SUNY New Paltz

Polluting the Law: The Conservative Legal Mobilization's Attack on the Environment

Libby Bell

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Professor Lipson

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Abstract

The conservative legal movement gained momentum and influence over the law beginning in the 1980s. Today the movement has focused on various areas of the law to exert control over and the environment is one focal point. Following the liberal legal win of *Massachusetts v. EPA,* the Republican party began working to strip the power granted to the EPA by this decision. The upcoming case, *West Virginia v. EPA,* will determine whether the EPA has the authority to regulate greenhouse gas emissions from power plants. The conservative movement will use arguments of state's rights and separation of powers to make their case that the EPA does not have the authority to regulate CO_2 emissions. It is predicted that the court will rule in favor of West Virginia by applying fringe ideologies of the Major Questions Doctrine or the Nondelegation Doctrine. The outcome of this case will set the precedent for how the Court will rule in future environmental cases, as well as in cases that deal with the authority of federal agencies.

Key Words: conservative legal movement, EPA, Clean Air Act, CO_2, environment

Introduction: The Conservative Legal Movement's Grip on Environmental Law

Anti-environmental ideologies were founding principles in the birth of the conservative legal movement. As conservative legal mobilization has increased its influence over the courts, environmental issues have remained a key area of litigation that have continued to be attacked. The 2007 case, *Massachusetts v. EPA*, classified carbon dioxide and greenhouse gasses as pollutants that could be regulated by the Environmental Protection Agency (EPA). This decision was deemed constitutional under the Clean Air Act which marked a monumental victory for environmental protection. Currently this decision is being challenged as the Supreme Court has agreed to hear *West Virginia v EPA,* which challenges the EPA's authority to regulate carbon emissions from power plants. The conservative legal movement is arguing that the EPA went outside of its congressional authority by making new legislation, and that the agency should not be allowed to implement sweeping rules that reshape the conduction of electricity grids. Thus, if Congress wants CO_2 to be regulated under the Clean Air Act of 1970, then Congress must pass a new amendment updating the Clean Air Act to explicitly authorize the EPA to regulate CO_2. In today's political climate achieving this is nearly impossible as the Republican Party has been taken over by extremists who identify as anti-environmentalists, and because the Senate has a 50-50 makeup with Democrat Joe Manchin (D-WV) often siding with Republicans. It is for this reason that Democratic administrations have relied so heavily on the EPA's authority to determine CO_2 as a pollutant. Stripping the EPA of its authority to regulate and impose restrictions on air pollutants will only exacerbate the effects of global warming unless Democrats can assemble ample votes to pass legislation. If the Supreme Court rules against the EPA, it will reverse the regulations that have been put in place to combat climate change and will open up opportunities for the Supreme Court to further strike down environmental protections, as well as

delegitimize the power of federal agencies. As the battle for control of the law continues, The case of *West Virginia v EPA* will serve as a precedent for how the court continues to rule in environmental cases, as well as in cases dealing with the power of executive agencies. Although this case is not a make-or-break decision in terms of overall environmental protections, it will serve as a building block in a series of important rulings, and will in part determine whether Democrats or Republicans emerge victorious in controlling the law.

Section 1: The Birth of the Conservative Legal Movement

The establishment of the conservative legal movement has roots in the rising success of the liberal legal network beginning in the 1950s. The liberal legal movement emerged with the institution of the New Deal in 1933. The New Deal created the demand for a "new kind" of lawyer that strayed away from the predominant demographic of lawyers which was conservative men. Over time this demand for a more diverse group of lawyers transformed the legal academy and expanded the number of liberal elite law professionals (Teles, 2008). The lawyers working with the New Deal came from very different backgrounds than the traditional Republican white, Anglo-Saxon Protestants (WASPs) who overwhelmingly exerted influence in the legal realm. The institutional changes in law schools fostered an increasingly liberal environment that drew in a diverse demographic of students and professors. Much of the liberalization of the legal academy was due to the decline of anti-Semitism following World War II (Teles, 2008). Set against the background of the 1950s with an expansion of welfare rights and civil rights, the liberal legal network inspired many American people with law that could move the country forward in a progressive nature. Over the course of only forty years following the institution of the New Deal, the liberal legal network fundamentally changed the makeup of law schools and

of law itself (Teles, 2008). These changes came to fruition in the early 1970s, which marked the beginning of liberal public interest law gaining momentum. This established opportunities for young lawyers to pursue public interest law and win landmark cases such as *Roe v Wade* in 1973.

