US Supreme Court preemptively blocks EPA regulations which would mitigate global warming

Alex Findijs
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The Supreme Court ruled against the Environmental Protection Agency (EPA) yesterday, deciding that it did not have the authority to regulate pollution from power plants on a nationwide basis. In a 6-3 decision split along ideological lines, the conservative majority on the court has taken a provocative and reactionary action defending the interests of the fossil fuel industry.

At the center of the ruling is an Obama era policy plan, called the Clean Power Plan, that was drafted in 2015. Under the plan, the EPA would have imposed regulations that restrict carbon emissions from states, primarily caused by power plants, which would have encouraged a transition to renewable energy.

But the Supreme Court blocked that plan in 2016, and it never went into effect. The Trump administration then repealed the plan and imposed its own more lenient policies. That Trump era plan was also blocked by the federal appeals court in Washington D.C, which ruled that the EPA could in fact adopt broad policy plans.

Despite neither the Obama nor Trump emissions plans being in effect, several Republican states and two coal companies preemptively sued the Biden administration, expecting him to introduce a plan similar to Obama's. But Biden's emissions plan never came, leaving legal experts to expect the court to overlook the case.

To their surprise, however, the Supreme Court took up the case in *West Virginia v. EPA*. The resultant ruling is effectively a ban on a policy that does not actually exist, instead attacking future policies and limiting the broader regulatory power of federal agencies.

In his brief on the ruling, Chief Justice John Roberts argued that Section 111(d) of the Clean Air Act—initially passed in 1970, years before federal regulators had any serious knowledge of climate change—did not give the EPA the express authority from Congress to regulate statewide emissions. The ruling still allows the environmental agency to regulate individual power plants but severely limits its ability to combat climate change caused by the fossil fuel industry as a whole.

The Clean Air Act calls for the reduction of air pollution through the "best system of emissions reduction," a vague authority that the EPA has cited as the basis for much of its work. The court's ruling states that the act is not specific enough, and that the EPA may not operate beyond the bounds of how Congress has explicitly instructed it to act.

The basis of this ruling is formed on the "major questions" doctrine, a judicial principle the Supreme Court granted itself in order to rule on issues of "vast economic and political significance." In other words, if the court determines an issue to be significant enough, it may utilize an un-enumerated authority to prevent federal agencies from reaching beyond their express written powers granted by Congress.

The significance of this ruling and its legal justification are far reaching. Steve Vladeck, a professor at the University of Texas School of Law, described the ruling in an interview with CNN as "cataclysmic for modern administrative law."

He continued by saying: "For a century, the federal government has functioned on the assumption that Congress can broadly delegate regulatory power to executive branch agencies. Today's ruling opens the door to endless challenges to those delegations—on everything from climate change to food safety standards—on the ground that Congress wasn't specific enough in giving the agency the power to regulate such 'major' issues."

Such a ruling opens the door for the Supreme Court, as well as lower courts, to block regulations on businesses on the grounds that the responsible agencies were not

granted specific authority. And there is concern among legal experts at how ill defined the major questions doctrine is.

"It's surprisingly unprincipled," said Jay Duffy, an attorney and power plant emissions expert for the Clean Air Task Force, to CNN. "It's a can of worms that has been opened and without much guidance as to how important is important. How major is major? I think it could create a lot of problems."

The Supreme Court has also used this doctrine to block regulations from the Occupational Safety and Health Administration (OSHA) requiring COVID-19 vaccinations, efforts by the Food and Drug Administration (FDA) to regulate tobacco sales and to overturn the eviction moratorium imposed by the Centers for Disease Control and Prevention (CDC) in the early stages of the ongoing COVID-19 pandemic.

The court had previously ruled in 2007 in *Massachusetts v. EPA* that the EPA did have the authority to regulate greenhouse gas emissions in general based on the authority of the Clean Air Act. Using the major questions doctrine, the court rejected the EPA's argument that it did not have express authority because the language of the act is "sweeping" and "capacious" and that the agency was unjustified in its inaction against climate change.

Dissenting from the court's ruling were three of the current conservative justices: Roberts, Alito and Thomas.

Seeing a chance to undo their previous defeat, the conservative majority of the court decided that they could now drastically change the policy powers of a federal agency, usurping the powers of Congress the court claims to protect.

The political danger of the ruling was captured by Justice Elena Kagan, who wrote that "The subject matter of the regulation here makes the Court's intervention all the more troubling. Whatever else this Court may know about, it does not have a clue about how to address climate change. And let's say the obvious: The stakes here are high. Yet the Court today prevents congressionally authorized agency action to curb power plants' carbon dioxide emissions. 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."

This decision, along with its deeply reactionary ruling on abortion rights earlier this month, is a demonstration of the court's right-wing political character and the fascistic turn of the Republican Party.

The court has effectively granted itself legislative powers, with the aim of stripping the working class of its hard-won democratic rights and undoing regulatory reforms of the past which might even slightly hinder the pursuit of profit.

The ruling on *Roe v. Wade* and the creation of many regulatory agencies, including the EPA, came at the end of the liberal period that followed the Second World War and the civil rights movement. Such reforms are now being torn apart by the Supreme Court, which is acting as a theocratic cabal in the service of the Republican Party and the most reactionary elements within the ruling class.

After the elimination of the right to abortion, Clarence Thomas, whose wife was directly involved in the January 6 coup attempt, has been explicit in his intention to target other court rulings, including those that guarantee the right to gay marriage and contraception, among others.

The Democratic Party bears responsibility as well. For over five decades they have failed to establish any comprehensive plan to fight climate change and have refused to grant federal regulators the proper authority and resources to do so.

The Supreme Court's ruling could be undone with the passage of a bill to combat climate change, granting the EPA the express powers that the court demands. But the Democrats have consistently failed to pass any legislation of note. From voting rights to climate change, the Democrats have repeatedly built false promises of reform only to purposely trip at the final hurdle. As the Republicans and the Supreme Court move to attack the rights and protections of the working class, no progressive solution can be found through the feckless politics of the Democratic Party.

In order to fight climate change and defend democratic rights, the working class must take up the fight itself, armed with a social perspective to reorganize society to meet the needs of the vast majority and not the profit interests of a privileged few.