



Insight

SCOTUS Limits EPA's Ability to Issue Broad Greenhouse Gas Rules

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EXECUTIVE SUMMARY

- The Supreme Court ruled that the Environmental Protection Agency (EPA) lacks the authority to issue broad regulations to reduce greenhouse gas emissions from power plants by shifting the source of electricity generation from coal and natural gas to renewables.
- The Court found that the agency's regulation was of major significance, departed dramatically from how EPA has typically interpreted the Clean Air Act, and that the agency would need clearer congressional authority.
- The ruling put the onus on Congress to develop a comprehensive climate change policy.

INTRODUCTION

The Supreme Court ruled on June 30 that the Environmental Protection Agency (EPA) lacked the authority to issue broad regulations to address greenhouse gas emissions from power plants. The decision in *West Virginia v. EPA* sends the Biden Administration back to the drawing board for a regulatory approach to limit such emissions.

This analysis briefly explains the Court's decision and its implications on climate change regulation.

BACKGROUND

The case in question dealt with how EPA structured its [Clean Power Plan \(CPP\)](#), a 2015 rule from the Obama Administration that sought to shift electricity generation on a national level from coal and natural gas-fired plants to renewable energy sources. EPA's authority to regulate greenhouse gas emissions stems from another Supreme Court decision that found EPA could use the Clean Air Act (CAA) to address climate change.

The Obama Administration's challenge was figuring out how it could issue a broad, generation-shifting rule under the 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, as EPA has wielded it to address other pollutants, allows the agency to determine the best way to make a plant operate more cleanly. The Clean Power Plan, however, sought to make coal and natural gas-fired power plants produce less electricity, or even shut down entirely, to favor renewable energy. EPA determined that the BSER was to transition from coal to natural gas-fired plants and then from natural gas to renewables. Once the rule was finalized, the Supreme Court issued a stay on the rule to prevent it from going into effect while legal challenges made their way through the federal courts.

Before those legal challenges made their way to the Supreme Court, however, the Trump Administration assumed office. It repealed the CPP in favor of the [Affordable Clean Energy](#) (ACE) rule. The Trump Administration's EPA justified the repeal by finding that it did not have the authority for such a system-wide rule, and the ACE rule established more traditional emissions requirements on the plant level. This rule was eventually struck down on the last day of the Trump Administration by a federal court that reasoned the rule did not go far enough.

Knowing the Biden Administration would resurrect the CPP in a more stringent form, states asked the Supreme Court to decide if the CPP was a legal approach, even though it was not in effect. The Supreme Court agreed to hear the case.

SUPREME COURT DECISION

In a 6-3 ruling, the Court concluded that EPA did not have authority for a regulation designed like the CPP. 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.

Of note, the Supreme Court did not rule on whether the Trump Administration's ACE rule would be an appropriate approach. Instead, the Court remanded the case to lower courts. The chief justice would clearly prefer Congress to establish a policy, concluding his opinion with the following: “A decision of such magnitude and consequence rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body.”

IMPLICATIONS OF THE DECISION

The Supreme Court's decision has three clear implications. First, it is now certain that any comprehensive climate change policy able to withstand legal scrutiny will have to come from Congress, not EPA. Congress could take the opportunity to craft a bipartisan policy that relies on market-based mechanisms – such as carbon pricing – to achieve reductions. [Research](#) has shown that emissions reductions from a broad market-based policy would be far more efficient than those stemming from regulations like the CPP.

Second, EPA now must go back to the drawing board on how it wants to regulate greenhouse gas emissions from power plants. The decision deals a major blow to the extent of emissions reductions EPA may be able to attain through current authority. According to last week's [regulatory agenda](#), the agency is expected to propose a rule on this issue in [March](#). It is not clear whether the agency had presumed a CPP-like approach was doomed legally (the Supreme Court decision was hardly a surprise) and is already contemplating a new structure.

Third, the decision should signal to all federal agencies that rules that have major consequences and depart from agency norms will face greater scrutiny under the major questions doctrine. We now know for sure that rules aimed at addressing climate change are considered a major question. The decision would seem unfavorable to a [proposed rule](#) from the Securities and Exchange Commission regarding climate disclosures, for example. But far-reaching rules in other areas would also appear at risk unless agencies can point to clear congressional

authority.

CONCLUSION

This decision realigns the operative balance of power in climate policy and potentially other major areas of regulatory policy. As Justice Gorsuch notes in his concurring opinion – likely alluding to President Obama’s now-famous phrase – “the Constitution does not authorize agencies to use pen-and-phone regulations as substitutes for laws passed by the people’s representatives.” The Supreme Court’s decision is a substantial setback for the Biden Administration’s climate agenda, which consists almost entirely of regulatory actions. The ruling should signal to Congress that it needs to develop a comprehensive climate policy sooner rather than later.