In order to defend conservative legal values, conservative legal mobilization took off. The initial launch of the conservative legal mobilization did not come without failure; in fact the movement failed to assert influence from the early 1970s to the late 1980s. Conservatives viewed the rise and success of liberal public interest law as a direct threat to their influence in the courts and thus decided to act. The first generation of conservative legal actors made a few large missteps that derailed the progress of their movement. First, the movement was reactive rather than proactive. Rather than establishing their own core set of beliefs, the conservative legal movement waited for the liberal legal network to act and merely argued the opposite approach (Teles, 2008). This was harmful because a movement cannot be truly successful and garner support if its core principles and values are unknown. The movement read less as a strong conservative one and more as anti-liberal. Another mistake made was the conservative movement's broad approach to public interest law as opposed to specializing in one particular area (Teles, 2008). Not narrowing in on one area allowed for little meaningful work to be done, whereas focusing on more specific issues would enable more resources and time to be devoted to arguing a specific legal interest well. The Horowitz Report noted that in focusing on one demographic of people such as "ghetto public housing residents" conservative law could win over a large group of people who would view the conservative legal movement as their friends (Teles, 2008). The movement was advised to focus on one demographic or issue which they failed to do from the start. The early movement's decision to institute regional organizations as opposed to national ones also hurt them as it minimized the amount of strategic client selection

that was available to them (Teles, 2008). The liberal legal network was formerly criticized by conservatives for "venue shopping," but it worked for them and so the conservative movement followed suit.

The prevailing second generation of the conservative legal network that has excelled into current day took inspiration from many tactics utilized by the liberal legal network. The establishment of conservative public interest law firms such as the Institute for Justice (IJ) and the Center for Individual Rights (CIR) successfully brought numerous important cases before the Supreme Court. The CIR focused primarily on affirmative action cases as opposed to tackling numerous areas of law. This enabled the firm to put all of their resources into building strong cases for their specific area of litigation, and also established the institution's core beliefs (Teles, 2008). The CIR's decision to focus primarily on affirmative action was a testament to their commitment to remedy past mistakes. They would take proactive measures to bring conservative law back to power, they worked out of D.C to work nationally, and they established their organization's beliefs.

Perhaps the most telling example of the conservative legal movement's success is the influence that the Federalist Society wields. The Federalist Society is a national organization of conservative lawyers run out of Washington, D.C. (Toobin, 2017). Founded in 1982, it was created to harbor an environment for conservative law students to exchange ideas and to network. The Federalist Society has contributed to a reemergence of conservative law schools, a respect for conservative law, and to the education of the younger generation of conservative law students (Avery, 2013). Through the Federalist Society, the conservative legal movement has been able to chip away at the liberal's success in exerting influence over law schools by establishing a heavy presence at law schools to fuel and educate new generations of conservative

legal professionals. The Federalist Society's vice-president Leonard Leo is also credited with being responsible for one third of the current makeup of the Supreme Court (Toobin, 2017). A main task of the Federalist Society is compiling a list of judicial nominees that subscribe to the organization's core conservative beliefs. Republican presidents are then pressured to nominate candidates approved by the Federalist Society, and Republican Senators are also pressured to only confirm nominees who are loyal to the Federalist Society (Toobin, 2017). The influence that the Federalist Society has exerted over American law and handpicking justices to the highest court indicates the progress that the second generation of the conservative legal movement has made in taking back the law.

