

West Virginia v. EPA

142 S.Ct. 2587
(June 2022)



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Texas Water Conservation Association

Fall Conference

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- **Parties:**

- State and municipal gov'ts,
- Power utilities,
- Renewable energy trade ass'n,
- Public health and environmental advocacy groups, and
- Coal mine operators



- **Procedural History:**

- Petition for review of EPA's Clean Power Plan ("CPP"), which was promulgated under Clean Air Act ("CAA").
- D.C. Circuit Court consolidated the petitions, vacated and remanded, and later partially stayed issuance of the mandate (on EPA's motion).
- Then, the Supreme Court granted the petitions for certiorari.

- **Issue:** Whether EPA has authority under the CAA to adopt the CPP, which would apply to new and existing sources.
- **Holding:** The Court found that Congress did not give EPA express authority under § 111 of the CAA to adopt a cap-and-trade system and struck down the CPP.



- An agency “must point to **clear congressional authorization** for the power it claims” to justify regulations involving “major questions.”
- “[B]oth separation of powers principles and a practical understanding of legislative intent make us reluctant to read into ambiguous statutory text the delegation claimed to be lurking there.”
- “A decision of such magnitude and consequence rests with Congress itself, or an agency pursuant to a clear delegation from that representative body.”



What this means for TWCA Members

- Is this a preview of things to come in the next term when SCOTUS takes up WOTUS again?
- SCOTUS may not be as deferential to agencies as historically done
- EPA actions (and other agencies' actions) may be challenged with success on "Major Question" issues
- While this case dealt with air issues (cap and trade), water-related EPA decisions are not immune from the new "Major Questions" jurisprudence



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THANK YOU!