



# UNITED STATES SUPREME COURT DECISION BRIEF

Texas Conservative Coalition  
Research Institute

*West Virginia v. EPA*

(Decided on June 30, 2022)

## FACTS AND BACKGROUND

Promulgated by the Obama Administration's Environmental Protection Agency (EPA) in 2015, the Clean Power Plan sought to reduce carbon dioxide emissions from coal and natural-gas power plants. The authority for the Clean Power Plan, the EPA argued, was found in Section 111 of the Clean Air Act. However, except for on rarely used subsection of Section 111, Section 111 broadly authorized regulations of *new* energy generation sources. The exception, Section 111(d), allows regulation of existing energy generation sources, but only for certain pollutants, and under that provision, the States actually set most of their own rules.

The Clean Power Plan never took effect because the Supreme Court issued a stay in 2016 and the Trump Administration subsequently repealed the plan and issued its own, different, plan in 2019 called the Affordable Clean Energy (ACE) Rule. Under the Trump Administration, the EPA determined that the Clean Power Plan exceeded its own authority under Section 111(d).

When the Biden Administration took office, the EPA began to consider promulgating a new Section 111(d) rule and litigation gained new life.

## LOWER COURT RULING

The D.C. Circuit Court of Appeals vacated the ACE Rule and the EPA's repeal of the Clean Power Plan, citing a misreading of Section 111(d).

## QUESTION PRESENTED FOR THE U.S. SUPREME COURT

Under Section 111(d), does the EPA have the authority to regulate greenhouse gas emissions beyond sources expressly covered as regulated under the Clean Air Act, which would allow it to regulate greenhouse gas emissions in virtually all settings and industries?

## HOLDING BY THE U.S. SUPREME COURT

No. Under the “major questions doctrine,” there are “extraordinary cases” in which “the history and breadth of the authority that [the agency] has asserted,” and the “economic and political significance” of that assertion provide “a reason to hesitate before concluding that Congress” meant to confer such authority. Under the major questions doctrine, “given both separation of powers principles and a practical understanding of legislative intent, the agency must point to ‘clear congressional authorization’ for the authority it claims.” In this case, the EPA “claimed to discover an unheralded power representing a transformative expansion of its regulatory authority in the vague language of a long-extant, but rarely used, statute designed as a gap filler.” Indeed, the Court pointed out that the Clean Power Plan largely resembled a cap-and-trade program for carbon, a proposal that Congress had considered and rejected numerous times, which is something it would not do if it had already granted the EPA that authority. It is clear in this case that there is no “clear congressional authorization” for the Clean Power Plan.

## **MEANING FOR TEXAS**

*West Virginia v. EPA* is important to Texans for several reasons. First, practically, it protects Texas from an aggressive federal regulatory regime that would make energy more costly for Texans in exchange for [dubious environmental benefits](#). More importantly, however, *West Virginia v. EPA* helps restore constitutional balance. Indeed, by firmly establishing that federal agencies must have clear marching orders and authorization from Congress before enacting policies, the Court strikes a blow for separation of powers. By requiring that sweeping national policies be passed through Congress rather than incubated by unelected bureaucrats, the Court protects the States from federal overreach. The decision requiring “clear congressional authorization” can be applied to any federal agency attempting to create its own policies instead of enacting the will of Congress.