

## **Brett Kavanaugh: Delivering for Right-Wing and Corporate Interests**

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### Unleashing special interest money into elections

1. Citizens for Responsibility and Ethics in Washington v. Federal Election Commission (2018)
  - Shielded the FEC's considerations not to investigate dark money groups, making it easier for a partisan FEC to decline to investigate campaign violations.
2. Independence Institute v. FEC (2016)
  - Enabled dark money groups to evade donor disclosure requirements. Kavanaugh's opinion was later reversed by a three judge panel and the reversal was summarily upheld by the Supreme Court.
3. Bluman v. FEC (2011)
  - Suggested foreign nationals can run political "issue" advertisements.
4. Emily's list v. FEC (2009)
  - Allowed nonprofit front groups to raise and spend unlimited amounts of money in elections.

### Protecting corporations from liability

1. PHH v. CFPB (2018, en banc, dissenting)
  - Declared the Consumer Financial Protection Bureau, charged with protecting consumers from fraud and abuse, unconstitutional.
2. Bais Yaakov of Spring Valley v. Federal Communications Commission (2017)
  - Struck down law that would have required businesses to include opt-out notices with solicited fax advertisements.
3. NLRB v. CNN America, Inc. (2017, dissenting).
  - Argued that an employer should be absolved of liability for firing union workers and discriminating against them when rehiring.
4. Ortiz-Diaz v. United States Department of Housing & Urban Development (2016, concurring).
  - Made it harder for federal employees to bring discrimination claims.
5. Sea World of Florida, LLC v. Thomas Perez (2014, dissenting)
  - Argued that employers in dangerous industries should not be subjected to workplace safety regulations.
6. Saleh v. Titan Corp. (2009)
  - Extended sovereign immunity to tort claims brought by international plaintiffs.
7. Jackson v. Gonzales (2007)
  - Denied employment discrimination claim by employee who alleged race discrimination.

### Helping polluters pollute

1. Mexichem Fluor, Inc. v. Environmental Protection Agency (2017)
  - Undermined agency deference, stripping the EPA of its authority to properly implement the Clean Air Act and opening the door to unregulated corporate pollution.

2. *Communities for a Better Environment v. EPA* (2014)
  - Concluded that environmental groups did not have standing to challenge an EPA decision not to tighten carbon monoxide standards.
3. *In re Aiken County* (2013)
  - Granted permission to process a license application for permanent nuclear waste station, limiting agency discretion.
4. *Friends of Blackwater v. Salazar* (2012)
  - Upheld the Fish and Wildlife Service's delisting of the West Virginia Northern Flying Squirrel as an endangered species.
5. *EME Homer City Generation, L.P. v. E.P.A.* (2012)
  - Struck down EPA rule aimed at reducing air pollution, expanding judicial review over final rules promulgated by the EPA and undercutting the ability of the EPA to rely on the Clean Air Act to craft new rules.
6. *Howmet Corp. v. E.P.A.* (2010, dissenting)
  - Refused to approve an EPA fine against company that had improperly shipped corrosive chemicals.
7. *American Bird Conservancy, Inc. v. FCC* (2008, dissenting)
  - Dissented from a decision requiring the FCC to more completely review possible harm to migratory birds.
8. *Sierra Club v. EPA* (2008, dissenting)
  - Supported a rule that prevented authorities from supplementing inadequate federal monitoring requirements of sources of air pollution.
9. *Association of Irrigated Residents v. E.P.A.* (2007)
  - Gave polluters a free pass by refusing to review agreements between EPA and animal feeding operations.

#### Striking down commonsense gun regulations

1. *Heller v. District of Columbia* (2011, dissenting)
  - Argued against Washington, D.C.'s common-sense gun laws banning semi-automatic weapons and registration requirements.

