

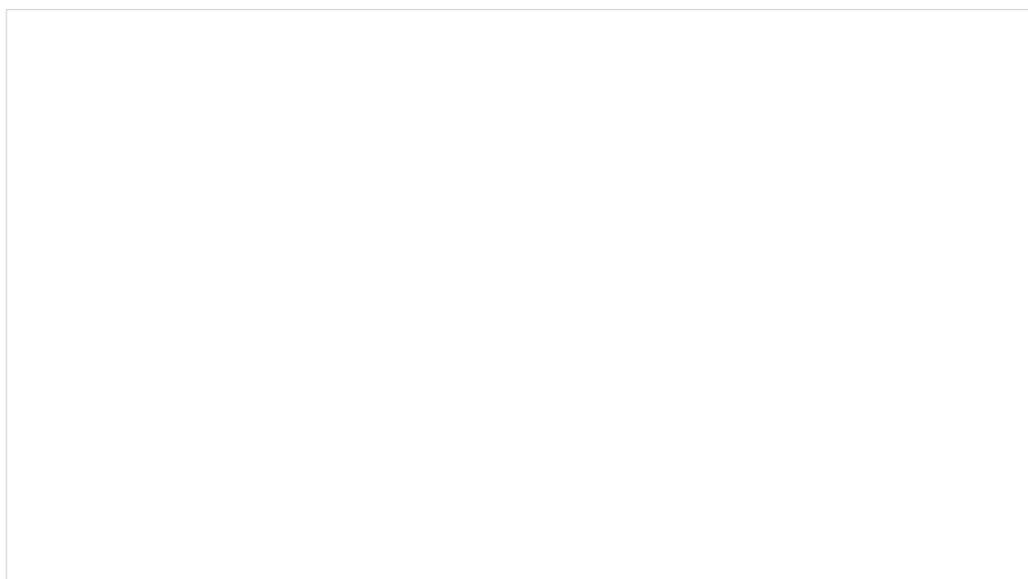
[Commentary](#)

## While the Supreme Court creates confusion over climate regulations, Virginia can still do its part



[Guest Column](#)

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Climate-induced weather disasters in 2021 included record wildfires in the West, record-setting heat waves and droughts, and aggressive hurricanes. Here, smoke plumes and hurricane clouds are visible at once. (NASA Earth Observatory)

I'm shocked at what the Supreme Court has been doing recently. The court overturned the State of New York's right to [restrict who can carry concealed, loaded guns in public](#) and then struck down women's [constitutional right to abortion](#).

On June 30, they limited the EPA's ability to regulate greenhouse gas emissions—when the world needs to reduce them drastically. In its decision on [West Virginia v. EPA](#), the conservative court killed a rule that was already dead — Obama's 2015 Clean Power Plan.

So why did the Supreme Court even look at the case? I don't know. And my lawyer friends don't understand either.

Long before this case, the court established that greenhouse gases, namely carbon dioxide, are air pollutants and that burning fossil fuels to generate electricity is a significant source of greenhouse gas emissions. In addition, the Clean Air Act of 1970 gave the EPA broad authority to regulate air pollution. All this is established law.

At issue with the West Virginia v. EPA case is the practice of “shifting” electricity generation from fossil fuel sources to clean energy sources such as solar and wind power. The court said the EPA could not require electric utilities to do this.

The Virginia Clean Economy Act is transitioning the state to using 100 percent clean energy by 2050. We're not alone. Just about every nation on the planet is shifting electricity generation from fossil fuels to clean energy sources. The poorest countries, Burundi and Somalia, are shifting away from fossil fuel energy generation; a small island in the Arctic, Grimsey, is making this shift—even the king of fossil fuels, the state of Texas, is a [major generator of renewable energy](#).

Most people agree, we must make the shift to combat the effects of climate change.

But West Virginia, which, along with its fellow petitioner, the North American Coal Corporation, and other fossil-fuel burning entities, sued the EPA claiming it had overstepped its authority in regulating the shifting of electricity generation.

The June 30 6–3 opinion creates confusion. The court struck down Obama’s 2015 pollution-reducing Clean Power Plan, which a federal circuit court had already struck down in 2016 and which the Biden administration had said it would not enforce. The Trump administration’s EPA, under the leadership of Scott Pruitt and Andrew Wheeler (now director of Virginia’s new Office of Regulatory Management) repealed the Clean Power Plan and replaced it with their pollution-enabling Affordable Clean Energy rule. So, the court had no reason to even consider the Clean Power Plan other than to provide an advisory opinion, something courts never do.

Environmentalists sued the EPA for repealing the Clean Power Plan and the new rule allowing more pollution. The Court of Appeals in D.C. struck down both rules and remanded them back to the Biden administration’s EPA to come up with a new rule to combat climate change. The Biden administration has not yet issued a new rule.

Again, why even take up the case? The EPA has not issued a new rule—there’s nothing to rule on.

In its bizarre ruling, the Supreme Court relied on the court’s “major questions doctrine.” What the heck is that? I thought. The climate crisis is not a major question. There’s no question. We know it’s here, affecting millions of people and costing billions of dollars. We also know that Congress gave EPA broad authority to protect us from air pollution and its harmful effects.

It is crystal clear that we have a greenhouse gas emission problem, and it is crystal clear that we need to reduce greenhouse gas emissions by shifting away from burning fossil fuels for electric power. It’s crystal clear that Congress gave the EPA authority to regulate greenhouse gas emissions.

But the conservative court thought Congress’s language for the EPA regulating greenhouse gases was “lurking” in the Clean Air Act. I beg to differ. The Clean Air Act states in Section 111 that the EPA “shall prescribe regulations which shall establish a procedure under which each state shall submit to the [EPA] a plan which (A) establishes standards of performance for any existing source for any air pollutant.”

This is not “gap filler” language, as the court’s majority wrote. Instead, by using the word “shall” twice, it gave the EPA explicit authority to regulate greenhouse gases.

Justice Elena Kagan stated in her dissent that, with this new ruling, “the court appoints itself — instead of Congress or the expert agency—the decision-maker on climate policy. I cannot think of many things more frightening.”

While the court’s decision has grabbed headlines, let’s not lose sight of what’s happening at the state level. Virginia must remain steadfast in its commitment to transitioning to clean energy sources by 2050. Virginia should also stay part of the Regional Greenhouse Gas Initiative — the cap-and-trade program that is reducing carbon emissions while funding energy efficiency and flood protection programs.

Both efforts face the threat of rollbacks here, yet both are critical for Virginia to do its part in the face of climate change and the latest challenges to the EPA.

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