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EPA Administrator Scott Pruitt resigns 02:04

Editor's Note: [William W. Buzbee](#) is a professor of law at Georgetown University Law Center, a founding member-scholar at the Center for Progressive Reform, and the author of "[Fighting Westway: Citizen Activism, Environmental Law, and the Regulatory War that Transformed New York City](#)." The opinions expressed in this commentary are his.

(CNN) — Soon a new administrator will assume the reins at the US Environmental Protection Agency (EPA). The current administrator (until today) Scott Pruitt, has resigned after an avalanche of ethical, fiscal, and managerial lapses, plus reported intolerance for dissent.



Amid all the noise, a crucial question must be addressed: How did Pruitt do at his job, and what should the EPA's future head learn from his track record? Somewhat paradoxically, the late Justice Antonin Scalia's writings provide illumination. Pruitt had professed [admiration](#) for Scalia, a conservative, describing him as a stalwart defender of the law and constitutional fundamentals.

But it is exactly Scalia's emphasis on fealty to the law that highlights Pruitt's failure at his post. Pruitt has demonstrated an unwavering disrespect for the requirements of statutes and

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judicial precedents. Any leader of the EPA, present or future, should heed Scalia's lessons about rule-of-law fundamentals.



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The EPA's role is shaped by law, not partisan politics

Justice Scalia forever [emphasized](#) that courts and agencies need to respect [congressional choices](#) reflected in the laws.

Pruitt has acted as if he could write on a blank slate, seeking regulatory reversals before doing the congressionally required work to justify them. Every statute sets out goals, procedures, and criteria to [guide agency actions](#). Wholesale regulatory reversals tend to be hard, especially where the law is protective and science is sound.

Yet Pruitt's EPA repeatedly dodged engagement with the law's substantive and procedural requirements and ignored or sought to [skew the science](#), erring instead on the side of [polluters seeking relief](#).

The EPA's determination in April that it would roll back car efficiency regulations -- a move cheered by the auto industry -- is a case in point. The agency originally set these regulations in 2012 to reduce greenhouse gas emissions and improve mileage. That action followed a [2007 Supreme Court decision](#) ordering the EPA to follow the law in assessing the regulation of greenhouse gas emissions from motor vehicles.

The EPA's recent [determination](#) under Pruitt, however, was flatly contrary to determinations published by the EPA in January 2017, just before President Donald Trump took office. Barack Obama's EPA had massively [documented](#) technology, business, and consumer trends and concluded that progress in motor vehicle efficiency and reducing emissions was exceeding earlier expectations.

Pruitt's EPA has [reversed that conclusion](#), determining to discard these mileage and emission requirements. What the agency will require in the future is not clear and it has thus far provided scant justification for the decision. It merely paraphrased industry concerns, without the EPA stating its own conclusions about the state of technological progress. This [rollback](#) has already provoked litigation and congressional criticism.

The EPA administrator must abide by legal rules of the road

In a democracy ruled by law, agencies must do things the right way, even if clunky or slow.

Scalia called for compliance with such procedural requirements, emphasizing in a 1978 article that "one of the functions of procedure is to limit power -- not just the power to be unfair, but the power to act in a political mode, or the power to act at all."

Indeed, during times of deregulatory rollbacks, the Supreme Court has repeatedly emphasized that an agency making a [policy change](#) must surmount several hurdles: The original regulations stand until validly changed. Moreover, the agency [must provide](#) "good reasons" for a change, leave no "unexplained inconsistency," and grapple with [underlying facts](#) and the effects of the original policy.



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Pruitt's EPA, however, has sought to scuttle still-governing regulations with shortcuts, such as claimed delays or postponements that would, in reality, indefinitely shelve earlier finalized regulations, but without providing the analysis and justification the Supreme Court has long required. So far, the EPA has repeatedly lost on this strategy in the courts.

In 2017, the United States Court of Appeals for the District of Columbia, the nation's pre-eminent federal appellate court, [ruled](#) that the EPA could not roll back methane regulations through a regulatory stay without new rule-making that included opportunities for public comment, plus legal and factual justification.

And, similarly, a federal district court in California in 2018 [rejected](#) the EPA's use of a delay strategy to indirectly abandon pesticide regulation.

The EPA's administrator must faithfully execute laws that protect the environment

The EPA's head is constitutionally obligated to uphold these laws, not to benefit or bail out some particular sector or region. Two of Scalia's most significant opinions involved the EPA's authority to focus on health, or costs, or perhaps both.

Scalia's instructions? Follow the law.

In one case, the law's text mandated that the agency make regulatory choices based on an assessment of a pollutant's threats to health, and [Scalia's opinion](#) for the court said just that.

In the other, Scalia -- and a strong court majority -- [said](#) the EPA and other agencies must look at both the benefits of regulation as well as regulatory costs, unless prohibited by law. Scalia castigated agencies for illegal "interpretive gerrymanders," stating that they cannot keep portions of the law they favor and discard the rest. Under Pruitt's leadership, the EPA has done exactly what Scalia condemned.

Statutes rule the day, and balanced analysis is the norm. Pruitt seemed to have forgotten this, and has been focusing inordinately on [polluters' concerns](#), while barely addressing resulting harms from increased pollution that, again and again, he wanted to allow.

Neither Pruitt nor any future EPA administrator is above the law.

The EPA administrator must acknowledge his or her own limitations

Environmental law is laden with science, technological issues, and evidence-based assessments of the best performers and cutting-edge developments. A good administrator will listen to self-interested lawyers and lobbyists, but then seek expert agency counsel and follow the law and evidence. Pruitt [met extensively](#) with his anti-environmental allies, but few others.

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It makes sense, then, that under Pruitt, the agency has proposed [poorly justified rollbacks](#). Short-circuiting procedures designed to allow for public comment and constrain government power (as Justice Scalia noted) has left Pruitt's EPA with the appearance of being one-sided and ill-informed.

Public servants must respect the law. The EPA has gone through hard times before, but Pruitt's reign has been a uniquely lawless disaster. If a new administrator respects the law and follows the science and data, that administrator may still find room to adjust agency policy, yet emerge with reputation and the environment intact.

This commentary has been updated from an earlier version in response to the news of the resignation of former EPA administrator Scott Pruitt.



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