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# West Virginia et al. v. EPA et al.

## Supreme Court of the United States (2022)

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Interim Committee – August 2022

# Today's Discussion

- Background
- Basics of Majority Opinion
- Highlights of Concurrence & Dissent



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# Background

## **EPA issued the Clean Power Plan Rule (CPP)**

- Addressed carbon dioxide emissions from existing coal/natural gas power plants
- Authority cited was CAA Section 111(d)
- Some states and other parties challenged the CPP

## **SCOTUS stayed the CPP**

## **EPA repealed the CPP**

- Concluded that the CPP exceeded EPA's statutory authority
- Issued a new rule known as the Affordable Clean Energy Rule (ACE)

## **Some states and other parties challenged ACE arguing that CPP should not have been repealed**

- Court of Appeals for District of Columbia vacated the ACE and the repeal of the CPP
- Current administration asked for stay pending EPA deciding whether to issue a new rule
- Some states and other parties filed petition for SCOTUS review

Timeline

2015

2016

2019-2021



# Background

## West Virginia v. EPA

- 6-3 decision
- Chief Justice Roberts wrote majority opinion
- Justice Gorsuch wrote concurring opinion (joined by Justice Alito)
- Justice Kagan wrote dissenting opinion (joined by Justices Breyer and Sotomayor)

2022

## SCOTUS majority opinion explained concerning CPP

- EPA's standard of performance under CAA Section 111 is to reflect amounts achievable through the application of the best system of emission reduction adequately demonstrated (BSER)
- CPP found BSER for existing plants included 3 blocks
  - Heat rate improvements
  - Shift in production from coal fired power to natural gas fired
  - Shift from coal and gas fired to low or zero carbon generation
- Shift of generation to cleaner source
  - Reduce the regulated plant's own production of electricity
  - Build or invest in another facility
  - Purchase emission allowances or credits as part of cap-and-trade



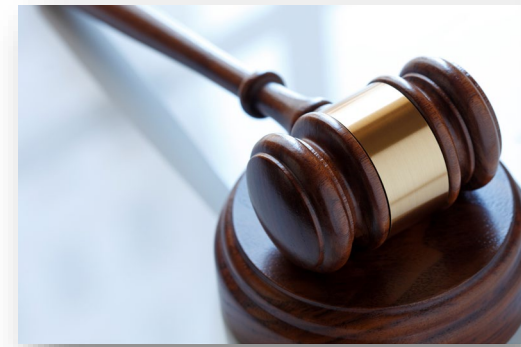
# Basics of Majority Opinion



- Case is justiciable - state petitioners have standing
- Congress did not authorize EPA to provide emissions caps based on generation shifting
  - Applied the “major questions doctrine” - if major question, then agency needs clear congressional authorization
    - “Extraordinary cases” - “economic and political significance”
    - Examples of factors considered
      - History of CAA Section 111(d) and EPA rules
      - EPA request for funding to develop expertise
      - Congressional failure to enact
      - Use of the term “system”



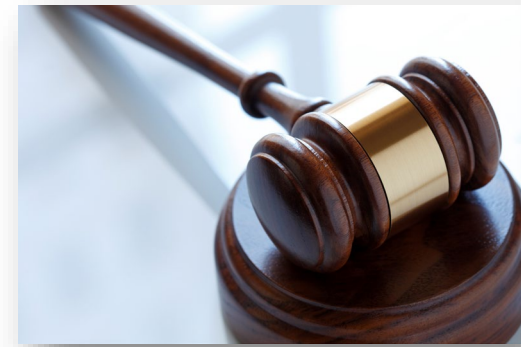
# Basics of Majority Opinion



“Capping carbon dioxide emissions at a level that will force a nationwide transition away from the use of coal to generate electricity may be a sensible ‘solution to the crisis of the day.’ . . . But it is not plausible that Congress gave EPA the authority to adopt on its own such a regulatory scheme in Section 111(d). A decision of such magnitude and consequence rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body.”



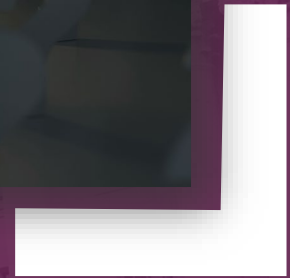
# Highlights of Concurrence & Dissent



- **Concurrence** (Justice Gorsuch wrote, joined by Justice Alito)
  - Major questions doctrine
    - Implicates self-government, equality, fair notice, federalism, and separation of powers
    - Factors to consider to determine whether doctrine applies
    - Factors to consider to determine clear congressional statement
- **Dissent** (Justice Kagan wrote, joined by Justices Breyer and Sotomayor)
  - “[A]dvisory opinion”
  - Role of EPA as primary regulator of green house gas emissions
  - Text-in-context statutory interpretation v. major questions doctrine
  - Term “systems”
  - Congressional delegation



# Questions



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