Section 2: From Past to Present: Conservative Mobilization and the Environment

The Republican Party has a complicated history with environmental politics as policy and ideologies have shifted over time. At one point in recent history the Republican party fiercely advocated for government intervention for environmental reasons. After all, it was Republican President Richard Nixon who issued an executive order to create the EPA, and the Clean Air Act was passed during his term with his active support (Adler, 2013). Ronald Reagan's election in 1980 presented an opportunity for conservative actors who detested environmental regulation to roll back policy, but this opportunity was missed. The environmental institutes weathered anti-regulatory efforts and thus "the Reagan administration failed to relax or eliminate any of the nation's environmental statutes" (Adler, 2013). Following Reagan's presidency, Republican George H.W Bush pledged himself to be the "environmental president" and delivered on his word through the Clean Air Act Amendments of 1990 (Adler, 2013). It wasn't until Republicans took control of Congress in 1995 that stances on environmental regulations split along partisan

lines. Issues regarding the environment grew more contentious, however, the George W. Bush administration did very little to roll back existing regulations. Although the parties have been split on environmental regulations for some time, the modern day divide between the two parties regarding the environment and the EPA did not come about until the 2012 Republican presidential primary. Unique to this primary was the competition among candidates as they fought to express their disdain for the EPA, and shrug off climate change as a nonissue (Adler, 2013). The precursor to this was in 2008 following the rise of a conservative group created and run by the Koch Brothers called Americans for Prosperity. This group was responsible for the "No Climate Tax," which was spearheaded by the Koch brothers. The pledge was only a single sentence in length that stated: "I will oppose any legislation relating to climate change that includes a net increase in government revenue" (Coral and Davenport, 2017). This pledge followed the failure of the cap-and-trade bill to gain traction and be passed, which is indicative of the pressure put on Republicans by Americans for Prosperity. The solidification of the Republicans Party's dismissal of climate regulations came to fruition upon Trump's campaign when he began referring to climate change as a hoax. His anti-environmental approach appealed to coal miners, and the promise to put them back to work garnered support from all over the nation, but especially in coal powered states such as West Virginia where 68.5% of voters cast their ballot for Trump (Coral and Davenport, 2017). Trump overwhelmingly won the votes of white men and white voters who did not receive a college education. In the 2016 Presidential election Trump won the vote of 62% of eligible white male voters as compared to receiving only 14% of the vote from eligible black male voters. Additionally, 64% of eligible voters who were non-college grads voted for Trump (Pew, 2018). Following his electoral victory, he delivered on his anti-climate agenda by withdrawing the U.S from the Paris Climate Accord, as well as

directing the EPA Administrator to end the Clean Power Plan among slashing various other Obama era regulations. Through tactics such as reappropriating open records laws (Ley, 2018) and spreading climate denial, the Republican Party in government as well as the electorate has asserted itself as the anti-environmentalist party.

Since its birth the conservative legal movement has worked to strip away environmental protections, and much of this can be credited to influential donors and think tanks working behind the scenes. One of the most prominent names in conservative funding is Koch Industries. The Koch brothers played critical roles in funding and creating conservative think tanks such the Cato Institute and the Heritage Foundation. These think tanks have played integral roles in producing anti-environmental ideologies and in funding candidates who align with the institution's beliefs. For instance, in the 2012 election, Koch-affiliated organizations raised $400 million dollars for Republican candidates (Dickinson, 2014). The Koch's creation of interest group super PACs are a testament to the gravity of their outside spending. Koch Industries center around the fossil fuel industry, and the Koch brothers' hefty indirect financial contribution to Republican candidates has gotten them out of legal trouble. For instance, the Koch brothers were forced to pay fines for disregarding environmental law; however, when Bush was in office the Justice Department offered a sweetheart deal where their 97-count indictment was paired down to only 7 counts (Dickinson, 2014). Under Republican leadership, the Koch brothers' consequences for violating environmental law were significantly less than what the law determined. In addition to founding and funding conservative think tanks, the Koch brothers also donate to climate denying organizations. This money typically goes to "political groups and electoral campaigns focused on electing right-wing candidates who oppose meaningful action on climate change and often support expanding and deregulating the fossil fuel industry" (Kotch,

2022). The vast majority of financial sponsors of the climate change countermovement are "well-known and prominent conservative funders" (Brule, 2013) and the Koch brothers are no exception.

