

NOMINATIONS

Pruitt's new legal ally in climate rule repeal

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U.S. EPA Administrator Scott Pruitt has a lot in common with the man who could soon become his agency's top lawyer.

Like Pruitt, EPA general counsel nominee Matt Leopold is a big believer in states' rights and limited federal government. And like the EPA administrator — who sued the Obama administration over its Clean Power Plan rule — Leopold is critical of that regulation aimed at cutting down power plants' greenhouse gas emissions.

Leopold is slated to appear on Capitol Hill this week for his confirmation hearing. If he's cleared by the Senate, it'll be his job to keep Pruitt's rollbacks of the Clean Power Plan and other climate rules on firm legal footing.

"Unless action is undeniably unlawful, the administrator and assistant administrators, in order to make policy, have available to them a suite of options that have legal pros and cons. It's the general counsel's job to identify those legal pros and cons," said Avi Garbow, former EPA general counsel under President Obama.

Pruitt has already begun the process of reviewing the Clean Power Plan, and EPA is expected to release details of its plans early next month.

The agency will undoubtedly face swift legal challenges from environmental groups once it is finalized. The new general counsel will be able to advise the agency as it develops a final version of a new rule that is widely expected to significantly weaken the stalled rule.

Other important voices when it comes to preparing for court challenges will be attorneys at the Department of Justice, including the assistant attorney general of the Environment and Natural Resources Division. President Trump has nominated former George W. Bush DOJ official Jeffrey Clark for that job, but he hasn't yet been confirmed.

Ultimately, the EPA administrator will decide which course of action to take, Garbow said.

Leopold has been critical of the Clean Power Plan in the past, calling implementation of the rule too expensive and "incredibly transformative" to the energy economy.

In a panel discussion hosted by the Federalist Society in 2016, Leopold said EPA had overstepped its authority under the Clean Air Act in creating the Clean Power Plan, a "2,000 page regulation, based on two paragraphs of text in the Clean Air Act known as 111(d)."



Matt Leopold Courtesy of Carlton Fields

He also called more broadly for giving states greater regulatory authority because of their ability to act more nimbly than the federal government.

"I'm not arguing that we shouldn't have robust environmental laws to protect air, water and lands. Just the opposite," he said.

Leopold added that the complexity of these laws requires that Congress delegate certain technical matters "that Congress either doesn't have the time or capacity to deal with" to agencies like EPA.

"But the issue is Congress has given away too much of that authority," he said.

He likes chopping rules

Leopold is relatively unknown in Washington energy circles, despite a previous stint in the nation's capital as a staff attorney at the Justice Department.

He is currently of counsel at the Tallahassee, Fla.-based law firm Carlton Fields Jordan Burt. The firm's president and CEO, Gary Sasso, called Leopold an "incredible asset" to the law firm's clients in a statement on the firm's website.

"Matt Leopold is superbly qualified to serve as General Counsel for the EPA," said Sasso. "He is an intelligent, thoughtful, and talented attorney with deep expertise from his service to the State of Florida and the Department of Justice."

According to publicly available financial disclosure documents, Leopold represents a number of clients EPA is responsible for regulating. They include: Ford Motor Co.; BASF Corp., a German chemical company; and Edgar Minerals Inc., a mining company. The National Law Journal first reported the clients listed on his financial disclosure form last week.

An EPA spokeswoman noted that Leopold had experience in environmental law at the state and federal level and his nomination had received "high accolades" from environmental leaders.

"Upon confirmation, he will receive ethics briefings and follow the guidelines set forth by EPA's ethics office with regard to recusals," Liz Bowman said in an email.

Leopold has shown he will also likely be a supporter of the Trump administration's deregulatory agenda.

During the 2016 Federalist Society panel, he praised Florida Gov. Rick Scott (R) for rolling back environmental regulations in the state. Leopold had worked under Scott from March 2013 to March 2015 as general counsel at the Florida Department of Environmental Protection, according to his LinkedIn profile.

"Under Gov. Scott's leadership, DEP went and evaluated how many regulations are outdated and unnecessary and we ended up cutting one-third of all regulations on the books at DEP," Leopold said.

Jerry Phillips, a former enforcement attorney at Florida DEP and director of Florida **Public Employees for Environmental Responsibility** (PEER), has been tracking Scott's environmental enforcement record in the state.

According to a 2014 [PEER analysis](#) of department data, DEP opened 85 percent fewer enforcement cases in 2014 than 2010, the year before Scott took office. Meanwhile, the general counsel's office received 30 case reports in 2014, compared to 113 in 2010.

"From the minute Scott took over, the air program enforcement just bottomed out. If you look at the air program, there was no enforcement. There still is none for all intents and purposes," he said. "To the extent that Leopold could have helped bring those numbers up, he certainly didn't do it."

When asked about Leopold's involvement in evaluating deregulatory efforts at the agency, Florida DEP Communications Director Lauren Engel declined to comment on his work.

She said in an email the department takes its responsibility to the environment seriously.

"We are also committed to being responsible stewards of taxpayer dollars, improving processes and increasing the effectiveness and efficiency of our operations, which has helped us reduce steps and redundancies in our regulatory processes without reducing environmental protection," Engel wrote.

Leopold's nomination has earned some praise from former EPA officials.

Ethan Shenkman, former deputy general counsel at EPA and an Obama political appointee, worked with him during Leopold's tenure at Florida DEP and when he was at the Justice Department. Shenkman described him as a "real problem-solver" and someone who "understands the very important role of career lawyers in government."

"I think he is a good candidate," Shenkman said.

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