Currently, the press seems to view Judges Michelle Childs, Ketanji Brown Jackson, and Leondra Kruger as the front runners to replace Breyer. That may shift over the next month, but it seems worthwhile to give these three a closer look. They've all decided environmental cases while on the bench. I assume most readers don't want to see them, but I've listed citations for the cases at the end. Here's what we know at this point about these judges.

Michelle Childs.

Judge Childs was nominated for a seat on the D.C. Circuit, but the nomination is on hold while Biden decides on his Supreme Court appointment. She's been a federal district judge in South Carolina since 2010. Her background is in labor and employment law. Probably the most significant ruling was South Carolina v. United States (2018). She ruled that the state of South Carolina had standing to challenge the government's failure to follow NEPA when deciding to halt construction of a nuclear waste facility but still store plutonium there. "It is the State's environment that is placed at risk as a result of the Federal Defendants' failure to comply with NEPA. Therefore, the State has suffered an injury in fact." She then found that the government had violated NEPA by failing to take a hard look at the environmental consequences. That sounds reasonable to me, but the Fourth Circuit disagreed. In another case, she held that the state legislature was within its rights by refusing to allow a utility to recovery $5 billion from ratepayers for construction costs. She rejected the claim that making the utility bear the cost was an unconstitutional taking of its property.

Judge Ketanji Brown Jackson

Judge Jackson was a federal district judge in D.C, for eight years and was recently appointed to the D.C. Circuit to replace Merrick Garland. Because she's been on the Court of Appeals for such a short time, her environmental rulings have all been on the trial bench. D.C. is a frequent venue for environmental litigation, so she's decided a fair number of cases. I'll only discuss the most interesting rulings here.

In a 2019 case, Judge Jackson held that environmental groups couldn't challenge the border wall under various laws because Congress had stripped the courts of jurisdiction. Regrettably, that's a correct statement of the law. In another case, she upheld a decision by the fisheries service to lift catch restrictions previously imposed to protect endangered fish. She found that the fisheries service had properly concluded that the fish in question weren't found together with the

endangered fish, so that the catch restrictions wouldn't help the endangered fish.

In another case, Judge Jackson ruled that the government erred by designating 56 acres of land as critical habitat for Riverside fairy shrimp. The shrimp pond itself was only one acre, but the agency thought that protecting the watershed surrounding the pond was crucial to saving the shrimp. Judge Jackson ruled that habitat must be inhabitable by the endangered species, which wasn't true for the watershed. These cases don't seem to reflect much of a passion for environmental protection, but we shouldn't put too much weight on these very fact-intensive disputes.

Judge Leondra Kruger

Judge Kruger joined the California Supreme Court in 2015. She's ruled in several cases involving fees relating to the environment or conservation. In a case from the Monterey area, she ruled that the public utility commission lacked jurisdiction to review the amount a water district charged customers for actions to mitigate environmental damage caused by the utility. In another water district case, she ruled that groundwater pumping charges did not violate the California constitution's restrictions on fees and taxes. She found that the fees had a reasonable relationship to the benefits flowing from the District's conservation activities. In a more recent case, she held that municipal water fees were exempt from California's referendum process because they funded an essential government function. Apart from this, her main environmental ruling was in a CEQA case. (CEQA is the California version of NEPA and tends to be more protective of the environment.). The case involved improvements at a community college. After the environmental impact assessment was issued, the community college decided to demolish one building previously slated for renovation and renovate two previously slated for demolition. The court found that there was substantial evidence that these changes were not major project revisions requiring a supplemental impact review.

Any of these judges would be vastly better for the environment than any possible Republican appointee. If I had to guess based just on these cases, I would bet on Judge Childs as the most pro-environmental, but the differences don't seem to be that dramatic.

Citations

Judge Childs

South Carolina v. United States, 329 F. Supp. 3d 214 (D.S.C. 2018), vacated and remanded, 912 F.3d 720 (4th Cir. 2019).

S.C. Elec. & Gas Co. v. Randall, 333 F. Supp. 3d 552 (D.S.C. 2018).

Judge Jackson

Ctr. for Biological Diversity v. McAleenan, 404 F. Supp. 3d 218 (D.D.C. 2019).

Otay Mesa Prop., L.P. v. United States DOI, 344 F. Supp. 3d 355 (D.D.C. 2018).

Judge Kruger

Wilde v. City of Dunsmuir, 470 P.3d 590 (Cal. 2020).

Friends of Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist., 378 P.3d 687 (Cal. 2016).

City of San Buenaventura v. United Water Conservation Dist., 406 P.3d 733 (Cal. 2017).

Monterey Peninsula Water Mgmt. Dist. v. Pub. Utils. Com., 6364 P.3d 404 (Cal. 2016).