U.S. Supreme Court Strikes Down EPA Climate Rule: Implications for Energy Regulation and Climate Disclosure

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On June 30, 2022, the U.S. Supreme Court, in *West Virginia v. EPA*, issued a significant decision regarding regulation to combat climate change. In particular, the Court limited the authority of the Environmental Protection Agency (the "EPA") to regulate greenhouse gas ("GHG") emissions from existing coal- and natural-gas-fired power plants based upon the "major questions doctrine."[1] The decision may have knock-on effects in the climate regulatory space, including similar challenges to the Securities and Exchange Commission's (the "SEC") recently proposed climate disclosure rule. The Court's decision may also prompt the Biden Administration's EPA and other federal regulators to change tactics for achieving their GHG emissions reduction goals, and there could be an increase in state and local efforts to address climate change.

THE SUPREME COURT'S DECISION

This appeal involved a challenge by several states of the EPA's authority to promulgate the "Clean Power Plan." The Obama Administration's EPA had issued the Clean Power Plan in 2015 under the authority of Section 111 of the Clean Air Act, which directed the EPA to determine the "best system of emission reduction" (the "BSER"). The Supreme Court stayed the Clean Power Plan in 2016, with the result that the rule never actually took effect.

Under the Clean Power Plan, the EPA set guidelines for power generation that states would be required to follow. For existing coal-fired power plants, the EPA identified three types of "building blocks" for the BSER, two of which would have involved "generation shifting" from higher-emitting to lower-emitting energy sources. This would have involved a shift from coal-fired power plants to natural gas or renewable energy. Under the plan, the EPA projected that the overall mix of electricity generation could be shifted from 38% to 27% coal by 2030 compared to 2014 levels.

[1] *W. Virginia v. Envtl. Prot. Agency*, No. 20-1530, 2022 WL 2347278 (U.S. June 30, 2022), *available* here.

The Supreme Court decided *West Virginia v. EPA* by a vote of 6-3 on the basis of the major questions doctrine. In a majority opinion written by Chief Justice Roberts, the Court held that the EPA exceeded its authority in proposing the Clean Power Plan's emissions reduction system. The major questions doctrine, as described by the majority, "refers to an identifiable body of law that has developed over a series of significant cases all addressing a particular and recurring problem: agencies asserting highly consequential power beyond what Congress could reasonably be understood to have granted." The Court determined that the doctrine requires clear congressional authorization in order for a court to uphold agency actions in extraordinary cases where the agency's action is of "economic or political significance" or broadly regulates a "fundamental sector of the economy."

Relying on the major questions doctrine, the majority held that the BSER identified in the Clean Power Plan was not within the authority granted to the EPA because "[a] decision of such magnitude and consequence rests with Congress itself, or any agency acting pursuant to a clear delegation from that representative body."

On its face, the *West Virginia* ruling was narrower than many had anticipated, as it focuses on striking down the Clean Power Plan. For example, the ruling did not strike down *Chevron* deference, a judicial doctrine that provides for court deference to agency decision-making. Nevertheless, the rise of the major questions doctrine may impact future regulatory efforts, including regarding climate change, as discussed below.

THREE KEY TAKEAWAYS FROM THE WEST VIRGINIA DECISION

Recent U.S. regulatory efforts to reduce GHG emissions have accelerated, making the Court's decision particularly salient. Below, we summarize three key takeaways for current and future GHG emissions regulatory efforts.

1. ***The rise of the major questions doctrine could pose an additional challenge to the proposed SEC climate disclosure rule.*** Federal financial regulatory agencies, which generally do not have mandates to address climate change, recently have entered the climate change regulatory space, and their efforts could be impacted by this ruling. For example, in March, the SEC proposed a rule seeking to enhance and standardize climate-related disclosures, which would require significant new disclosures for SEC registrants.[2] The West Virginia decision increases the possibility that a challenge to the SEC's climate disclosure rule may succeed on the ground that the SEC exceeded

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[2] SEC, The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21334 (Apr. 11, 2022). To read more about the SEC climate disclosure proposal, please see our Debevoise In Depth, *available* here.

its authority, as challengers similarly could invoke the major questions doctrine. For its part, the SEC cites its broad authority under the Securities Act of 1933 and the Securities Exchange Act of 1934 to promulgate disclosure requirements that are "necessary or appropriate in the public interest or for the protection of investors."[3] Of course, how courts ultimately may rule remains to be seen.

2. ***The Biden Administration's EPA likely will tailor new rules to avoid conflict with the* West Virginia *decision.*** Because a divided Congress is unlikely to pass comprehensive climate change legislation in the near future, agency action is an important tool for the Biden Administration to address climate change. The West Virginia decision leaves the EPA's authority to regulate GHG emissions in the power sector intact but limits some tools it can utilize to reduce emissions. As a result, the EPA may now shift its GHG emissions reduction efforts to avoid generation-shifting measures and instead focus on more tailored approaches for setting emissions limits and increasing efficiency for existing power plants.

3. ***State and local governments may face increased pressure to act to reduce GHG emissions, which could result in more fragmented compliance frameworks.*** Efforts to curtail GHG emissions may shift increasingly to state and local levels. The *West Virginia* decision does not impair states' ability to regulate GHG emissions, such that states already acting to limit GHG emissions may increase such efforts, as several did after the Trump Administration withdrew from the Paris Agreement in 2017. The extent of GHG emissions reduction regulations that companies must comply with, therefore, could become even more fragmented based on the locations of their operations. Thus, in the absence of a sweeping federal climate plan, companies may need to track compliance with multiple regulatory frameworks related to GHG emissions reduction or climate disclosure.

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We anticipate there will be important developments over the next few months as the Biden Administration and state and local governments decide how to react to the *West Virginia* decision. Please do not hesitate to contact us with any questions.

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[3] 87 Fed. Reg. at 21335 (citing Section 7 of the Securities Act [15 U.S.C. 77g] and Sections 12, 13 and 15 of the Exchange Act [15 U.S.C. 78l, 78m, and 78o]).

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