

# Supreme Court Upholds Limits On Environmental Protection Agency's Authority To Shift Sources Of Energy Production

Client Alert | June 30, 2022

Decided June 30, 2022 *West Virginia, et al. v. EPA, et al.*, No. 20-1530; *North American Coal Corp. v. EPA, et al.*, No. 20-1531; *Westmoreland Mining Holdings LLC v. EPA, et al.*, No. 20-1778; and *North Dakota v. EPA, et al.*, No. 20-1780 Today, the Supreme Court held 6-3 that Congress has not delegated broad authority to EPA to substantially restructure the American energy market. **Background:** Under the Clean Air Act, the Environmental Protection Agency has authority to regulate emissions of pollutants from power plants by mandating the “best system” for reducing emissions. In 2015, EPA issued the Clean Power Plan, which required existing coal and gas power plants either to reduce their production of electricity or to offset their production by subsidizing the generation of natural gas, wind, or solar energy. The Clean Power Plan, however, was stayed in subsequent litigation and never took effect. In 2019, EPA issued a new rule—the Affordable Clean Energy Rule—that repealed and replaced the Clean Power Plan. EPA reasoned that the Clean Power Plan had exceeded its statutory authority.

After the 2019 rule was challenged in court, the D.C. Circuit vacated the rule and held that EPA had erred in concluding that it lacked authority to impose the Clean Power Plan. EPA subsequently planned to promulgate a new rule.

**Issue:** Whether the Clean Air Act empowers EPA to transform the electric generation sector. **Court's Holding:** No. Under the Clean Air Act, Congress has not delegated to EPA broad authority to restructure the energy industry by requiring existing power plants to shift to different forms of energy production.

*“[O]ur precedent counsels skepticism toward EPA’s claim that [the Clean Air Act] empowers it to devise carbon emission caps based on a generation shifting approach.”*

Chief Justice Roberts, writing for the Court

## What It Means:

- The Court concluded that in enacting the Clean Air Act, Congress did not empower EPA to substantially restructure the American electricity market by requiring a shift away from coal and gas power plants to other types of electric generation.
- For the third time in a year, the Court reaffirmed the principle that agency action with vast economic and political significance requires a clear delegation from Congress. Thus, although this decision marks the first time the Court has expressly referred to the “major questions doctrine” in a majority opinion, application of that doctrine is not new. The Court’s repeated application of the major questions doctrine signals a continuing commitment by the Court to limit executive agencies’

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regulation of particularly significant matters to circumstances where Congress clearly delegated such regulatory authority to the agency. The Court's robust application of this doctrine will have potentially significant applications for a wide range of agency actions that assert broad power over important economic and political matters.

- In employing the major questions doctrine to resolve this case, the Court did not defer to EPA's interpretation of the Clean Air Act. This result follows from the nature of the major questions doctrine, which obligates agencies to identify a clear statement of congressional authorization to justify extraordinary and far-reaching agency regulatory initiatives. In such cases, ambiguity in a statutory grant of authority is fatal to the agency's regulatory efforts, leaving no room for deference.

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The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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