

Supreme Court Hears Moot Climate Case To Dismantle Federal Gov't Ability To Regulate

Feb 28, 2022 8:39am EST

Remember when multi-shirting white nationalism peddler turned Presidential strategist Steve Bannon said the Trump administration would bring about the “deconstruction of the administrative state?” Many were skeptical that the administration would be successful at undoing 130 years of governance, and indeed, it may seem like it failed.

That undoing might be underway today, as the Supreme Court hears West Virginia v. EPA, a case ~~The Federalist Society~~ *the Supreme Court justices appointed by presidents who lost the popular vote* could use as a vehicle to fulfill Bannon's promise, and effectively destroy the federal government's ability to protect the public from any manner of threat, from climate change and more traditional pollution, to bad pharma, financial scams, and food safety inspections.

Because for the past century and half or so, and specifically since the Court decided Chevron v. NRDC in 1984, federal courts recognized a degree of deference in the relationship between Congress passing laws and the executive branch then developing regulations to enforce those statutes. The creation of those regulations requires lots of careful consideration by subject matter experts, like scientists, to set how strict a pollution limit should be, for example, or how low the risk of a side-effect should be for a medication to be approved and sold. Congress more or less sets a goal, and the federal government figures out how to meet it. And when things end up in court, the deference goes to federal agencies, since they're staffed with the experts who know the issue best.

But now, the Supreme Court has decided to take up a case against Obama's Clean Power Plan, which never went into effect. The Trump administration tossed the proposed plan, and the Biden administration is content to leave it dead, because we met the emission reduction goals addressed in the proposed plan without it ever going into effect. Why is the Court taking a case about a law that never was and never will be?

Unfortunately, the likely reason is because a majority of the justices intend to use it to achieve a decades-long plan by conservative, industry-funded legal lobbyists, to achieve what Bannon never could: a deconstructing of the administrative state.

The Supreme Court hears argument today, and the justices will decide in the next few months whether, or more likely how extensively, to incapacitate the federal government's ability to protect the public. A majority of the justices could choose a path where unless Congress explicitly legislates, for example, that CO2 emissions should be below X million (billion) tons per year, or that it is illegal to sell a specific combination of herbal supplements as a medication that claims to cure COVID or Parkinsons or any other ailment or disease, regulatory bodies like the EPA and FDA wouldn't be able to do much, if anything, about it.

That's the short version. The long version?

...how much time ya got?

Because there's lots of reading you'll need to do to understand the whole ugly story. Rachel Cleetus of the Union of Concerned Scientists has an op-ed in Scientific American, if you want a science take. On the law side, Vox has a great explainer on the moot case, Richmond Law Professor Noah Sachs educated us about the possible consequences in the American Prospect, and Pamela King covered how Justice Kavanaugh (who lied to Congress, almost certainly committed sexual assault, and still hasn't explained who paid off his credit card debt) should recuse himself from the case (but obviously won't), and Jennifer Hijazi covered the amicus brief filed by Democratic lawmakers. Karen Sokol explained it concisely at Slate, and Elie Mystal doesn't mince words about it at The Nation: Supreme Court vs. the Earth. Meanwhile, Sierra Club, NRDC, and EDF all have blog posts running down the high stakes of the case.

But it's a piece by Andrew Perez in the Daily Poster that we'll focus on, because Perez focused on the fact that beyond Bannon, this assault on the government's ability to protect the public from profiteers, has been fueled for decades by the Koch empire.

The Koch network's chief political arm, Americans for Prosperity, led campaigns supporting the confirmation of all three of Trump's Supreme Court justices: Amy Coney Barrett, Brett Kavanaugh, and Neil Gorsuch. Barrett's confirmation was a particularly significant win for the fossil fuel industry — she has familial ties to Shell Oil, and refused to recuse herself in a case involving that oil giant.

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Several more Koch-funded dark money groups have filed similar amicus briefs in the case. That includes the Cato Institute, the New Civil Liberties Alliance, the Competitive Enterprise Institute, and the Mountain States Legal Foundation.

This is essentially the end game of decades of covert lobbying and legal disinformation, a culmination of hundreds of millions of dollars of PR spending, front group think tank reports, academic-center white papers and good old fashioned dirty politics.

Unfortunately, with the Supreme Court solidly in the hands of polluters, there's little we can do.

Aside from, of course, stacking the courts with enough uncompromised judges to rule in the public's best interest, instead of polluters'.

And if you think court-packing sounds radical, just wait until you see the changes that result from the decision this Court makes.