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In NCLA Amicus Win, SCOTUS Limits EPA’s Regulatory Authority Under Clean Air Act

West Virginia, et al. v. Environmental Protection Agency, et al.

Washington, DC (June 30, 2022) – In a blockbuster 6-3 [decision](#), the U.S. Supreme Court has rejected the Environmental Protection Agency’s (EPA) sweeping claim of regulatory authority under the Clean Air Act (CAA). The Court stated that EPA could not satisfy the “major questions” doctrine nor “point to ‘clear congressional authorization’” to devise carbon emissions limits. The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus brief](#) in *West Virginia v. Environmental Protection Agency*, supporting the Petitioner States’ challenge against EPA.

EPA argued that its statutory authority should be read broadly, and that the CAA grants the agency a license to order the wholesale restructuring of the power industry in order to address climate-change concerns. But the Court held that any such major restructuring implicates the “major questions” doctrine—under which Congress is presumed not to have authorized major regulatory activity unless it has issued a clear statement to that effect. The Court noted that the CAA includes no such clear statement.

Writing for the six-justice majority, Chief Justice Roberts said, “it is not plausible that Congress gave EPA the authority to adopt on its own such a regulatory scheme in Section 111(d). A decision of such magnitude and consequence rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body.” In his concurrence, Justice Gorsuch wrote that the Court applies the “major questions” doctrine when interpreting federal statutes, in part because doing so ensures that all legislative power is exercised by Congress, not by unaccountable federal bureaucrats—who are not authorized by the Constitution to exercise Congress’s legislative power. Gorsuch’s concurrence cites NCLA founder and CEO Philip Hamburger’s work three times.

NCLA’s amicus brief argued that the essence of the American Republic is that the people are bound only by laws enacted by their representatives. The “major questions” doctrine, a canon of statutory interpretation that secures this fundamental freedom holds that Congress must make major national policy decisions, not by administrative agencies. The Court correctly held that decarbonization of the energy industry is a major policy decision that Congress has not expressly made.

NCLA commends the Court for its decision but is concerned that the major questions doctrine’s reasoning might be misused by lower courts to decide that Congress may divest its legislative power if it does so knowingly and expressly. The majority opinion contains no such suggestion, but neither does it expressly disavow Congress’s authority to divest legislative power. When enacting the Constitution, the people gave to Congress, and Congress alone, the power to legislate, most centrally the power to make binding rules—those limiting their liberty. The major questions doctrine is a clear-statement principle to enforce the over-arching constitutional principle that Congress should not readily be interpreted to have delegated its legislative power. But when Congress does act knowingly and expressly, the doctrine must not in any way be deemed to authorize divesting massive legislative power.

NCLA released the following statements:

“The court reached the right outcome, but on strange reasoning. It seems to be saying: *If Congress is going to violate the Constitution (by divesting massive legislative power), it must do so knowingly and clearly.* As if that somehow would be a cure!”

— **Philip Hamburger, Chief Executive Officer, NCLA**

“The Court agreed with NCLA that Congress did not grant EPA authority to restructure the entire power industry. And we are gratified that Justice Gorsuch’s concurring opinion emphasized a point on which NCLA’s amicus brief focused: if Congress through the Clean Air Act really had granted EPA the unbounded authority to regulate energy production it was asserting, the legislation would have violated the Constitution’s mandate that all legislative power must be exercised by Congress.”

— **Rich Samp, Senior Litigation Counsel, NCLA**

“At heart, this decision is a victory for democracy: the major decisions affecting people’s lives are to be made by the people’s representatives in Congress, not by unelected bureaucrats. Just in time for the anniversary of our nation’s freedom, the Court has gifted the American people a renewal of their democracy.”

— **Brian Rosner, Senior Litigation Counsel, NCLA**

For more information, visit the *amicus* brief page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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