Aside from electing anti-environmentalists to office, Koch funded conservative think tanks have also wielded significant influence over the law. The Heritage Foundation is one of the leading conservative think tanks in the United States, and its mission is to "formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense" (Heritage Foundation). It has been ranked as the number one think tank globally for its impact on public policy (Heritage Foundation). As for their stance on the environment, the organization detests regulations on oil, coal and gas and advocates for the use of natural gas arguing it to be beneficial for the environment, economy, and geopolitically (Loris, 2021). The Cato Institute is another prominent libertarian think tank whose mission is to "originate, disseminate, and advance solutions based on the principles of individual liberty, limited government, free markets, and peace" (Cato Institute). The organization prides itself in the influence they've exerted in policy debate in the United States. The Cato Institute does not deny climate change, but rather argues that the environment can be protected so long as it does not sacrifice economic liberty (Cato Institute). Koch Industries has managed to use their fortune to establish powerful institutions to advocate for their interests to the federal government. Although these think tanks are indirectly influencing the law, it's still important to understand how these organizations have helped to mold the Republican Party into *the* party that is vehemently opposed to environmental protections.

Section 3: Catalysts for the CLM Backlash: The Clean Air Act & *Massachusetts v. EPA*

The Clean Air Act of 1970 and the 2007 case *Massachusetts v EPA* are two instances that signaled direct environmental action from the federal government which the Republican party of today has taken issue with. The Clean Air Act of 1970, a federal law that regulates air emissions, is one of the most powerful environmental policies in U.S history as it was the first to deal with curbing pollution, and still serves as a foundational piece of legislation. This Act delegates authority to the EPA to establish National Ambient Air Quality Standards on the grounds of protecting public health and welfare by regulating emissions of dangerous air pollutants (EPA). The Democratic-controlled Congress passed the Clean Air Act (CAA) overwhelmingly with bipartisan votes: 374-1 in favor among the House and 73-0 in favor in the Senate. These votes were accompanied with the strong leadership and backing of Republican President Richard Nixon during the height of the national environmental movement. The push for legislation that regulated air pollutants was largely due to its undeniability as smog became visible in many large cities around the nation. The CAA was revised in 1977 as well as in 1990 to target other environmental hazards. The revisions of 1977 dealt with provisions for the Prevention of Significant Deterioration of air quality (EPA). The 1990 revisions were proposed by President George H. W. Bush in order to curb acid rain and urban air pollution. This revision implemented new regulatory programs which expanded the power and responsibilities of the federal government. Since this revision the federal government and EPA have continued to wield significant power over environmental policy. While this has resulted in many positive environmental regulations, the anti-environmentalist Republicans within the government have taken issue with expansive federal power.

The 2007 case of *Massachusetts v. EPA* was a landmark case for environmental protection, however, its influence has become fragile as the conservative legal movement is now questioning the case's validity. The state of Massachusetts brought forth concerns to the Supreme Court that the CO_2 being emitted by motor vehicles was contributing to climate change and that this would ultimately endanger public health which violates the Clean Air Act (Abate, 2008). The Supreme Court majority in *Massachusetts v. EPA* ruled that the EPA may regulate CO_2 emissions from motor vehicles if it was proven that these emissions were harming public health. In 2009 the EPA reported that CO_2 emissions were contributing to human caused climate change, and thus would be regulated under the Clean Air Act. Essentially this decision classified carbon dioxide and other non-polluting greenhouse gasses as air pollutants under the Clean Air Act, which enables them to be regulated by the EPA (justice.gov). The core problem is that the CAA has language that authorizes the EPA to regulate air pollutants such as methane, SO2, Nox and VOCs, but the Act does not authorize the regulation of non-polluting climate change emitters. This means that particles such as CO_2, the highest climate emitter, is not authorized by the CAA to be regulated since it is not categorized as a pollutant. The question that this case poses is whether the EPA can regulate non-polluting climate emitters despite legislation that only authorizes regulation of specific air pollutants. The outcome of *Massachusetts v EPA* gave the green light to regulate non-polluting climate emitters which was favored by the liberal legal network, but was, and still is, hotly contested by the conservative legal movement. Many conservatives were outraged by the decision as Congress did not explicitly grant the EPA the authority to regulate CO_2 as an air pollutant (Tubb, 2021). The decision was viewed as an overstep of the EPA's regulatory authority by many leading conservatives. There is a simple legislative fix; Congress would need to pass a new amendment to the Clean Air Act that would

