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Supreme Court Deals Blow to Common-sense Climate Protections

Center for Progressive Reform Board President Rob Verchick issued the following statement on the U.S. Supreme Court opinion in West Virginia v. EPA:

WASHINGTON, DC — Once again turning its back on bedrock precedent and the will of the American people, the U.S. Supreme Court today sent a wrecking ball through the U.S. Environmental Protection Agency’s (EPA) ability to protect us all from climate change. More than that, though, even the still-settling dust cannot conceal the extent of the damage this decision does to our system of regulatory safeguards, as it threatens our ability to take common-sense actions to protect public health, safety, financial security, and the environment.

To strike down the EPA's authority to use a power industry-wide approach to limit carbon dioxide emissions under the Clean Air Act, the Court’s conservatives deployed their new favorite weapon for invalidating rules that are inconsistent with their policy preferences, the so-called “major questions doctrine.” That doctrine, invented by the Court with no constitutional basis, asserts that for an agency like the EPA to address issues of "vast economic and political significance," Congress must directly and specifically authorize the agency to do so. Broad delegations, no matter how clearly stated, appear not enough. As Justice Elena Kagan wrote in dissent, the doctrine is a “get-out-of-text free card.”

In the real world, this means that at least for the time being, the EPA will find it far more difficult to regulate climate pollution and protect the American people from the worst impacts of human-driven climate change. The ruling will particularly harm low-income communities and communities of color already overburdened by climate pollution, extreme weather, toxic flooding, and other damaging climate impacts.

The destructive fallout from today’s decision extends well beyond the EPA and its efforts to tackle the climate crisis, an existential threat that Chief Justice John Roberts erroneously dismisses as merely a "crisis of the day" in the majority opinion. This decision heralds a new, more aggressive version of the major-questions wrecking ball, which swings around any agency working to address new, emerging, and immediate hazards.

That the Court's majority chose to travel down the road of conservative judicial activism yet again is not surprising. The majority tipped its hand when it accepted [*West Virginia v. EPA*](#) for review. The job of any court, including this one, is to interpret the law and resolve legal disputes

based on facts, reality, and past and present circumstances, not to explore fanciful, hypothetical future "harms" included in poorly reasoned speculative legal fiction. The majority's attempts to explain away these important constraints on the Court's limited role in our constitutional system of government heaps still more ignominy on this already execrable decision.

The majority opinions in *West Virginia v. EPA*, *Dobbs v. Jackson Women's Health Organization*, and the other damaging, outcome-driven rulings this term show once again that we cannot rely on the Supreme Court to make the right calls. For most of its history, the Court has been structurally and ideologically biased toward elite, wealthy, and powerful special interests, at the expense of effective, common-sense safeguards and historically marginalized and overburdened people and communities.

The Court's structural and substantive failings should not cause Congress and the people to abandon majoritarian legislative and constitutional reforms of the federal courts. Indeed, that work is long overdue, and all reform options should be on the table.

But those reforms are not enough. Policymakers need to pursue the will of the people: substantive and specific legislation and regulation to curb climate pollution; advance climate, energy, and environmental justice; protect reproductive rights and freedoms; and more.

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