

Brett Kavanaugh in Partisan 2-1 cases: Advancing Right-Wing and Corporate Interests **91% of the Time**

A review of Brett Kavanaugh's jurisprudence on the D.C. Circuit reveals that in the most controversial and salient civil cases – those decided by bare 2-1 majorities – when Kavanaugh is in the majority with another Republican-appointed judge, he votes to advance right-wing and corporate interests a striking **91% of the time**.

Methodology:

- We identified 22 D.C. Circuit cases in which Kavanaugh and another Republican appointee formed a 2-1 majority over the dissent of a Democratic appointee.
- 20 of the 22 2-1 partisan civil cases (**91%**) advance Republican and/or corporate interests.

Helping Republicans Win Elections: Dark Money, Voter Suppression & Union-Busting

1. 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.
2. Citizens for Responsibility and Ethics in Washington v. Federal Election Commission (2018)
 - Shielded FEC commissioners' considerations not to investigate dark money groups, making it easier for a partisan FEC to decline to investigate campaign violations.

Protecting Corporations from Liability: Letting Polluters Pollute & Making It Harder for Americans to Have Their Day in Court.

3. 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.
4. Association of Irrigated Residents v. E.P.A. (2007)
 - Gave polluters a free pass by refusing to review agreements between the EPA and animal feeding operations.
5. 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.
6. EME Homer City Generation, L.P. v. E.P.A. (2012)
 - Struck down an 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.

7. *In re Aiken County* (2013)
 - Granted permission to process a license application for a permanent nuclear waste station, limiting agency discretion.
8. *Ivy Sports Medicine, LLC v. Burwell* (2014)
 - Limited the FDA’s authority to correct its own errors or make revised determinations based on new information.
9. *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.
10. *Bais Yaakov of Spring Valley v. Federal Communications Commission* (2017)
 - Struck down a law that would have required businesses to include opt-out notices with solicited fax advertisements.
11. *National Railroad Passenger Corporation (Amtrak) v. Fraternal Order of Police, Lodge 189 Labor Committee* (2017)
 - Aggressively used judicial review to vacate an arbitration award that would have reinstated a terminated union member, undercutting workers’ rights.
12. *Mexichem Fluor, Inc. v. Environmental Protection Agency* (2017)
 - Undermined agency deference, stripped the EPA of its authority to properly implement the CAA, and opened the door to unregulated corporate pollution.
13. *Arc Bridges, Inc. v. National Labor Relations Board* (2017)
 - Undermined the NLRB and made it easier for corporations to discriminate against union members.

Taking Away Civil Rights and Condoning Discrimination

14. *Jackson v. Gonzales* (2007)
 - Found that the non-selection for promotion of an African-American employee of the Bureau of Prisons was not a result of racial discrimination in violation of Title VII.
15. *Saleh v. Titan Corp.* (2009)
 - Extended sovereign immunity to tort claims brought by international plaintiffs.
16. *Odiambo v. Republic of Kenya* (2014)
 - Made it more difficult for foreign plaintiffs to access our courts even if they are experiencing harm in the United States.

17. Meshal v. Higgenbotham (2015)

- Limited access to civil remedies for victims of torture and abuse.

18. Ortiz-Diaz v. United States Department of Housing & Urban Development (2016)

- Made it harder for federal employees to bring discrimination claims.

19. Multicultural Media, Telecom and Internet Council v. Federal Communications Commission (2017)

- Prevented the translation of life-saving information to non-English speakers.

Advancing the Far-Right Social Agenda: Religion, Guns & Abortion

20. In re Navy Chaplaincy (2008)

- Affirmed the Navy's choice of the Catholic faith over non-liturgical Protestant faiths in the Chaplain Corps, creating a denomination preference for Catholics and marginalizing those of other faiths.

Ideologically Neutral or Liberal Rulings

21. American Trucking Associations, Inc. v. E.P.A. (2010)

- Upheld the EPA's authorization of a California air-quality rule that limits emissions from in-use non-road engines, noting that the rule did not impose a de facto national rule that precluded other states from declining to follow it and the EPA adequately considered cost of compliance. This decision is favorable to the EPA and to environmental regulation more generally as it affirms its authority to approve state guidelines.

22. National Sec. Archive v. C.I.A. (2014)

- Held that material related to the CIA's internal investigation of the Bay of Pigs Operation in Cuba was protected by deliberative process privilege, and exempt from disclosure under the Freedom of Information Act (FOIA).