expand the EPA's authority to regulate climate emissions regardless of whether they are classified as pollutants.

Section 4: Establishing Precedent: *West Virginia v. EPA*

The upcoming Supreme Court case, *West Virginia v. EPA*, is critical as it will set the precedent as to how the court will rule in environmental issues. Various industry groups (such as coal companies) and coal-fired energy states' Republican lawmakers along with Republican state attorneys general filed lawsuits arguing that the EPA exceeded its congressional power. After hearing oral arguments the D.C Circuit dismissed the case citing that the EPA's interpretation of the language in the Clean Air Act did not require Congressional oversight or approval. However, the Supreme Court agreed to review the D.C Circuit's decision (Reed, 2022). The petitioners are asking the Supreme Court to reevaluate the statutory limitations imposed on the EPA by the Clean Air Act when it regulated emissions from a stationary source. The attorneys representing Republican lawmakers in West Virginia argued that the EPA should not be allowed to implement crucial rules that will change the operation of electricity grids because such rules result in an unauthorized expansion of the agency's power.

Since the case has yet to be heard it's unclear what arguments will be made on the side of West Virginia, but amicus briefs offer insight into the various angles that will be brought before the court. These arguments will likely be rooted in federalism, a separation of powers, economic cost-benefit analysis, and substantive due process. The federalism approach is tied to the interstate commerce clause as laid out in Article 1, Section 8, Clause 3 of the Constitution. This clause grants Congress the power to "regulate commerce... among the several states". This clause has been a point of contention between the Republicans and Democrats, as it has called into

question whether this gives the federal government too much authority over state governments. Between 1937 and 1995 the Supreme Court made expansive decisions on what falls under the Commerce Clause (Rutkow &Vernick, 2011). This broad interpretation enabled Congress to pass almost any kind of domestic legislation dealing with issues of civil rights to labor legislation. In order to protect legislation that was justified through the Interstate Commerce Clause, Congress should have clearly stated in each bill that such legislation was addressing problems that affected the national economy. Since most pieces of legislation do not include this language, it has been left vulnerable. A majority of environmental policy at the federal level is deemed constitutional under the Interstate Commerce Clause, and thus is very fragile if it comes under attack. Every landmark environmental policy that came after 1970 is grounded in the Commerce Clause that was justified to protect air and water (Meyer, 2017). This clause is what has enabled the EPA to exercise power and impose federal regulations. It is very likely that those arguing on behalf of *West Virginia v EPA* will challenge the legitimacy of the application of the Commerce Clause to environmental policy citing that it infringes on states' rights.

As for the angle on separation of powers, those arguing on behalf of West Virginia assert that the EPA has overstepped its authority as granted by Congress. Representing this argument is Jacob Roth, a lawyer for coal companies, who is challenging the EPA's congressional authority to regulate the energy sector as a whole (Liptak, 2022). Also supporting the side of West Virginia are organizations such as the Heritage Foundation, New Civil Liberties Alliance (NCLA) and the Cato institute. The NCLA wrote an amicus brief that argues that the decarbonization of the energy decision is a decision that Congress has the power to decide, not a federal agency (NCLA, 2021). The brief states "Congress may not delegate its legislative power over this decision for EPA to make in its stead." The NCLA brief relies heavily on the argument that the

lack of legislation nullifies the EPA's authority to regulate CO_2. The support of powerful conservative institutions, through the form of amicus briefs, have helped to push arguments forward in the case of *West Virginia v. EPA*.

