

Explainer on

WHAT THE SUPREME COURT'S DECISION ON EPA REGULATION OF POWER PLANT POLLUTION MEANS FOR ENVIRONMENTAL JUSTICE

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What does the forthcoming decision from the Supreme Court on the EPA's authority to regulate greenhouse gas emissions from power plants have to do with climate justice and racial justice?

A LOT.

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THE BASICS:

What is this case about?

- Petitioners in the [West Virginia v. Environmental Protection Agency](#) case (red states, energy companies, and owners of coal mines) have challenged whether the EPA can use any means to regulate planet-warming pollution from power plants, without express authorization from Congress saying it can do so.
- The case arose from a challenge to the Obama-era Clean Power Plan (CPP). Although that plan never took effect, and was repealed by the Trump administration, petitioners are asking the Court to rule on whether the EPA has authority to issue the kind of rules the CPP would have imposed, requiring power plants to decarbonize by shifting toward cleaner energy sources.
- It's essentially a challenge to the EPA's authority to require power plants to decarbonize, and the Court could set limits on what power the EPA has to require emissions reduction measures.
- Depending on how the decision is written, it could have much more far-reaching consequences for the ability of the government to protect the environment and public health, and to regulate in a range of other areas.

What is the EPA?

- The [Environmental Protection Agency](#) (EPA) is the federal agency charged with protecting the environment and the public health that depends on it.
- The EPA is currently developing new rules under the Clean Air Act to manage greenhouse gas emissions (that drive climate change) from power plants, but they've been delayed pending the outcome of this case, which could affect their scope.

What is the Clean Power Plan?

- The [Clean Power Plan](#) (CPP) is one of former President Obama's efforts to fight climate change. It was authorized under the Clean Air Act, but never took effect and was repealed by former President Trump (who imposed much weaker policies in its place called the "Affordable Clean Energy" (ACE) rule) .

- [Under this plan](#), the EPA would [give each state](#) an individual goal for cutting power plant emissions. States could then decide for themselves how to get there. If states refused to submit a plan, the EPA would impose its own federal plan.

What is the Clean Air Act?

- The [Clean Air Act](#) (CAA) of 1970 is the comprehensive federal law that regulates air emissions from stationary and mobile sources.
- It relied on a type of governance that is ubiquitous in federal law: Congress lays out a broad policy (in this case, that power plants must use the “best system of emission reduction” as stated in the CPP) and then delegates to a federal agency (in this case, the EPA) the task of implementing that policy how it deems best through a series of binding regulations.
- Among other things, it authorizes the EPA to establish National Ambient Air Quality Standards (NAAQS) to protect public health and public welfare and to regulate emissions of hazardous air pollutants.

POSSIBLE OUTCOMES:

There are a broad array of potential outcomes but [three scenarios](#) are particularly concerning if the Court rules in favor of West Virginia and the other petitioners.

NARROW

The Court could rule that the federal Clean Air Act does not authorize regulatory approaches like the Clean Power Plan, and set new limits on EPA’s power under the Clean Air Act.

- This could restrict the EPA’s ability to reduce [greenhouse gas emissions](#) from coal and gas power plants in the future.

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The Court could rule that it is [unconstitutional](#) for the EPA to set the sort of aggressive policies and regulations that it could under the Clean Air Act, without Congress’ express authorization.

- Such a ruling could strip the EPA of much of its power to fight climate change and limit Congress’ ability to broadly delegate authority to develop pollution standards and protect the environment.

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The Court could rule that [all](#) federal agencies lack the authority to implement their own policies and regulations that are of vast economic and political significance without explicit Congressional authorization (*one framework for this reasoning being the [Major Questions Doctrine](#)*).

- Since countless federal statutes rely on a similar structure as the Clean Air Act (Congress setting a broad policy and delegating implementation of it to a federal agency), this would [fundamentally alter the structure of the US government](#), stripping away the government’s power on a broad range of issues, and requiring a new way of writing laws and distributing power.
- [Depending on the approach](#), it could effectively shift an enormous amount of power to the courts (and, ultimately, the Supreme Court) since they would be the ones deciding when a federal agency has overstepped.
- A broad ruling on agency power could call into question hundreds of regulations. Many regulations could be overturned. Restoring them would require passing legislation through a bitterly divided Congress and the [filibuster](#), all but ensuring that no action could be taken.

