service had the authority to designate 1,544 acres of private land in Louisiana as critical habitat for the endangered dusky gopher frog in 2010, even though the frog doesn't exist there and the acres don't have all the characteristics the frog needs for survival.

Parties in the case disagree over whether the Endangered Species Act allows such a designation, which could frustrate attempts to sell and develop the land.

If the Senate acts fast enough to fill a vacancy on the court, the environmental case will be the first the presumed new justice will consider.

Update: BuzzFeed:

“He is pretty consistently anti-environment on every front,” Center for Biological Diversity senior counsel Bill Snape, a law professor at American University, told BuzzFeed News. “I call him Lord Voldemort,” said Professor Snape.

In 2016, Kavanaugh noted, “The Earth is warming. Humans are contributing.” He called a law intended to address climate change “laudable,” but also suggested that this was best left to Congress to sort out, rather than the courts.

And in past cases over the last decade, Kavanaugh has argued that climate and environmental regulation is a legal overreach — “even where science and emerging new information might be on the side of taking more environmental action,” said Joe Goffman of Harvard Law School’s Environmental Law Program.

In 2012, Kavanaugh wrote a 2–1 appeals court decision invalidating Environmental Protection Agency rules regulating air pollution that crosses state lines, arguing that the agency had overstepped its authority and siding with power companies. The Supreme Court reversed the decision, with Kennedy agreeing with the majority. (Kavanaugh was once Kennedy’s clerk.)

“He read into the statute a provision that simply wasn’t there,” Goffman said. “The second mistake he made was to second-guess the EPA on a very complicated technical decision that involved some very delicate judgment.”

In 2011 Kavanaugh ruled that the sighting of four endangered fairy shrimp on a 143-acre parcel of land near San Diego did not make it “critical habitat” under endangered species rules. A similar case involving the designation of critical habitat for a frog species in Louisiana is now on the court’s fall docket. Kavanaugh would “destroy” the Endangered Species Act, said Snape, who led the fairy shrimp case for the losing side.

Property rights advocates who are critical of environmental laws praised Trump’s pick: “Judges like Kavanaugh play a vital role in protecting individual rights, including freedom of speech, economic liberty, property rights, and other guarantees of freedom,” said a statement from the Pacific Legal Foundation.

Kavanaugh will now go before the US Senate for confirmation, where a simple majority vote would be enough to put him on the court.