The substantive due process angle is rooted in libertarian ideals and has been advocated by the Cato institute and the Koch brothers. This influential Koch funded think tank filed a brief on the basis of the threat to individual liberty that is posed by the EPA regulating greenhouse gasses as this power has not been explicitly granted by Congress (Shapiro & Yateman, 2021). The Cato institute brief urges the court to "build out its major questions doctrine" (Shapiro & Yateman, 2021). The major question doctrine, which will be discussed in greater detail later in my paper, is the idea of restricting the power of agencies when it involves substantial political and economic stakes. This argumentative approach relies on libertarian ideology that views EPA regulations as an infringement on citizens' liberties.

Finally, the economic cost-benefit analysis will likely be brought before the court in a conservative attempt to highlight that the economic disadvantages outweigh the positives for the environment. The U.S Chamber of Commerce has filed a brief on behalf of West Virginia that is rooted in this argument. The amicus brief asks the court to reevaluate the EPA's authority in terms of regulating CO_2. The Chamber of Commerce makes the case against the EPA due to the costs that regulation incurs: "the proposed rule's annual compliance costs will reach at least $7.3 billion by 2030, dramatically increasing electricity's costs for the industry, while mandating obligations making electric service less reliable." The economic cost-benefit analysis asserts that the economic costs of the EPA's regulation of CO_2 outweighs the positive influence this has had on clean air.

The EPA will argue in favor of maintaining the authority of being able to regulate CO_2 emissions as granted under the Clean Air Act. Solicitor General Elizabeth B. Prelogar was quoted as saying the EPA should not be denied "much-needed flexibility to do common sense and commonplace and well-established limits in this industry" (Liptak, 2022). Those arguing for the EPA will likely reason that regulating greenhouse gas emissions is a power within the agency's wheelhouse.

In February of 2022 the Supreme Court heard oral arguments for *West Virginia v EPA*. During this two-hour argument Justice Alito voiced his skepticism regarding the idea that "Congress had meant to give the agency what they said was vast power to set national economic policy" (Liptak, 2022). Alito also expressed doubt of climate change as a whole, citing it as an idea in "which some people believe is a matter of civilizational survival" (Liptak, 2022). Although none of the Justices took a firm stance on which way they'd side in this case, based on the court's ruling that Occupational Safety and Health Administration had no authority to require large employers to mandate employee vaccinations or testing, it is likely that the court will rule in the same vein of reducing the power of executive agencies (Liptak, 2022). The current Supreme Court has made decisions that reduce power of federal authorities, and thus it is likely that conservatives on the court will seek to strip away some of the power that the EPA currently exercises.

If the Supreme Court does rule in favor of West Virginia, it is expected to be justified through either the major questions doctrine or the nondelegation doctrine. Both of these doctrines have been fringe approaches to the law that have only recently resurfaced as grounds for the court to rule. The foundational ideology for these doctrines can be traced back to John Locke in 1690 when he wrote "The Legislative cannot transfer the power of making laws to any other

