



Supreme Court curbs EPA regulatory power after Koch-tied groups' push

By Jorja Siemons

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Organizations tied to billionaire Charles Koch bankrolled advocacy efforts pushing the Supreme Court to curb regulatory power over carbon emissions in *West Virginia v. Environmental Protection Agency*.

The Supreme Court's 6-3 vote sides with Republican-led states and coal companies who argued Congress doesn't give the EPA authority to regulate the fossil fuel industry under the Clean Air Act. The ruling is a defeat for President Joe Biden's administration and its agenda to cut emissions. At least eight organizations tied to the Kochs' network pushed for the decision in "friend of the court" briefs. This includes the Charles Koch Foundation, which reported revenue of over \$118 million in 2020.

The Koch-tied influence effort aids Koch Industries, the business at the center of the Koch family's empire. Founded by Fred C. Koch in 1940, the family-owned company has business in chemicals, refining and software. It is now the second-largest private industrial conglomerate in the U.S.

The Koch family has funneled hundreds of millions into libertarian think tanks and advocacy groups pushing for deregulation — creating a web of political influence some call the "Kochtopus".

According to Robert Maguire, research director at Citizens for Responsibility and Ethics in Washington, lobbying against climate change-focused policy solutions has been the Kochs' "bread and butter."

"[The Koch network] is aimed in a lot of ways at reducing regulations of pollutants," Maguire told OpenSecrets. "Of course this is framed as a push for small government. It just so happens that it is a push for small government that benefits Koch Industries considerably."

Though Koch Industries is an EPA 2022 Energy Star Award-winner — and Charles Koch has pushed back against the narrative that the company is against "environmental protection" — Koch money has financed groups furthering climate change denialism.

Greenpeace reported that Koch family foundations spent more than \$145 million between 1997 and 2018 financing groups that seek to minimize policy changes to address climate change, such as clean energy alternatives to fossil fuels.

The involvement of Koch-tied groups in *West Virginia v. EPA* helps protect its financial interests in the oil industry, according to Maurice Cunningham, a University of Massachusetts Boston professor and author of *Dark Money* and *the Politics of School Privatization*.

“Using these law firms to file amicus briefs is a way to use nonprofits — for which they get hefty tax deductions — to influence public policy in a direction that directly benefits, financially, the Koch empire,” Cunningham told OpenSecrets.

Koch Industries did not return OpenSecrets’ request for comment on *West Virginia v. EPA* or their financial contributions to organizations who filed “friend of the court” briefs.

In another “friend of the court” brief, Sen. Sheldon Whitehouse (D-R.I.) called out groups with financial ties to the Koch network or funded by the fossil fuel industry for submitting amicus briefs.

“The industry-funded and industry-promoted arguments made here have been repeatedly rejected by the Court, and would empower and enrich polluting corporations at the expense of public health, welfare, and the environment,” wrote the Democratic senator, who has been outspoken about dark money’s Supreme Court influence.

The Kochs’ political arms

The Americans for Prosperity Foundation, the charitable arm of the Koch-founded advocacy group Americans for Prosperity, submitted an amicus brief last December arguing for justices to side with West Virginia.

“It is not for EPA to attempt to impose its will on the nation through regulatory [orders],” Michael Pepsen, Americans for Prosperity’s attorney, wrote.

Americans for Prosperity, the Koch family’s primary political advocacy outlet, was called the U.S.’s “third-biggest political party” by The Washington Post in 2014.

Several senior members of the 501(c)(4) were once affiliated with Koch Industries. Chief Executive Officer Emily Seidel previously served as Koch Companies Public Sector’s director of special projects, and Americans For Prosperity Board Chair Mark Holden is a former Koch Industries senior vice president.

The top recipient of Koch Industries’ donations in the 2022 election cycle is the Americans for Prosperity Action super PAC, with the company directly donating \$6.5 million. The super PAC raised about \$22.3 million from various sources through the end of June, according to FEC filings.

Koch Industries also donated \$1.5 million each to congressional Republican congressional leadership-aligned super PACs, the Congressional Leadership Fund and the Senate Leadership Fund. The company’s PAC also donated to the National Republican Congressional Committee and the National Republican Senatorial Committee.

Koch Industries also spends millions of dollars on lobbying each year. The company spent over \$5.9 million in the first half of 2022 lobbying on a range of issues, including oil and gas, nuclear power and clean air.

Maguire stressed that the Koch network's involvement doesn't just stop at lobbying and election spending but extends into judicial processes.

"It's critical to view this in the full context of the amount of money that they are pouring into the system for decades to craft not only the legal arguments they need... but also making sure that the institutions before which they are making these arguments are full of justices that are sympathetic," he said.

Americans For Prosperity spent in support of the confirmation of the three Trump-era Supreme Court justices who echoed its amicus brief argument for *West Virginia v. EPA* in June's majority opinion.

The organization committed seven figures to supporting the confirmation of Justice Brett Kavanaugh, reaching over 1 million Americans by sending emails, making calls and knocking on doors, Sarah Lerner of The Intercept reported.

Americans For Prosperity also pressed senators to support Justice Neil Gorsuch, whose mother once ran the EPA, and launched a website advocating for the confirmation of Justice Amy Coney Barrett, whose father was an active member of The American Petroleum Institute for over 20 years.

Americans for Prosperity did not respond to OpenSecrets' request for comment.

Following June's Supreme Court decision regarding the EPA, Americans For Prosperity celebrated the "historic victory."

