

<https://www.scotusblog.com/2021/10/justices-agree-to-review-epas-authority-to-regulate-greenhouse-gases/>

SCOTUS NEWS

## Justices agree to review EPA's authority to regulate greenhouse gases

By Amy Howe

on Oct 29, 2021 at 6:55 pm

In a term already defined by **abortion** and **guns**, the justices on Friday **agreed to hear** two more politically divisive disputes, involving the Environmental Protection Agency's authority to regulate greenhouse gases and the ability of states to defend a Trump-era immigration rule that the Biden administration has declined to defend.

### Climate change regulation

The litigation over the EPA's authority comes to the court in a quartet of environmental cases on appeal from the U.S. Court of Appeals for the District of Columbia Circuit. The D.C. Circuit vacated both the Trump administration's decision to repeal the 2015 Clean Power Plan, which established guidelines for states to limit carbon dioxide emissions from power plants, and the Affordable Clean Energy Rule that the Trump administration issued in its place.

Urging the justices to hear the case, one of the challengers, the North American Coal Corporation, acknowledged that the issue of climate change and how to address it has "enormous importance," but the company stressed that "[t]hose debates will not be resolved anytime soon." What the court should resolve, it continued, "as soon as possible is who has the authority to decide those issues on an industry-wide scale — Congress or the EPA." Unless the justices weigh in, the company warned, "these crucial decisions will be made by unelected agency officials without statutory authority, as opposed to our elected legislators."

The Biden administration told the justices that there was no need for them to step in now, because the Clean Power Plan "is no longer in effect and EPA does not intend to resurrect it." Instead, the government explained, it intends to issue a new rule that takes recent changes in the electricity sector into account. "Any further judicial clarification of the scope of EPA's authority," the government suggested, "would more appropriately occur" after the agency has actually issued the new rule.

After considering the cases at four consecutive conferences, the justices granted review and ordered the cases to be argued together. The justices' decision in the case, which is expected by summer 2022, could have an impact well beyond environmental law because it could impose new limits on Congress' ability to delegate authority to all regulatory agencies.

The lead case is **West Virginia v. EPA**. It is consolidated with **North American Coal Corp. v. EPA**, **Westmoreland Mining Holdings v. EPA**, and **North Dakota v. EPA**.

\* \* \*