



The Kochs' Dream of Smashing Climate Action May Be About to Come True

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The Koch brothers have been using their vast fortunes to fight government regulation since 1974. Now, their empire may be on the cusp of one of its biggest wins in a generation: trimming the powers of the U.S. presidency and gutting the Environmental Protection Agency's ability to fight climate change.

That is—if the Supreme Court agrees.

In June, the Supreme Court will deliver a potentially monumental decision in a case that could change the way the U.S. government works, and potentially hammer the EPA's ability to lower greenhouse gas emissions. If that happens, you can thank a billionaire named David Koch, the remaining member of the fabulously rich and notoriously influential Koch brothers, owners of the second-largest private industrial conglomerate in America.

The Koch network spent decades building up a powerful set of think tanks and advocacy groups that have focused on rolling back the power of the federal government to regulate businesses. Now, that network may be about to score a crushing victory in a case called *West Virginia vs. EPA*.

In a nutshell, the decision could restrict the power of executive branch agencies—the EPA and possibly others—from making significant rules that go much beyond the specific powers laid out by Congress.

“The ruling is likely to curtail not just EPA's ability to combat climate change but the government's ability to protect the public from other threats, from financial fraud to public health,” said Dan Farber, an expert on environmental and constitutional law at UC Berkeley School of Law.

There's no telling which way the court will go, and some legal experts are skeptical that it will use this opportunity to dramatically reorder the way the U.S. government works.

Yet there are also reasons to think the final ruling may, at the very least, deal a serious blow to the fight against climate change. And it could go a lot further than that.

A monster case

On the surface, *West Virginia vs. EPA* is about how much power the EPA should have to make power plants produce environmentally friendly electricity.

The Biden administration hadn't yet rolled out new regulations in this area when the court decided to weigh in, prompting many court-watchers to suspect the only reason the Supreme Court took up the case was to set fresh limits on what the agency could do.

In agreeing to hear the case, the court accepted challenges to EPA regulations that had been set down by former presidents Barack Obama and Donald Trump. But both of those were bogged down by legal challenges, and were never actually put into effect.

In other words, the court agreed to hear arguments over rules that don't presently exist. That's why climate activists worry the court is moving forward with an ulterior motive: to take this chance to limit what the EPA can do in the future.

The fight over these zombie regulations has now evolved into a battle over how much leeway federal agencies, like the EPA, should have to make rules and regulations beyond the explicit language used in congressional legislation. Right-wing groups argue the court should put more of the burden explicitly on Congress, and give federal agencies like the EPA less leeway to act on their own.

In this specific case, the question turns on how much room EPA has to interpret the Clean Air Act, which was originally passed about a half-century ago, to apply solutions today to fight climate change.

“The coal companies and their allies are shooting for a broad rule that the EPA can't use the Clean Air Act to tackle any significant new problem without going back to Congress each time for new, and very detailed, legislation,” said David Doniger, senior strategic director of the Climate & Clean Energy program at environmental group NRDC.

“They're counting on lobbyists and dark money to keep Congress gridlocked so that those new laws are impossible to pass,” Doniger said.

The upshot here is that the court may be about to block one of the most important avenues still open to Biden to actually taking action against climate change—at a moment when there is no time to lose. Biden’s plan to rev up climate spending in Congress was killed last December by Democratic Sen. Joe Manchin of West Virginia.

While there is now talk of a possible revival, for the moment, Biden’s options for using Congress to fight climate change look dubious at best.

That leaves the EPA as Biden’s next-best option. And now, as a result of this big legal challenge, the EPA is in trouble too.

How Koch fits in

The Koch network has long been credited as one of the most important forces opposing action to fight climate change in recent history.

“Charles Koch has been in the political influence game since 1974,” said Christopher Leonard, author of *Kochland: The Secret History of Koch Industries and Corporate Power in America*. “And the existential, life-or-death battle for Charles Koch is carbon.”

According to Greenpeace, Koch family foundations have spent over \$145 million financing 90 groups that have attacked climate change science and policy solutions between 1997 and 2018 alone.

“The Koch network of foundations has done more to fund organizations that have both denied climate science and opposed any policy that would solve climate change over the past 30 years than probably any other single fossil fuel source,” said Kert Davies, a longtime environmental activist and director of the Climate Investigations Center.

A spokesperson for the Koch network insisted that the group believes in “a cleaner environment” but thinks government regulation isn’t the answer. The spokesperson said the case is not about policy but about the proper role of the court.

“We all want a cleaner environment, but the way to get there is with bottom-up innovation, not top-down regulation,” the Koch network spokesperson told VICE News in an emailed statement. “Our concern with some policies is that they would do more harm than good and push us further away from the actual goals—imposing devastating costs for virtually no gain. The reality is, bottom-up innovation will result in leaps in efficiency far greater than any mandate, and that’s what we’re trying to work towards.”

The primary Koch political advocacy group, Americans For Prosperity, or AFP, joined campaigns supporting all three of Trump's nominations to the high court: Justices Amy Coney Barrett, Neil Gorsuch, and Brett Kavanaugh.

At least five nonprofits tied to Koch filed amicus briefs with the Supreme Court in *West Virginia vs. EPA* arguing that the EPA doesn't have the authority to set new limits on greenhouse gas emissions, according to a review of legal briefs conducted by the Lever.

The AFP filed a brief in the *WV vs. EPA* case arguing: "It is not for EPA to attempt to impose its will on the nation through regulatory diktat."

The Cato Institute argued that no blanket provision by Congress should let the EPA issue rules that would have a significant impact on U.S. power producers. "It makes no sense that a 'catch-all' provision authorizes the EPA to take on major questions, such as remaking the electricity sector," the group wrote in its brief to the high court.

Other Koch-linked nonprofits that filed amicus briefs in this case include the New Civil Liberties Alliance, the Competitive Enterprise Institute and the Mountain States Legal Foundation.

The potential for the court to issue a ruling that dramatically hems in the executive branch is "a serious worry," said Susan Rose-Ackerman, an expert on law and political science at Yale Law School—although she said she thinks the court may be reluctant to actually go that far in the end.

"The concern is that the courts could impose severe restrictions on the executive branch to respond to changes, including changes in the underlying expertise, or the passage of time, that might be very difficult to incorporate into effective policymaking," Rose-Ackerman said. "They could impose restrictions without themselves having the expertise or the political legitimacy to handle the issues themselves."