"While the policies the EPA was attempting to enforce would have caused immense damage to the economy and hardship for millions of Americans, the question at the heart of this case focused on the separation of powers," Casey Mattox, Americans for Prosperity's vice president of legal and judicial strategy, said in a statement.

Koch-funded groups weigh in

At least five other Koch-tied institutions filed "friend of the court" briefs in support of *West Virginia*, using the "major questions doctrine" to argue that Congress had not specifically authorized the EPA to restrict power plant emissions.

"It makes no sense that a 'catch-all' provision authorizes the EPA to take on major questions, such as remaking the electricity sector," Cato Institute and Mountain States Legal Foundation representatives wrote in their shared submission to the Court.

When asked to comment on the Court's decision, a Cato Institute spokesperson pointed to Senior Research Fellow William Yeatman's statement.

"I believe that the Cato Institute might have influenced the Court's thinking," Yeatman, who helped to author the "friend of the court" brief, wrote in a July 1 statement.

"We had pitched a framework for identifying major questions. And the majority opinion tracks our framework," according to Yeatman.

The Cato Institute was co-founded by Charles Koch in 1977. Since the Kochs gained control of the libertarian think tank after a 2012 dispute, it has received more than \$11 million from the

Charles Koch Foundation with over \$43,000 from the foundation in 2020, according to Internal Revenue Service filings.

The foundation also gave “several five-figure donations” to the Mountain States Legal Foundation in recent years, according to Lever News.

Cato Institute and Mountain States Legal Foundation — along with most other Koch-tied groups who filed briefs — also received hefty donations from DonorsTrust, a donor-advised fund commonly used by conservative “dark money” groups to give and receive money without disclosing identities of donors. Conservative benefactors giving through DonorsTrust have included the Koch family, according to Mother Jones.

“You can never quite pinpoint exactly whose money it is, so it never becomes publicly known,” Cunningham told OpenSecrets about DonorsTrust. “It’s just another way for huge interests to hide who they really are.”

When asked to comment on Cato Institute’s financial ties to DonorsTrust and Koch-tied groups, a spokesperson shared a list of 2021 institutional supporters which includes DonorsTrust but also features several foundations, individual donors and corporate sponsors that are not part of the Koch network.

Tax records reviewed by OpenSecrets show DonorsTrust steering over \$73,700 to The Buckeye Institute and over \$891,700 in 2019 to the Competitive Enterprise Institute in 2019. The two groups, which are part of the Koch-backed State Policy Network, each filed “friends of the court” briefs supporting West Virginia.

Competitive Enterprise Institute, which also received \$11,700 from DonorsTrust in 2020, previously challenged EPA jurisdiction in 2015 as a petitioner alongside several oil companies in Dalton Trucking, Inc., et al v. EPA. The U.S. Court of Appeals for the District of Columbia Circuit dismissed the petitions for review.

DonorsTrust’s 2019 donation to Competitive Enterprise Institute included \$325,000 intended for the organization’s Green Ads. The think tank ran an ad campaign in late 2019 on MSNBC opposing the Green New Deal, which was introduced by Rep. Alexandria Ocasio-Cortez (D-N.Y.) and Sen. Ed Markey (D-Mass.). It received \$372,750 from DonorsTrust in 2020.

DonorsTrust also gave \$1 million in 2019 and \$50,000 in 2020 to New Civil Liberties Alliance, which submitted a “friend of the court” brief shortly after Competitive Enterprise Institute echoing a similar argument for “separation of powers.”

The alliance was founded in 2017 with seed money from the Charles Koch Foundation and has staffed its board of advisors with conservative experts, including retired U.S. Court of Appeals for the District of Columbia Circuit conservative judge Janice Rogers Brown and former Trump lawyer William Consovoy.

The Charles Koch Foundation did not respond to OpenSecrets’ request for comment. Buckeye Institute, Mountain States Legal Foundation and New Civil Liberties Alliance did not return OpenSecrets’ requests for comment regarding their financial relationships to DonorsTrust or the Charles Koch Foundation.

When asked for comment, a DonorsTrust spokesperson pointed to a statement from the fund's President and Chief Executive Officer Lawson Bader that stated that since its founding in 2001, the fund has distributed over \$1.6 billion to institutions focused on science, medicine, public policy and health, among other areas.

“As a policy, we decline to discuss account holders or transactions that are real or imagined,” Bader said. “DonorsTrust discloses all its donations to 501(c)(3) charities, the vast majority of which are for general operations and by law cannot be used for political purposes.”

What lies ahead

In *West Virginia v. EPA*, the Supreme Court concluded that the EPA doesn't have authority to transition the electrical system away from fossil fuels — but the Biden administration is exploring alternative measures for reducing emissions. This includes further restricting other pollutants including mercury in coal-burning power plants.

The EPA also expressed commitment to reducing pollution despite the “disheartening” ruling.

“While I am deeply disappointed by the Supreme Court's decision, we are committed to using the full scope of EPA's authorities to protect communities,” EPA Administrator Michael Regan said in a statement.

While Maguire said the case is a big one for the Koch network, he emphasized that it's just one of many current efforts to hamstringing the government's regulatory ability.

The Supreme Court will hear oral arguments in October about how wetlands are classified under the Clean Water Act, which could impact American waterway pollution regulations. Americans for Prosperity Foundation, Cato Institute and other Koch-linked, fossil fuel-aligned organizations have already filed “friend of the court” briefs.

“I also want to stress how cheap this is for them,” Maguire said, alluding to the Koch family's multi-million donations in comparison to their overall wealth. “It's a level of influence that no regular American can ever aspire to.”