

Ann Carlson wrote an excellent [post](#) about how Kennedy's departure might impact some key environmental issues. His retirement means that the Supreme Court will move even further to the right and stay there at least until one of the conservatives departs (maybe Thomas, the oldest). The new pick is likely to be another Gorsuch, which will make Roberts [the swing voter](#). This isn't as dire as it would have been when Roberts was appointed, because he has moved toward the center. But it's still bad.

First of all, Trump's Supreme Court appointment should drive home a key lesson once and for all: you have to win elections. Really, nothing else is as important. Voters who care about the environment or other liberal causes need to realize, much more than they have in the past, that control of the Supreme Court really matters. It's been fifty years since Nixon first used his appointments to move the Court to the right. Conservatives have had a laser focus on this goal for many years. And it has paid off, not as fast as they would have liked, but in the end they have gotten what they wanted. Unless liberals are prepared to fight just as hard, they will inevitably lose out. Conservatives are making every effort to keep people from voting and dilute their votes if they do manage to survive the hurdles - all the more reason for liberals to redouble their efforts.

Second, it is obviously important to keep fighting hard in the courts. Many cases never reach the Supreme Court, and environmentally oriented judges may have more of a voice in lower courts. Of course, that assumes that they get appointed, which brings us back to lesson #1 about the importance of elections. Also, even Antonin Scalia sometimes voted on the side of the environment when the statutory text was clear, and we should not give up on the idea of winning Supreme Court cases. To do so, environmental lawyers will have to learn to argue original intent and statutory text with greater skill, because that's the language conservative judges understand.

Third, state governments become even more important. The Supreme Court may limit state regulatory powers, but conservatives have ideological commitments to federalism that may prevent this from getting out of hand.

Finally, environmentalists will have to focus on avenues for change outside of the courts or the voting booth. Pressure from investors, consumers, and social media can do a lot to change corporate behavior, even without formal legal mandates. (See [here](#)). But direct action may also be an important tool, and it's one that mainstream environmental groups have eschewed. A recent [paper](#) by three Stanford sociologists shows that demonstrations against polluters result in emissions cuts, even controlling for a number of factors including a state's liberal bent. We saw from the [teachers' strikes](#) in states like West Virginia how effective spontaneous protest can be in changing policy even in very conservative political

settings.

Regardless of how conservatives stymie environmental progress, we need to be smart about finding new strategies - and keeping up the fight.