

Inertia isn't something we think about very often. Still less often is it something we feel grateful for. But it's what prevents us from being tossed around by every passing wind. At this precise moment, that's something we should hold precious. It's ironic that environmentalists should now be grateful for all the features that hold up change, since they usually think of themselves as the vanguard of progress. But right now, you can add inertia to your list of things to be grateful for on Thanksgiving.

Inertia can slow down progress, but it can also act as a ratchet to limit backsliding. Inertia means that efforts by Trump and his Republican Congress to roll back environmental protections won't be as fast or easy as they might be in another legal system. We've had plenty of examples of how slow Congress can be, even when both Houses are in the hands of the President's party. The courts and the executive branch have their own forms of inertia.

Let's start with the federal courts. As Jeffrey Toobin [pointed out](#) last month, Obama "has had two hundred and eighty judges confirmed, which represents about a third of the federal judiciary." Democratic judges are a majority in nine circuits, including the D.C. circuit, where they are 7 out of 11 judges. On the Ninth Circuit, by my count, there are 18 Democratic appointees and 9 Republicans. Democratic dominance won't last forever, of course. For now, at least, environmental organizations and progressive state governments will have a very good chance of winning public lands cases in the Ninth Circuit and regulatory cases in the D.C. Circuit. And regardless of the ultimate decision, litigation takes time, slowing down implementation.

The judicial balance will slowly shift. The longer Trump is in office, the more judges he will be able to appoint. This won't happen overnight. Even without the ability to filibuster against lower court judges, there are many ways that Democrats can slow down the process, though eventually Trump nominees will start filling the benches. Moreover, there's no reason to think that the Trump team are going to be great at vetting, which may give Democrats some material to use against nominees.

Democratic dominance of lower courts may not help much with the highest profile cases like the Clean Power Plan, which are likely to reach the Supreme Court. There, the only hope is to get Justice Kennedy's vote. But for every Supreme Court case, there are dozens of court of appeals cases. The Supreme Court just doesn't have the capacity to review more than a handful of regulatory cases a year. So on many significant cases, the court of appeals has the final word, and for now, many of those rulings will come from judges who are sympathetic to environmental protection.

Even in cases that reach the Supreme Court, some of the Republican Justices may be turned

off if changes seem poorly considered or too radical. Most judges, of whatever political stripe, are temperamentally disinclined toward drastic overnight changes.

There's also a lot of inertia built into the executive branch. Presidents have gained more control over the executive branch in the last couple of decades, but there are still far more civil servants than political appointees. Many of them have devoted their lives to implementing environmental statutes; they will not be enthusiastic about rolling them back. Moreover, changing regulations or eliminating them takes time and resources. If anything, the process has become more ornate in recent years, with expanded requirements for peer review and for cost-benefit analysis. Environmentalists used to complain about the "ossification" of the rulemaking process. They may come to celebrate it.

Let's not overplay the benefits of inertia in our present situation. Some bad things - probably including some *very* bad things - will happen anyway. And inertia has its limits. If Republicans maintain control for long enough, inertia won't be enough to hold them back. They're likely to gain strength in the Senate in 2018; they might get an additional Supreme Court appointment, flipping the Court dramatically; and regulatory delays don't last forever. Ultimately, if environmentalists and their political allies want to block regulatory backlash, there's no substitute for winning elections.

Let me say that again: *ultimately, there's no substitute for winning elections*. But inertia can help buy more time for that to happen.