

GREEN ENERGY INSTITUTE

AT LEWIS & CLARK LAW SCHOOL

July 2018

GEI Director Melissa Powers on the Impact of the SCOTUS Swap: Kennedy for Kavanaugh

A [June 28 ThinkProgress article](#) featured Professor Powers's thoughts on what Kennedy's retirement might mean for environmental advocates: "I think standing is going to get harder to prove," said Powers. "But I think scientific advancements may help with showing the burden." As climate science continues to advance, and the impacts of climate change become ever more apparent, it will be harder for justices to reject environmentalists' arguments for standing, Powers said. But, she warned, "plaintiffs need to be very deliberative and careful as they proceed." On [VICE News](#) Melissa touched on (potentially positive) changes to states' rights that might provide an opening for left-leaning jurisdictions to take bold action: "Melissa Powers, a law professor at Oregon's Lewis and Clark University, envisions many questions about civil rights becoming state, rather than federal, issues. If Roe is overturned, for example, that may open the door to opportunities for blue states to enact far-reaching social legislation even as GOP-led states are emboldened to restrict rights. The upside, Powers said, is that left-leaning legislation at the state level could be given the same leeway."



US Supreme Court Associate Justice Anthony M. Kennedy (R) and Associate Justice Ruth Bader Ginsburg (L) (Credit: Saul Loeb/Afp/Getty Images)



President Trump with Judge Brett Kavanaugh, his Supreme Court nominee. (Credit: AP Photo/Alex Brandon)

After Kavanaugh was nominated, [Trump on Earth](#), a podcast exploring the effects of the Trump administration on the environment, asked Melissa to speak directly to the SCOTUS nominee's potential impact on environmental law and policy. "Powers says there's a pretty broad level of concern about some of the decisions that Judge Kavanaugh has issued, but the pick could have been worse. 'There's a little bit of hope that he won't necessarily be as radical as some people were fearing some of the potential appointees might be when it comes to the environment, especially in terms of climate change.' In a couple of different decisions, Judge Kavanaugh has made it clear that he doesn't doubt the science of climate change. He has specifically referred to regulation of greenhouse gases and climate change mitigation as a vital policy objective. And he told a court room two years ago, "The earth is warming. Humans are contributing. There is a moral imperative. There is a huge policy imperative." [Listen to the full episode here.](#)

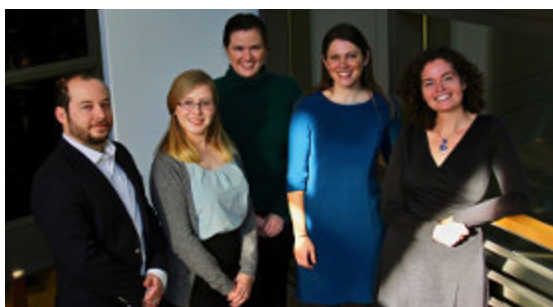
Updates from the Carbon Policy Office at the Joint Interim Committee on Carbon Reduction Meeting

On June 26, the Joint Interim Committee on Carbon Reduction convened to hear updates from Kristen Sheeran, Energy and Climate Change Policy Advisor to Governor Kate Brown and Director of the Carbon Policy Office. Kristen highlighted several policy issues that her office is investigating in an effort to propose the most effective carbon-reducing policy:

- Point of regulation (how far upstream will entities be regulated?);
- Compatibility with existing policies (how will cap and trade work with the transportation package and renewable portfolio standards, for example?);
- Energy intensive, trade exposed industries (EITEs) (how do we protect energy intensive industries from fleeing the state?);
- The role of natural lands in reducing carbon (how do we effectively incentivize sequestration efforts?); and
- The capacity of existing agencies to administer the program (how do we best support successful implementation of the program?), among others.

Kristen noted that her office is conducting targeted conversations with a variety of stakeholders as well as contracting research and analysis on subjects such as EITE leakage risk. Working groups will also assess EITE leakage, forest sequestration efforts, and protecting low-income utility customers from excessive rate hikes. [Go to the Committee's information page to find the recording of the June meeting as well as tune into the July convening, which is happening today!](#)

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