

## ***Ohio v. EPA, No. 23A349***

**Introduction:** Today, the Supreme Court issued a 5-4 decision staying an Environmental Protection Agency (EPA) plan to reduce air pollution that crosses state lines. The stay prevents the EPA from enforcing the plan while the case proceeds in the D.C. Circuit.

**Background:** The Clean Air Act tasks the EPA with setting standards for common air pollutants to protect public health. When the EPA sets a standard, States must submit plans on how they will reduce emissions to meet that standard. Under the Act's "Good Neighbor Provision," 42 U.S.C. § 7410(a)(1), States must design their plans to prohibit emissions that make it more difficult for downwind States to meet the EPA standard. If a state plan fails to satisfy the Good Neighbor Provision and other requirements in the Act, the EPA may issue a federal implementation plan for the noncompliant State.

In 2015, the EPA revised its air-quality standard for ozone, triggering the requirement for States to submit implementation plans. The EPA rejected plans from 23 States on the ground that they did not adequately address the States' obligations under the Good Neighbor Provision. The EPA then proposed a single plan for the 23 States. Meanwhile, several States challenged the EPA's decisions rejecting their plans and courts stayed four of the rejections. Soon thereafter, the EPA issued its final plan for the 23 States.

Several States challenged the EPA's plan in the D.C. Circuit and asked for a stay stopping the plan from taking effect during the litigation. The States contended that they were likely to succeed on the merits by arguing that the EPA's plan was unreasonably based on the incorrect assumption that all 23 States would remain bound by the plan. The D.C. Circuit denied a stay and the challengers renewed their stay motion in the Supreme Court. While the litigation was pending, courts stayed eight more of the EPA's rejections of state plans.

**Issue:** Whether challengers were likely to succeed in arguing that the EPA's plan to implement standards on cross-state pollution was arbitrary and capricious.

**Court's Holding:** In an opinion authored by Justice Gorsuch, the Supreme Court granted a stay that prevents the EPA's plan from taking effect while litigation proceeds in the D.C. Circuit. The Court held that the States were likely to succeed in the challenge because the EPA incorrectly assumed that all 23 States would be subject to the plan. The Court reasoned that, in light of the orders staying the EPA's rejections of 12 state plans, the EPA needed to perform additional analysis on the cost-effectiveness of emissions-control measures intended to minimize downwind air pollution. The Court therefore determined that the States were likely to succeed in arguing that the EPA's plan was not reasonably explained and that the EPA ignored important issues.

Justice Barrett authored a dissent, joined by Justices Kagan, Sotomayor, and Jackson. The dissenters would not have granted emergency relief in light of the fact-intensive and highly technical issues in the case. The dissent also reasoned that the States' argument was "underdeveloped" and "unlikely to succeed on the merits."

Read the opinion [here](#).