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*West Virginia v. Environmental Protection Agency*

In 1970, the Clean Air Act (CAA), which was originally passed in 1963, was amended to include provisions against carbon emissions by fossil-fuel-burning power plants. Specifically, New Source Performance Standards (NSPS) were outlined under § 7411. NSPS are stationary carbon emission sources - including coal- and natural-gas-fueled power plants - constructed after the 1970 CAA amendments. Under § 7411(b), standards for new carbon emission sources are instituted, while standards for existing sources are established in § 7411(d). The latter secures the EPA's ability to set emissions caps on existing power plants and to limit their emissions by mandating use of emission-reducing technology.

In 2015, the Obama administration proposed the Clean Power Plan (CPP), a spiritual successor to the CAA which would require each state to devise their own method of reaching their individual, EPA-assigned emission-reduction goal. The proposal was contentious, and an emergency stay was issued by the Supreme Court, thus halting the passage of the Clean Power Plan.

Following President Donald Trump's 2017 decision to withdraw from the Paris Climate Accords, his administration proposed the Affordable Clean Energy (ACE) rule. ACE repealed the CPP, proposed minimal emission-reduction standards and eased regulations requiring existing power plants to install new emission-reducing technology. The changes were lauded by opponents of the CPP, but faced resistance from the American Lung Association and the

American Public Health Association, who challenged the rule in court in 2019 on the grounds that the EPA was shirking its responsibility to protect public health as outlined in § 7521 of the CAA (*American Lung Association v. EPA*). The D.C. Circuit court ruled 2-1 in favor of ACE opposition in 2021.

Later in 2021, the state of West Virginia, along with several power companies and other states, challenged the D.C. Circuit's ruling against ACE, fearing that it gave the EPA too much power. They also petitioned the Supreme Court to review and decide on the extent of the EPA's power as outlined in the CAA.

As of 2021, the EPA had been proposing "generation shifting," wherein "dirtier" sources of carbon emissions like coal would be phased out in favor of "cleaner" sources like natural gas. Such policies would threaten the nation's already failing coal industry, a major component of the economies of states like West Virginia. Opponents of generation shifting claimed that the policy was an overextension of power by the EPA, as § 7411(d) affords the agency control over power plants' emissions, but none over what fuel sources they use. It was argued that allowing generation shifting would set a "dangerous" new precedent for how much power the EPA could wield, as its implementation would require a very loose interpretation of the CAA.

In 2022, the Supreme Court ruled that the EPA lacks the authority to limit emissions from existing power plants via generation shifting. The agency's ability to require the use of emission-reducing technology remained as the extent of its ability to regulate emissions from stationary sources.

*Massachusetts v. EPA* is a landmark case that was decided in 2007. In 2003, the EPA determined that they lacked congressional authority to regulate carbon emissions for the purpose of preventing climate change. Furthermore, the EPA determined that even if it had the authority

to limit carbon emissions for the sake of slowing climate change, it would not impose any emission restrictions on motor vehicles because it had no reason to. They did not seem, to the EPA, to be a threat. The state of Massachusetts, along with a group of other states, challenged this determination. The EPA opposition argued that not only was carbon hazardous to the environment, but hazardous to public health. Ultimately, the case resulted in a Supreme Court ruling that the EPA had the congressional authority to regulate carbon emissions from motor vehicles. This case set a precedent for *West Virginia v. EPA* in that it called upon § 7521 of the CAA, much like in *American Lung Association v. EPA*, which directly led to *West Virginia v. EPA*.

*Michigan v. EPA* was decided in 2015. The state of Michigan challenged the EPA's interpretation of a particular phrase in the CAA which stipulated that the EPA should not consider costs when regulating carbon emissions from power plants. The Supreme Court ruled that the EPA's interpretation of the phrase in question was unreasonable. This case set a precedent for *West Virginia v. EPA* because it involved argument over unclear phrasing within the CAA about whether or not there should be limitations to the EPA's regulation of carbon emissions. Essentially, it established a precedent that the EPA's jurisdiction over carbon emissions could be challenged and that not everything in the CAA should be interpreted verbatim.

In the 2020 election, there was expectedly some disagreement on environmental policies. President Joe Biden wanted to push the country towards carbon neutrality and bolster EPA regulations in an effort to slow the effects of climate change, as well as investing in sustainable housing, electric cars, and green areas. Furthermore, he talked about wanting to make strides toward a plan that would fix the problems of the CPP. All of these promises reveal that Biden wanted to serve the environment, rather than big business. Former President Trump promised to

continue to repeal democrat-instituted environmental protection policies, as he did with the CPP. He also made it clear that he aimed to support American oil, gas, and coal industries. Essentially, Trump's campaign promises placed him squarely in the EPA opposition camp. This is no surprise, as he was responsible for the repealing of the CPP and the implementation of ACE, as well as the U.S. withdrawal from the Paris Climate Accords.

Environmental consciousness has been on the rise in America. According to the Pew Research Center, Approximately 66% of Americans believe that the government is doing too little to combat climate change. As of 2020, 64% of Americans support protecting the environment, a dramatic increase from 41% in 2008. 62% of Americans said that their communities were in some way affected by climate change. Overall, it is clear that climate change is an issue that affects America, and is one that most Americans want a solution to. Decisions like in this Supreme Court case might be unhelpful for the preservation of the environment, but they can help raise awareness of environmental issues and bring them into the mainstream.

*West Virginia v. EPA* could prove to have been an important precedent in future cases concerning the EPA's jurisdiction when it comes to regulating carbon emissions, particularly regarding those from power plants. As climate change continues to worsen, it is a landmark case when it comes to the fight between preservation of the environment and rights of corporations.