

SCOTUS Limits EPA’s Authority to Regulate Greenhouse Gas Emissions in *West Virginia v. EPA*



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On June 30, 2022, the U.S. Supreme Court published its opinion in [West Virginia v. Environmental Protection Agency \(EPA\)](#), involving challenges to the scope of the Obama Administration's Clean Power Plan (CPP). The Court found that the EPA exceeded its authority in promulgating the CPP under the “major questions doctrine.” This ruling will limit the EPA’s authority to regulate greenhouse gas (GHG) emissions from existing power plants under Section 111(d) of the Clean Air Act (CAA) and thus restrict the EPA’s ability to combat climate change at a national level.

Section 111(d) of the CAA authorizes the EPA to adopt “standards of performance” for existing sources of carbon emissions that reflect “best system of emission reduction.” In the CPP, which was implemented in 2015, EPA determined that the “best system of emission reduction” was a “generation shifting” approach that would require

coal-fired power plants to reduce the amount of coal-generated electricity and shift to natural gas, wind, or solar based plants. One of the goals of the CPP was to reduce the amount of coal-generated electricity by 2030. The CPP, however, never went into effect as West Virginia, along with stakeholders and other states with coal interests, challenged the CPP as exceeding the scope of EPA's CAA authority.

The Court relied on the "major questions doctrine," which holds that if Congress wanted to give a federal agency the power to decide a major question, then Congress would have delegated that power in clear, direct language to that agency. Here, Chief Justice Roberts, writing for the majority, found that the potential economic and political effects would be so substantial that Congress would not have delegated that authority to the EPA without a "clear statement" directing the agency to regulate GHGs in this manner.

While the EPA's authority to regulate GHG emissions is now significantly curtailed, efforts to reduce GHG emissions continue. The Biden Administration has already [announced](#) that it will continue to work on revised clean energy regulations that are consistent with the statutory authority that the Court observed in *West Virginia v. EPA*. In addition to a forthcoming EPA regulation, states such as New York, Massachusetts, and California will continue to regulate GHG emissions under state authority. Further, market forces have pushed industries and companies to invest in cleaner energy, which has resulted in ongoing reductions of emissions in the power sector, even as EPA has not required such reductions at the federal level.

Finally, it is important to note that the Court's decision also leaves open the door for courts to re-evaluate the statutory authority behind many government programs, which could lead to deregulation of other industries in the future.

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