

WV v. EPA and the Major Questions Doctrine

[West Virginia v. EPA](#)

[Full Decision](#)

[Kagan Dissent](#)

[Gorsuch Concurrence](#)

CASES DISCUSSED

[Chevron U.S.A. v. Natural Resources Defense Council, Inc.](#) (1984): In this case, the issue was with the EPA's definition of "stationary source" and how that allowed them to regulate. The Supreme Court sided with the EPA, and created the "Chevron deference" doctrine by deferring to the agency's definition.

[FDA v. Brown & Williamson Tobacco Corporation](#) (2000): The Supreme Court ruled that the FDA did not have the power to regulate tobacco under the Food Drug and Cosmetic Act. The Court remarked that Congress had not given the FDA explicit authority and rejected proposals to give the FDA authority to regulate tobacco.

[King v. Burwell](#) (2015): The Supreme Court ruled that the Internal Revenue Service did not overstep when it created a regulation extending tax credits authorized by the Affordable Care Act to federal exchanges. The majority determined that Congress intended for the tax credits to be available for both the state and federal exchanges.

[National Federation of Independent Businesses \(NFIB\) v. Department of Labor, Occupational Safety and Health Administration \(OSHA\)](#) (2022): The Supreme Court ruled that OSHA violated its authority given by Congress in

creating a rule that required vaccination or testing/mask-wearing for businesses with over 100 employees.

[Alabama Association of Realtors v. U.S. Department of Health and Human Services](#) (2021): The Supreme Court against the CDCs extension of an eviction moratorium to mitigate the spread of COVID-19, as the agency did not have the power to enact the moratorium.

[Sackett v. EPA](#): The Supreme Court will hear this case in Fall 2022. The case concerns the EPAs authority to regulate wetlands under the Clean Water Act.

LAWS DISCUSSED

[Clean Power Plan](#)

[Clean Air Act Section 111](#)

WRITTEN MATERIAL

History of West Virginia v. EPA

Professor Heinzerling traces the case all the way back to 2015. During the Obama administration, the EPA unveiled the Clean Power Plan which would require “generation shifting” — increasing the use of renewable energy sources in lieu of coal power plants. However, the plan was never put into effect amid criticism that the EPA was overstepping its bounds. In 2016, the Supreme Court issued a stay on the Clean Power Plan to prevent it from going into effect prior to legal challenges being heard. Then, following the advent of the Trump administration, the EPA decided to repeal the Clean Power Plan and replace it with a less stringent statute. Yet, in 2021 the D.C. Circuit Court vacated the Trump administration's new rule since it was based upon a flawed understanding of the EPAs powers under the Clean Air Act. The Biden

administration took over after this, and then their request to stay the vacature of the Clean Power Plan was granted, so the rule never went into effect.

Prof. Heinzerling notes that given that the Clean Power Plan is not currently in effect, it's highly unusual that the Supreme Court decided to hear the case on its legality. She says that the Supreme Court could have easily used the "ripeness doctrine" as justification to decline hearing the case.

EPAs Authority

According to Prof. Heinzerling, the issue of this case is agency power. Section 111 of the Clean Air Act authorizes the EPA to regulate emissions of non-criteria, non-hazardous air pollutants from stationary sources through the "best system of emission reduction." Claiming this authority, the EPA enacted the Clean Power Plan's generation shifting measure to curb emissions.

Major Questions Doctrine and the Court's Decision

In *West Virginia v. EPA*, the Court's majority invoked the "major questions doctrine" to strike down the Clean Power Plan. Prof. Heinzerling estimates that the doctrine has been around for about 25 years, and limits the power of federal agencies. The major questions doctrine holds that courts should not defer to the statutory interpretations of agencies if the question is of "vast economic or political significance." The reasoning behind this is that Congress should be the one deciding important questions rather than the federal agencies. Applying this to *West Virginia v. EPA*, the majority found that the case involved a major question, and that there was not clear and narrow Congressional authorization for the EPA to utilize generation shifting—the "best system" language of the Clean Air Act was not enough.

Prof. Heinzerling is critical of the doctrine, mentioning that it allowed the Court to circumvent traditional methods of statutory interpretation. Additionally, she claims that the phrase "vast economic or political significance" is too vague and could feasibly be argued for whenever a jurist feels like it.

Major Questions and the Nondelegation Doctrine

Prof. Heinzerling describes the non-delegation doctrine as the idea that Congress cannot delegate any of its legislative authority as given by the Constitution. The doctrine has been dormant and is almost never explicitly used. However, according to Prof. Heinzerling, the conservative justices have signaled an interest in utilizing the doctrine. While not explicitly referred to in the decision, Prof. Heinzerling believes that the major questions doctrine is a way to enforce the nondelegation doctrine. The professor also predicts that it's possible that a future Court opinion could more clearly invoke nondelegation in a future case.

Contrast to Chevron

Prof. Heinzerling also discusses how the Court's opinion is a departure from the "Chevron deference" doctrine established in 1984 by the case [Chevron U.S.A. v. Natural Resources Defense Council, Inc.](#) From this case came a widely cited doctrine that granted far more agency power than the major questions doctrine. The Chevron deference held that the courts should defer to a federal agencies' interpretation of an ambiguous statute that Congress delegated the agency to administer. Prof. Heinzerling notes that with the rise of the major questions doctrine, the relevance of *Chevron*, once favored by conservatives, has diminished. She also mentions that the Supreme Court has never cited the Chevron case for a number of years, and in her opinion, the Chevron deference is likely dead.

Dissent

Justice Kagan wrote the dissenting opinion, joined by Justices Breyer and Sotomayor. Prof. Heinzerling describes how in Justice Kagan's opinion she criticizes the majority for abandoning textualism with the major questions doctrine.

Impact and Future Cases

Prof. Heinzerling notes that despite the Court's decision, the EPA still does have the power to regulate emissions in a variety of ways. She also mentions that, for the future, there is no clear way for EPA officials to avoid the major

questions doctrine when drafting new regulations, but one strategy might be to focus on analogizing new rules to past agency actions.

Looking ahead, Prof. Heinzerling believes that the case *Sackett v. EPA*, which will be argued in October 2022, could involve the major questions doctrine with the Clean Water Act's coverage of wetlands in its regulatory provisions. The professor also says that there's constantly challenges to agency power in lower courts that invoke the major questions doctrine as reason to strike down statutes. She mentions a challenge to the Deferred Action for Childhood Arrivals (DACA) program that will be heard in a Texas court. Following the *West Virginia v. EPA* opinion, the Texas AG wrote to the 5th circuit court deciding that case to say that the DACA case should be decided under the major questions doctrine.