



**Press Statement Re:**

SCOTUS Environmental Decision,  
West Virginia v. Environmental Protection Agency

**From:**

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Today the Supreme Court of the United States (SCOTUS) went above and beyond with its judicial rulemaking to undermine the authority of the United States Environmental Protection Agency (USEPA) to advance commonsense regulations that could limit climate changing emissions to a meaningful degree. In so doing, SCOTUS has most certainly sentenced communities across our nation and future generations to the growing devastations of unchecked climate change – including the deadly wildfires, floods, drought, heat waves, human health harms, and severe economic losses wrought by a growing climate crisis. The *West Virginia v. Environmental Protection Agency* decision will not only hamper the ability of the USEPA to ensure our country takes responsibility for its share of the climate crisis and is able to fulfill its obligations pursuant to international agreements, it threatens to undermine the ability of every federal agency to fully and faithfully implement the laws they are entrusted by Congress to carry forward in a way that will achieve the purpose and goals for which the law was passed.

Notably, this was a case the Court didn't have to take on. The federal government had made clear it had no intention of implementing the regulatory regime the court was evaluating and therefore the case was, in substance, moot and had no challenger who would be impacted and could therefore fulfill the requirements of legal standing. But the activist judges on this Supreme Court, wanting to wield their power to solidify into law their own personal political, religious, and moral beliefs, took the case up anyway.

Once taken up, the Supreme Court Justices could have, and should have, shown deference to the regulatory agency charged by Congress to implement the law. Despite years of precedent supporting such deference (a precedent established in 1984 in the case *Chevron v. NRDC*), the court decided to substitute its judgment for that of the Congressionally empowered agency. Through the Clean Power Plan the EPA had crafted a program intended to reduce greenhouse gas emissions in order to protect the health, safety and welfare of our communities. Rather than show deference to the agency's expertise in both how to interpret and apply the law it was charged with implementing, the court engaged in a pretzel-twisting exercise to find a way to avoid the decades-long precedent which requires courts to give deference to the expertise of agencies when implementing the laws they are charged with implementing.

Given the findings of scientists worldwide that nations need to achieve net zero climate changing emissions by 2050, the EPA Clean Power Plan goals at issue in the case of reducing power generation by coal from 38% to 27% by 2030 – a point repeatedly stated in the *W. VA v. EPA* decision – and over time transitioning to wind, solar and other clean energy sources, was irresponsibly modest. That being said, the USEPA was not seeking to drive a wholesale transformation in US energy supply, but simply to use its authority to modestly require reliance on changing technologies for energy creation – a reasonable interpretation of the mandates of the Clean Air Act.

In this case, by establishing a new legal test, the Supreme Court has hampered federal agencies' congressionally-delegated authority to help us save present and future generations by directly reducing climate changing emissions. Relying on a wonky legal doctrine (the major question doctrine) the court limited the ability of EPA to address climate changing emissions unless it can point to "clear congressional authorization" that allows it to do so. Federal statutes often use broad language in delegating authority to agencies so that they can flexibly address issues as they arise in the future, or incorporate new information into the implementation of those statutes. The "major questions" doctrine creates the risk that courts will hamstring agencies' ability to respond to crises across the board, even beyond the environmental context. Given the current political dynamic, and that so many in political power have taken the uneducated, or well-paid for, position that climate change isn't real and/or isn't caused by human activity and/or isn't even a problem, it is unlikely that explicit legislation needed to meet this test with regards to climate changing emissions is on the time horizon. Today the decision addressed the authority of the US EPA, but may be cited by the fossil fuel industry in future litigation challenging other actions by federal agencies to address climate change.

States need to sit up and take notice of this decision if they care about protecting our environment. This case of *W. VA. v. EPA* emphasizes the power that industry holds in the absence of direct constitutional protections for fundamental, human, inalienable rights. This decision should inspire states to be more proactive in addressing the climate crisis, as well as ensuring enduring constitutional protection for the inalienable rights of all people to a clean, safe and healthy environment. One of the clearest steps states can take in order to ensure all existing state legislation, regulation and action appropriately considers the climate crisis, is to pass constitutional Green Amendments that will recognize the environmental, climate, and environmental justice rights of all people in their state. A number of states are already on this constitutional path. The need to proceed has been made more clear with today's decision. The recently decided *Dobbs v. Jackson Women's Health Organization* further informs this pathway for environmental rights protection by making clear that absent express, explicit and direct constitutional recognition of environmental rights on par with other fundamental freedoms – such as speech, religion and even guns - courts are not obligated to honor them and are free to interpret existing environmental laws in whatever way suits their political fancy. State passage of a constitutional Green Amendment – particularly ones explicitly recognizing rights to a stable climate – can help fill the gap and provide the oversight our courts, and our current system of environmental laws and governance so clearly need. State level Green Amendments are achievable in the near term. Protective amendments have been proposed in a number of key states including New Jersey, New Mexico, Washington, Maine, Delaware and more. Amendments of this kind already exist in Pennsylvania and Montana, with New York passage achieved just this past year.

The US Supreme Court is taking and undermining critical protections for all corners of our society – from women’s rights to protections from gun violence to the devastating consequences of environmental pollution and degradation. Until the dynamics of the court change, we are sure to be in for more devastating losses when it comes to fundamental freedoms and inalienable rights. But there are steps that can be taken. Sometimes more laws will help. But when it comes to the environment, we have plenty of laws, what we need now are state-level Green Amendments, with one ultimately passed at the federal level when the seeds for success have been sown.

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