



The Daily Dish

Putting the Climate Heat on Congress

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Yesterday the Supreme Court of the United States (SCOTUS) released its decision in [West Virginia v. EPA](#), ruling that the Environmental Protection Agency (EPA) lacked the authority for broad regulations of greenhouse gas emissions from power plants. As detailed in a new [insight](#) by Dan Bosch (see the thumbnail version [here](#)), the issue was the Obama-era Clean Power Plan (CPP) and its approach to regulating greenhouse gas emissions using authority under the Clean Air Act (CAA).

The CAA's authority requires EPA to set the Best System of Emissions Reduction (BSER) for specific pollutants from specific sources (such as a power plant). That authority has been used by EPA to dictate the best way to make each plant operate more cleanly. The CPP was more aggressive, however, as over the long haul it was not possible to make fossil fuel-fired plants clean enough. Instead, the BSER was actually to close plants, transitioning from coal to natural gas-fired plants and then to renewables.

That did not fly with SCOTUS. As Bosch puts it: "In writing the majority opinion, Chief Justice John Roberts held that the rule went beyond what Congress intended in the CAA. He based his reasoning on the fact that the rule had such massive economic implications – overhauling the mix of the nation's electricity supply – and departed from agency norms to such a degree that it required significant scrutiny as to whether Congress had granted such authority. The chief justice applied the 'major questions doctrine,' a court precedent whereby in claiming authority on a policy with major 'economic or political importance' an 'agency must point to "clear congressional authorization."' The Court found no such authority to justify EPA's broad reconfiguring of the country's electricity generation sector."

The ruling obviously requires a rethink of emissions strategies at EPA. It will also likely rein in overreach in the rules of other agencies. But the most direct implication of the ruling is to put the spotlight on Congress in developing a strategy to reduce greenhouse gas emissions. This is also an opportunity, as Congress could craft a bipartisan policy that relies on market-based mechanisms, such as carbon pricing, that [research](#) has shown is far more efficient than regulations like the CPP.

Some people will argue that Congress is too beset by partisan divide to accomplish such a task. But perhaps Congress has had the luxury of being partisan and divided because it has not been forced to do its job.