hands" (ncsl.org). The language of Locke was introduced as these doctrines into the Supreme Court in the 1930s in an attempt to resist the New Deal, but were quickly abandoned and became obsolete in order to allow for the expansion of the modern-day administrative government (Sebring, 2018). Five conservative justices have recently "expressed interest in reviving a legal doctrine dormant since the 1930s, until recently considered fringe, which views much of the authority of the executive branch as illegitimate" (Yachot, 2022). Supreme Court Justice Neil Gorsuch is leading the charge in reinvigorating the nondelegation doctrine by claiming originalism. Gorsuch and other originalists cite that the "founding generation would have understood this assignment to implicitly forbid Congress from further delegating any part of that power to federal agencies" (Bagley & Mortenson, 2020). Another outspoken proponent of the doctrines, specifically the major questions doctrine, is Supreme Court Justice Brett Kavanaugh. The major questions doctrine "invalidates agency rules for issues of major economic and political importance" (Sebring, 2018). In the case of *West Virginia v. EPA* it can be argued that the regulation of CO_2 directly influences the economy of the energy sector. This argument also emphasizes the separation of powers as the major questions doctrine requires matters of economic and political significance to be authorized by Congress. The resurgence of the nondelegation doctrine has only very recently come about due to the conservative majority on the Supreme Court. The nondelegation doctrine gives the courts the power to strike down laws that grant the executive branch too much power with little guidance (Bagley & Mortenson, 2020). Of course, this is subjective as "major" and "vast economic and political significance" have yet to be defined by the court. This enables the Justices to make rulings based on their own policy preferences (Sachs, 2022). Gorsuch and Kavanaugh's justification for the revitalization of

the nondelegation doctrine and major questions doctrine on the grounds of originalism discounts how vastly different the United States functions today as opposed to in 1776.

If the court rules in favor of West Virginia, it will strip the EPA of regulatory authority of greenhouse gasses until legislation is written. The current makeup of Congress makes it unlikely for environmental legislation to be passed as the Senate has a 50-50 makeup and Democrat Joe Manchin often sides with Republicans as he comes from the coal-industry-dominated state of West Virginia. If West Virginia wins this case, it essentially means the Biden administration will have very little authority to regulate carbon pollution from power plants (Barnes & Grandoni, 2022). This case has significant weight because the interpretation of the Clean Air Act will determine whether Biden, and future presidents, can introduce measures to limit greenhouse gas emissions from existing power plants (Sachs, 2022). The decision of this case will extend beyond environmental implications and could "further signal that the court's newly expanded six-justice conservative majority is deeply skeptical of the power of administrative agencies to address major issues facing the nation and the planet" (Liptak, 2022). Scholar Noah Sachs predicts an EPA loss at the hands of the major question doctrine. Sachs highlights how the recent reliance on the major questions doctrine could no longer be an elusive tactic, but rather one that is weaponized frequently to clip the power of federal agencies (Sachs, 2022). The outcome of this case will provide critical insight into how the court will rule in future cases involving the power of agencies.

Conclusion: The Future of Environmental Law

The conservative legal movement has been attacking environmental law for decades, and with a conservative majority on the Supreme Court, the assault has only intensified. After

shifting their approach to mirror tactics the liberal legal network had success with, the conservative legal movement quickly reclaimed power in the courts. Having an overwhelming conservative influence in the law with a hard 6-3 majority on the Supreme Court poses a major threat to the environment and all those who inhabit it. If the court rules in favor of West Virginia the EPA will be stripped of its authority to regulate greenhouse gas emissions, which will have detrimental impacts on the quality of air as well as exacerbating the effects of climate change. The current makeup of the Senate will not allow for passage of an amendment to the Clean Air Act that grants the EPA power to regulate all greenhouse gas emissions, which means almost no regulations will exist. Climate change is among the most pressing issues facing humankind and under conservative legal domination it will only be amplified. The case of *West Virginia v. EPA* will give insight into how the Supreme Court may rule in the future in general and in cases involving the environment. The decisions that are made now will be critical to the salvation or sabotage of the planet, and it rests in the hands of the conservative legal movement. All hope for the environment is not lost, however, as public opinion overwhelmingly supports environmental protection. If the court strips the EPA's authority to regulate CO_2 emissions there's a chance that this will mobilize the liberal legal network. This has the potential to fire up enough voters to elect progressive candidates which creates the conditions to elect more Democrats to office and get a majority in the Senate. More Democrats in Congress makes the passage of legislation to solidify regulatory power of the EPA possible. The outcome of *West Virginia v EPA* will not make or break the future of the Planet, but will be an integral steppingstone in either the progression or downfall of environmental protections under the law.

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