WHY IT MATTERS FOR ENVIRONMENTAL JUSTICE:

The Supreme Court is poised to decide that because the regulation of greenhouse gas emissions touches on a “[major question](#)” (a decision that is of vast economic and political significance), the EPA’s ability to regulate power plant emissions is constrained without Congress’s express permission.

- This would likely fundamentally alter the EPA’s powers in ways that could make it very difficult for the Biden administration — or any future administration — to abandon the much weaker policies that President Trump imposed in place of the Clean Power Plan.
- The EPA would then be limited in how it can address the problem of power plant pollution, which could lead to inefficiencies in tackling this contributor to global warming and could prolong the life of polluting facilities - ultimately worsening the climate crisis and its detrimental impacts on communities.

Tying the hands of the EPA to rein in harmful pollutants hurts communities of color and low-income communities first and worst. Regulations of air pollutants, including those emitted by power plants, have been critical in reducing harms to fenceline communities, [particularly communities of color and low-income communities](#).

- Black, Brown and Indigenous communities are [more likely](#) to live near to a power plant (or other polluting industrial facility).
- Black, Brown and Indigenous people are [more likely](#) to die or suffer health problems from air pollution, including PM 2.5 and other pollutants associated with the very same fossil fuel facilities / power plants that emit the greenhouse gas emissions at issue in this case.
- And those same communities are already [disproportionately](#) affected by climate change, which is caused by the greenhouse gas emissions that the EPA seeks to regulate through the challenged rule.

Shifting power plants off dirty energy is square one of climate action. If the federal government cannot require emissions reductions in the sector responsible for the largest share of climate-destroying fossil fuel pollution, what can it do to combat climate change?

- Federal regulation is critical to ensure minimum standards (the floor for environmental protection) and counterbalance regulatory capture and industry’s political sway at the state and local level. The companies behind power plants and other polluting facilities often hold outsized sway among local policymakers and regulators.
- So the federal government plays a critical role in establishing and enforcing minimum standards to ensure at least some uniform baseline level of environmental protection and environmental justice across the country.

If the EPA can be stripped of its power, the same may be applied to other federal agencies.

- This would strip away the government’s power of passing regulations on issues as diverse as [workplace safety](#), [environmental protection](#), [access to birth control](#), [overtime pay](#), and [vaccination](#).
- Progress made in social, racial, gender, environmental justice and so many more could be rolled back and the fights for each would have to be taken up again.
- Access to the decision-making processes and ability to elect those that work on creating a healthy environment in which to live, learn, and work would be diminished.

THE GOOD NEWS:

The Supreme Court’s fossil-fueled attack on the Clean Air Act should not directly undermine the President’s authority under other bedrock laws to follow through on his climate promises using executive action.

- President Biden still has the [legal authority](#) to follow through on his promise to ban new federal fossil fuel leasing, halt permit approvals for new pipelines and other fossil fuel infrastructure, and hit the brakes on new gas exports. Using [existing authorities](#) under the National Emergencies Act and the

Defense Production Act, the president can also halt crude oil exports, stop offshore oil and gas drilling, restrict international fossil fuel investment and rapidly manufacture and distribute clean and renewable energy systems.

- In addition, President Biden and Congress can and must take action to reform and expand the Supreme Court, including creating additional seats, setting term limits and implementing ethics rules.

This case is Exhibit A for how the fossil fuel industry is corrupting our courts: this case was funded and developed by the fossil fuel industry to undermine the ability of our government to regulate pollution and address the climate crisis. It's part of a decades-long effort to install industry friendly judges who will put the rights of polluters over people.

- President Biden should instruct the Department of Justice (DOJ) to go after this industry corruption: On the campaign trail, Biden promised to go after industry corruption and support lawsuits that would hold Big Oil accountable for their climate crimes. He hasn't. Instead, the DOJ continues to argue on the side of big polluters. Biden should respond to this decision by instructing the DOJ to go after the industry and make them pay.
- This case strengthens the argument that Biden should declare a climate emergency: If the Court strips away the EPA's ability to address the climate crisis using the clean air act, Biden must take other measures. As the brief says, declaring a climate emergency would allow Biden to use other powers to stop new fossil fuel projects, drive the development of clean energy, and more. CBD laid out many of those powers here. Yes, the court may challenge some of those too, but Biden needs to play offense and join our fight of People vs. Fossil Fuels!

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