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# Experts Weigh in on Court Decision Limiting Federal Agencies on Environmental Regulation

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A Supreme Court decision on Thursday limiting the ability of the Environmental Protection Agency to set new rules on air pollution may radically curtail the ability of federal agencies to respond to key environmental challenges to clean water, air and climate – say environmental advocates and lawyers – and place the burden instead on a divided and gridlocked Congress to come up with solutions.

The court ruled 6-3 in West Virginia v. EPA that the agency lacks the authority to cap the amount of greenhouse gas emissions generated by coal-fired power plants, requiring energy companies instead to either reduce power production or pay to support the production of alternative energy sources like wind, solar, and natural gas — a process known as "generation shifting." The court disagreed with the agency's argument that the Clean Air Act — a half-century old environmental law — grants the EPA the power to regulate greenhouse gas emissions in this way.

"On EPA's view of Section 111(d) [of the Clean Air Act], Congress implicitly tasked it, and it alone, with balancing the many vital considerations of national policy implicated in the basic regulation of how Americans get their energy. There is little reason to think Congress did so," Chief Justice John Roberts wrote in **the decision**.

In making its decision, the court further argued that when dealing with an issue that concerns "a fundamental sector of the economy," the legislature has to explicitly and clearly outline the rights it is granting an agency like the EPA to create regulations.

"This Court doubts that 'Congress . . . intended to delegate . . . decision[s] of such economic and political significance,' i.e., how much coal-based generation there should be over the coming decades, to any administrative agency," Roberts continued.

Roger Reynolds, senior legal counsel at Save the Sound, an environmental organization in Connecticut, told CT Examiner that the ruling would severely limit the federal agency's ability to create policies that efficiently reduce carbon emissions — a goal which, he said, requires complex systems and the creation of incentives for companies to switch to renewable energies.

“It clearly, in terms of climate regulation, has a major impact in terms of not allowing what was, I think, indisputably and arguably the best system to regulate emissions,” said Reynolds.

But William Yeatman, a research fellow at the libertarian-conservative CATO Institute, said that the ruling would prevent “policy adventurism” and place the responsibility for enacting climate laws back into the hands of Congress — which Yeatman said he felt was fair.

“Presidents of both stripes … have been basically dusting off the statute books to enact kind of ever bolder policies in the climate realm,” said Yeatman. “That sort of stuff is going to stop and we’re going to see EPA regulation of greenhouse gasses more in line with the sort of the regulations and behaviors that it’s exhibited over the decades.”

In a dissent opinion, Supreme Court Justice Elena Kagan said that in the Clean Air Act, the legislature specifically gave the EPA wide latitude to make the changes that would reduce air pollution — including greenhouse gasses.

“A key reason Congress makes broad delegations like Section 111 [of the Clean Air Act] is so an agency can respond, appropriately and commensurately, to new and big problems. Congress knows what it doesn’t and can’t know when it drafts a statute; and Congress therefore gives an expert agency the power to address issues—even significant ones—as and when they arise.”
Reynolds said he was concerned about placing the responsibility for making regulations that should be based on science into the hands of a political body.

“These technical scientific questions shouldn’t be political. What’s political is – Do you need clean air? So that’s the Clean Air Act, and it says you need clean air. Now what clean air is, you don’t want to be a political question. You want that to be settled by the science,” said Reynolds.

**Looking to the states**
Reynolds said that Connecticut in fact offers a case study for what happens when a legislative body has authority over environmental regulations. Under state law, a committee of legislators known as the Regulations Review Committee must review and approve every regulation by the state Department of Environmental and Energy Protection before it becomes law.

Reynolds said the process is cumbersome and frustrating.

“Business gets frustrated with it. Advocacy organizations get frustrated with it. It just makes it hard to do anything — to change anything,” he said.

Daniel Dolan of the New England Power Generators Association, a trade group representing energy producers said he feared the ruling could change the way the Federal Energy Regulatory Commission prices energy generated from carbon-burning or manages positive incentives for renewable energy. He said this could make it more difficult to reach clean energy goals.

“If we start seeing such a strict reading of the individual statutes by the courts — and here, obviously the Supreme Court, it could really limit the ability to more creatively use some of these markets to better harmonize state priorities around clean energy or decarbonization,” said Dolan.

But Yeatman said that he didn't believe the ruling would affect the majority of the EPA's work as a regulatory body. He said that policies like the Clean Power Plan — the 2015 regulation that created the "cap-and-trade" carbon emissions caps that the court referenced in its decision — only happen once or twice per presidential term.

In addition, Yeatman said, the court would place in the hands of Congress only regulations that meet certain criteria – they must be unprecedented, unusually costly, something that Congress itself already failed to pass or a regulation that might be judged as "ancillary" to the scope of a particular piece of legislation. The remainder of policies would stay under the jurisdiction of the EPA.

"It really is only a handful of times, especially with the environmental realm, that an agency like the EPA takes on a so-called major regulation," said Yeatman. "It's not as though EPA is issuing these major rules every other day."

Connecticut Attorney General William Tong in a statement today called for continued work toward the development of clean energy in spite of the court's decision.

"This is a serious setback, but we cannot lose sight of what is at stake and what is urgently needed to fight the climate crisis. Outdated and expensive coal plants are causing enormous damage to our environment and economy, and we cannot let this decision stall our transition to clean, renewable, and truly affordable power," said Tong.

Yeatman and Reynolds both said that the ruling would not affect the states' ability to create policies around environmental regulation.

"Generally speaking, when it comes to stationary sources like power plants, the states have unfettered, unlimited authority to do as much as they want to do," Yeatman said.

Reynolds said the Supreme Court's decision made it even more important that the state's exercise that power.

"What Connecticut and New England states and California can continue to do is to be a model and to lead the way and, and to create the types of systems that have been invalidated by the court at the federal level today," he said.