

Supreme Court Decision Signals Need for Strong Implementation and Adequate Funding for New York's Landmark Climate Law

"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 decisionmaker on climate policy. I cannot think of many things more frightening."

--Justice Kagan, joined by Justices Breyer and Sotomayor, dissenting in *West Virginia v. EPA*

Today, the Supreme Court of the United States (SCOTUS) ruled to limit the U.S. Environmental Protection Agency's congressionally-granted authority to broadly regulate power plant emissions pursuant to the Clean Air Act. The 6-3 decision in *West Virginia v. EPA* prevents the agency from implementing comprehensive changes for the entire energy sector and limits it to emissions control at individual power plants unless given explicit authority by Congress. While we await the implications this ruling has for other federal agencies, one thing is clear – we cannot wait for the federal government to act on climate, and state-level action is more critical than ever.

Governor Hochul and the State Legislature must seize this moment and use all administrative and legislative powers of the State of New York to reduce emissions and transition off fossil fuels. Actually implementing the Climate Leadership and Community Protection Act (CLCPA), funding new and existing programs to transition off fossil fuels and signing or passing additional legislation must happen now! Moreover, while the SCOTUS decision does allow for emission controls at individual power plants, this must not be seen as an invitation to proliferate false solutions like Carbon Capture and Sequestration, Direct Air Capture, and other profligate and ineffective geoengineering schemes that are antithetical to the mandates of CLCPA and have no place in New York. See below for what the decision means to environmental justice communities and what steps can be taken next.

WHAT THE SUPREME COURT'S DECISION TO CURTAIL EPA REGULATION OF POWER PLANT POLLUTION MEANS FOR ENVIRONMENTAL JUSTICE

Tying the hands of the EPA to rein in harmful pollutants hurts communities of color and low-income communities first and worst. Regulations of air pollutants, including those emitted by

power plants, have been critical in reducing harms to frontline communities, [particularly communities of color and low-income communities](#).

- Black, Brown and Indigenous communities are [more likely](#) to live near to a power plant (or other polluting industrial facility).
- Black, Brown and Indigenous people are [more likely](#) to die or suffer health problems from air pollution, including PM 2.5 and other pollutants associated with the very same fossil fuel facilities / power plants that emit the greenhouse gas emissions at issue in this case.
- And those same communities are already [disproportionately](#) affected by climate change, which is caused by the greenhouse gas emissions that the EPA seeks to regulate.

Shifting power plants off dirty energy is square one of climate action. If the federal government cannot require emissions reductions in the sector responsible for the largest share of climate-destroying fossil fuel pollution, what can it do to combat climate change?

- Federal regulation is critical to ensure minimum standards (the floor for environmental protection) and counterbalance regulatory capture and industry's political sway at the state and local level. The companies behind power plants and other polluting facilities often hold outsized sway among local policymakers and regulators.
- The federal government plays a critical role in establishing and enforcing minimum standards to ensure at least some uniform baseline level of environmental protection and environmental justice across the country.

If the EPA can be stripped of its power, the same may be applied to other federal agencies.

- This would strip away the government's power to pass regulations on issues as diverse as [workplace safety](#), [environmental protection](#), [access to birth control](#), [overtime pay](#), and [vaccination](#).
- Progress made in social, racial, gender, environmental justice and so many more issues could be rolled back and the fights for each would have to be taken up again.
- Access to the decision-making processes and ability to elect those that work on creating a healthy environment in which to live, learn, and work would be diminished.

The Supreme Court's fossil-fueled attack on the Clean Air Act should not directly undermine the President's authority under other bedrock laws to follow through on his climate promises using executive action.

- President Biden still has the [legal authority](#) to follow through on his promise to ban new federal fossil fuel leasing, halt permit approvals for new pipelines and other fossil fuel infrastructure, and hit the brakes on new gas exports. Using [existing authorities](#) under the National Emergencies Act and the Defense Production Act, the president can also halt crude oil exports, stop offshore oil and gas drilling, restrict international fossil fuel investment and rapidly manufacture and distribute clean and renewable energy systems.
- In addition, President Biden and Congress can and must reform and expand the Supreme Court, including creating additional seats, setting term limits and implementing ethics rules.

This case is Exhibit A for how the fossil fuel industry is corrupting our courts: this case was funded and developed by the fossil fuel industry to undermine the ability of our government to regulate pollution and address the climate crisis. It's part of a decades-long effort to install industry friendly judges who will put the rights of polluters over people.

- President Biden should instruct the Department of Justice (DOJ) to go after this industry corruption: On the campaign trail, Biden promised to go after industry corruption and support lawsuits that would hold Big Oil accountable for their climate crimes. He hasn't. Instead, the DOJ continues to argue on the side of big polluters. Biden should respond to this decision by instructing the DOJ to go after the industry and make them pay.
- This case strengthens the argument that Biden should declare a climate emergency: If the Court strips away the EPA's ability to address the climate crisis using the clean air act, Biden must take other measures. As the brief says, declaring a climate emergency would allow Biden to use other powers to stop new fossil fuel projects, drive the development of clean energy, and more.