#### Keeping injured plaintiffs out of court

1. *National Railroad Passenger Corporation (Amtrak) v. Fraternal Order of Police, Lodge 189 Labor Committee* (2017)
  - Aggressively using judicial review to vacate an arbitration award that would have reinstated a terminated union member, undercutting workers' rights.
2. *Meshal v. Higgenbotham* (2015, concurring)
  - Limited access to civil remedies for victims of torture and abuse.
3. *Odhiambo v. Republic of Kenya* (2014)
  - Limited the ability to combat fraud by shrinking the types of claims that can be brought under the Foreign Sovereign Immunities Act.

4. *Rollins v. Wackenhut Services, Inc* (2012, concurring)
  - Argued that when a plaintiff's claim is categorically dismissed, the plaintiff should be barred from bringing a subsequent or amended claim.
5. *Miller v. Clinton* (2012, dissenting)
  - Argued that the State Department should be able to fire employees solely based on age, denying victims of age discrimination federal civil rights protections.
6. *Cohen v. United States* (2011, dissenting)
  - Described class actions as a “jackpot” and expressed hostility to class actions.
7. *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Tr. ex rel. Fed. Nat. Mortg. Ass'n v. Raines* (2008)
  - Insulated a corporate board of directors from a shareholders' suit. The Supreme Court abrogated his holding in *Lightfoot v. Cendant Mortgage Corporation* (2017).

#### Expounding a nearly limitless vision of presidential immunity from the law.

1. *Free Enterprise Fund v. Public Company Accounting Oversight Board* (2008, dissenting)
  - Argued that PCAOB's structure improperly limits Presidential power.
2. *S.E.C. v. Federal Labor Relations Authority* (2009, concurring)
  - Argued that the President or his designee, rather than the courts, should resolve legal or policy disputes between two Executive branch agencies.
  - Expounded the unitary executive theory that would limit the judiciary's role as a check on the president, noting that the “Constitution vests the ‘executive Power’ in one President”; that it “assigns the President the responsibility to ‘take Care that the Laws be faithfully executed’”; that “Article II provides that a single President controls the Executive Branch, [so] legal or policy disputes between two Executive Branch agencies are typically resolved by the President or his designee—without judicial intervention.”
3. 2016 American Enterprise Institute Speech<sup>1</sup>
  - Asked at a conservative event in 2016 to name a case that he believed should be overturned, Kavanaugh named *Morrison v. Olson*, a still-valid Supreme Court ruling upholding a 1978 law that creates a system for independent counsels to investigate and potentially prosecute government officials, including the president, for federal crimes. “It's been effectively overruled, but I would put the final nail in,” Kavanaugh said at an event for the conservative think tank American Enterprise Institute.

#### Gutting workers' rights

1. *Arc Bridges, Inc. v. National Labor Relations Board* (2017)
  - Held that yearly across-the-board wage increases were not a term or condition of employment.
2. *National Railroad Passenger Corporation (Amtrak) v. Fraternal Order of Police, Lodge 189 Labor Committee* (2017)
  - Overturned an arbitration ruling finding that an employee was wrongfully terminated.

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<sup>1</sup> <https://www.nbcnews.com/politics/donald-trump/trump-supreme-court-pick-kavanaugh-i-d-put-final-nail-n892421>

3. Verizon New England Inc. v. National Labor Relations Board (2016)
  - Held that yearly across-the-board wage increases were not a term or condition of employment, undercutting the National Labor Relations Act and diminishing workers' protected speech rights.
4. Police and Fire Professionals of America v. Faye (2016, dissenting)
  - Dissented from ruling that a union had right to sue union official for breach of duty.
5. Sea World of Florida, LLC v. Thomas Perez (2014, dissenting)
  - Argued that employers in dangerous industries should not be subjected to workplace safety regulations.
6. Miller v. Clinton (2012, dissenting)
  - Argued that the State Department should be able to fire employees solely based on age, denying victims of age discrimination federal civil rights protections.
7. Agri Processor Co. v. NLRB (2008, dissenting)
  - Dissented from decision ordering company to bargain with a union.
8. American Federation of Government Employees, AFL-CIO v. Gates (2007)
  - Granted temporary authority to abolish collective bargaining, effectively eliminating collective bargaining for hundreds of thousands of employees.