



## **Explainer: Will the US Supreme Court’s decision on the EPA rule over federal regulators?**

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The U.S. Supreme Court on Thursday restricted the Environmental Protection Agency’s ability to limit greenhouse gas emissions from power plants in a 6-3 ruling that some legal experts say would limit more largely the regulatory power of the federal government. Below is an explanation of the court’s decision and its wider impact:

### **WHAT DID THE COURT SAID IN THE EPA CASE?**

Majority opinion Chief Justice John Roberts said the EPA could not demand a radical shift from coal to cleaner energy sources by citing what he called a “little-used backwater” section of the Clean Air Act.

The decision invoked the “major issues” legal doctrine, which requires explicit authorization from Congress before regulators can take consequential action on matters of great importance and societal impact.

Roberts’ opinion, in *West Virginia v EPA*, said the agency was falling within the doctrine by adopting unprecedentedly powerful regulations aimed at shifting US electricity generation to energy sources renewable.

The White House Counsel’s Office and the Justice Department are studying the impact, a White House official said, adding they may have more to say about Friday’s decision.

### **IS THE DOCTRINE NEW?**

The Court has applied the major issues doctrine to some extent for more than two decades, although it is generally one of many tools used to review settlements.

Roberts said Thursday's decision, which marked the first time the court had referred to the doctrine by name in a ruling, was an acknowledgment of the common thread running through these cases.

The court applied that approach last year when it ruled that the Centers for Disease Control and Prevention lacked the authority to impose a nationwide eviction ban to contain the spread of COVID-19.

This year, the court invoked the doctrine when it blocked most of the Occupational Safety and Health Administration's vaccination and testing mandate that was imposed on large employers by the Biden administration.

## WHAT CHANGED ?

Thursday's ruling marked a shift in how the Supreme Court reviews agency authority by focusing more on major issues doctrine, said Max Sarinsky, a professor at the University of New York.

"It invites courts to apply special scrutiny and skepticism," Sarinsky said, when judges consider regulations that "address new or important issues facing America."

Expanding the doctrine has been one of the goals of conservative groups such as the Cato Institute, which in a brief on the EPA case argued for a "robust" interpretation of the doctrine.

Judge Elena Kagan said in the dissenting opinion that the purpose of the decision was "to prevent the agencies from doing important work, even though that is what Congress ordered."

## WILL THE RULE RESTORE THE POWER OF FEDERAL AGENCIES?

Allison Zieve of Public Citizen, a consumer advocacy group that had urged the court to rule in favor of the EPA, said the decision was malleable and could be used by conservative judges in lower courts to attack regulatory capacity. of the federal government.

Several administrative law experts said the doctrine would discourage regulators from pushing for innovative policies in politically charged cases.

Specifically, lawyers and analysts said the ruling could undermine the Securities and Exchange Commission's ability to impose a proposed rule requiring public companies to disclose climate risks, as well as the Biden administration's efforts to expand labor regulations.

Michael Lotito, a lawyer at Littler Mendelson, one of the world's largest labor and employment firms, said the rationale for Thursday's decision could apply to several upcoming rules, including

expected Department of Labor rules. Work to extend mandatory overtime pay to millions of workers. It could also make it more difficult to classify workers as independent contractors.

Labor Department officials did not immediately respond to a request for comment.

The doctrine could also be used against the Biden administration's rules to contain the COVID-19 pandemic, attempts to fix the so-called "family problem" in the Affordable Care Act that has deprived many people of the health insurance, as well as efforts to protect abortion drugs, experts say.

The FDA declined to comment. The SEC did not immediately respond to a request for comment.