Case Name and Number: *West Virginia v. Environmental Protection Agency*, No. 20-1530

Introduction: Today, the Supreme Court held in a 6-3 decision that EPA lacks authority under the Clean Air Act to limit greenhouse gas emissions from power plants through "generation shifting," *i.e.*, increasing the use of cleaner energy sources like wind and solar and reducing the use of dirtier sources like coal.

Background: This case is the culmination of a long-running challenge to EPA's authority to regulate carbon dioxide emissions from power plants under Section 7411(d) of the Clean Air Act, 42 U.S.C. § 7411(d).

Under the Obama administration, EPA issued the Clean Power Plan (CPP), which required meeting emissions-reduction targets through generation shifting. Numerous states and private parties sued EPA. The D.C. Circuit ultimately dismissed those cases when the Trump EPA reassessed its position.

Under the Trump administration, EPA repealed the CPP, concluding that the Clean Air Act does not authorize it to require emissions reductions in the aggregate. EPA also issued new emissions guidelines for coal plants. West Virginia, other states, and private parties sued EPA, arguing that it cannot regulate emissions from coal plants at all. The D.C. Circuit vacated both the CPP repeal and the coal guidelines, and remanded the rules to EPA.

In February 2021, at the Biden administration's urging, the D.C. Circuit stayed its order vacating the CPP repeal while EPA drafts new rules regulating emissions from power plants. EPA has not yet completed the new rules, but indicated that it would not enforce the CPP while it did so. The Supreme Court granted certiorari to decide whether the Clean Air Act gives EPA authority to regulate power plant emissions through generation shifting.

Issue: Whether the EPA has authority under the Clean Air Act, specifically 42 U.S.C. § 7411(d), to regulate carbon dioxide emissions from power plants through generation shifting.

Court's Holding: In an opinion written by Chief Justice Roberts and joined by Justices Thomas, Alito, Gorsuch, Kavanaugh, and Barrett, the Supreme Court held that the Clean Air Act does not give the EPA authority to use generation shifting to cap greenhouse gas emissions.

To resolve the case, the Court used the "major questions doctrine," a principle mentioned in prior Supreme Court decisions but more formally recognized in today's opinion. The major questions doctrine is the idea that courts, in considering an agency's authority to issue a regulation, must ask whether the agency is "asserting highly consequential power beyond what Congress could reasonably be understood to have granted." The Court held that this case implicates the major questions doctrine because before developing the CPP, the EPA had not claimed that the Clean Air Act authorized it to require generation shifting, and its new view would effect a "fundamental revision" of the Act, changing it from a scheme for regulating individual sources of pollution, principally by requiring use of technological methods, into one requiring system-wide shifts in the way energy is produced.

In reinforcing the major questions doctrine, the Court provides a powerful tool to businesses seeking to rebuff "extravagant" claims of regulatory authority that, although "plausible" based on statutory language, lack "clear congressional authorization." That doctrine may prove important in, for example, next Term's *Sackett v. EPA* case, which tests the scope of EPA's authority under the Clean Water Act to regulate usually dry land and isolated wetlands as "waters of the United States."

The Court also held that the case presented a live controversy because, as a result of the D.C. Circuit's rulings, the CPP was at least theoretically in effect, though EPA had said it would not enforce it while it pursued a new rulemaking. Petitioners had standing, and the dispute was not moot, because EPA could seek to reimpose the generation shifting requirement in the future.

Justice Kagan authored a dissent, in which Justices Breyer and Sotomayor joined, stating that the EPA may require generation shifting because the Clean Air Act authorizes it to implement the "best *system* of emission reduction." 42 U.S.C. § 7411(a)(1) (emphasis added). In the dissent's view, the Court's reliance on the major questions doctrine "replaces normal text-in-context statutory interpretation with some tougher-to-satisfy set of rules."

Read the opinion here.