

What Would Happen If...?

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In this paper, I will discuss the implications of a hypothetical case that would allow the Environmental Protection Agency to first, regulate greenhouse gasses, and second, interpret 42 U.S. Code § 7411 to call for a constant decrease of greenhouse gas emissions and require the shutdown of all coal-fired plants in the United States. I will also discuss opinions on the Inflation Reduction Act, which was signed into law on August 16, 2022, and could pave the way for a hypothetical such as this to become a reality.

I. Hypothetical

The Environmental Protection Agency (EPA) has introduced a new regulation that will affect existing sources that emit greenhouse gasses called the Existing Source Rule. The hypothetical regulation would limit the amount of greenhouse gas emissions that are produced by a state's electricity grid. In short, the law aims to limit greenhouse gas emissions in order to reach a net-zero value of emissions in the United States by 2030. Experts believe that under this regulation, it would be possible to eliminate greenhouse gas emissions by 2030 if states shut down *all* of their coal-fired power plants. The EPA believes that this regulation is necessary and proper as it is the "best system of emissions reduction" because they regulate grids as a whole rather than any marginal or fractional changes to the grid which could

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create greater environmental benefits.⁵⁰ The Supreme Court found that the EPA’s interpretation of the “best system of emissions reduction” was reasonable and therefore it should be implemented.⁵¹ Thus, future policies and decisions will be affected by the gravity of this hypothetical Supreme Court decision. This paper aims to provide an analysis of possible policy implications as well as how the consequences of the Supreme Court (SCOTUS) decision will affect the EPA, the Clean Air Act (CAA), other future cases such as this one, and climate change.

II. Background

Before delving into the hypothetical, it is important to define the variables. First, the EPA was created on December 4, 1970, by Order 1110.2 as directed by President Nixon in order to combat negative effects on the common good due to pollution; thus, the EPA plays a direct and active role in the regulation of air pollutants.⁵² Second, the Clean Air Act (CAA) is a set of federal laws that regulate air emissions. Most importantly, the CAA grants the authority to the EPA to protect public health and public welfare and to regulate emissions of hazardous air pollutants.⁵³ Briefly put, the CAA was created to encourage pollution prevention.⁵⁴ The CAA, establishes “a series of regulatory programs to control air pollution from stationary sources” which articulates the regulation of power plants just like the ones the EPA are attempting to regulate in the hypothetical.⁵⁵ Power plants are considered stationary sources because under the CAA, a “stationary source” is

⁵⁰ 42 U.S.C. § 7411.

⁵¹ 42 U.S.C. § 7411.

⁵² “EPA Order 1110.2 -- Initial Organization of the EPA,” 2016.

⁵³ “Summary of the Clean Air Act,” 2022.

⁵⁴ 42 U.S.C. § 7401 (b).

⁵⁵ “Summary of the Clean Air Act,” 2022.



specifically defined as “any building, structure, facility, or installation which emits or may emit any pollution”⁵⁶ and thus, under this definition power plants can be regulated under the section entitled “Standards of Performance for New Stationary Sources” or 42 U.S.C. § 7411.⁵⁷

III. Analysis

To reiterate, the SCOTUS decision from the hypothetical case declared that the EPA’s interpretation of “best system of emission reduction” was reasonable insofar that the interpretation aligned with the Congressional Intention to protect the nation’s air quality.⁵⁸ Therefore, in order for the states to be able to comply with the continual need to decrease emissions, all coal-fired power plants must be shut down by 2030. Once all the coal-fired power plants are shut down, what would this mean for future policies regarding greenhouse gas emissions? First, it is important to note that as of 2019, greenhouse gas emissions from the power sector make up about 25% of emissions. Even though coal-fired power plants will not be eliminated until 2030, there will be a steady annual decrease. Policymakers could now shift their focus from creating policies regarding power-based greenhouse gas emissions and focus their attention on other sectors producing emissions such as transportation and industries.⁵⁹ Second, setting this interpretation in stone removes any and all political will from possible legislation.⁶⁰ Assuming this case is not appealed, it would be safe to declare that the annual grid-wide decrease will occur up until the point that the power plants are

⁵⁶ 42 U.S.C. § 7411(a).

⁵⁷ 42 U.S.C. § 7411.

⁵⁸ 42 U.S.C. § 7401 (b).

⁵⁹ “Federal Climate Policy 101: Reducing Emissions.”

⁶⁰ Betts, “Can the U.S. Phase out Coal’s Greenhouse Gas Emissions by 2030?”



inevitably shut down, which no policy can change because SCOTUS declared the reasonability of the EPA to make that regulation in perpetuity. Therefore, it is impossible for the legislature to change the outcome. At this point, any policies that would merge post-implementation would be used for specific adjustments or regulations on *how* the grid-wide decrease will proceed.

A. Environmental Protection Agency

Even though greenhouse gasses are not criteria pollutants, the EPA declared that they are a danger to public health and welfare, therefore, SCOTUS acknowledged their danger when they declared the term “best” to refer to the most advantageous adjustment in regard to protecting the nation’s air quality. The SCOTUS decision affirming this standard allows the EPA to implement similar policies across the agency because this case, among others, upholds the danger of greenhouse gasses and gives support to the EPA to enforce regulations to reduce those emissions. Post-implementation, the EPA can now set more standards outside of power plants that will limit greenhouse gas emissions.

B. Clean Air Act

The SCOTUS decision will impact the CAA in a similar fashion to the way that the decision affected the EPA. The EPA can utilize the approved interpretation of the “best system of emission reduction” under the CAA to implement more strict pollution control standards across the nation and related sectors that emit greenhouse gasses. The SCOTUS decision does not affect the words of the act itself, but rather the decision allows for a more generous reading of the



promotion of pollution prevention, which, in turn, allows the EPA to enforce emission reductions.⁶¹

C. Future Cases Like This

As stated above, this case set the precedent of regulating greenhouse gasses in place. Therefore, any future cases that may arise are more likely to be dismissed because SCOTUS concluded the EPA's interpretation to be reasonable, and therefore, the regulation may be implemented. Potential upcoming cases that could arise would include cases regarding emissions standards not being met, cases involving legislative policies regarding implementation standards and subsequent EPA interpretations, or perhaps cases about technological implementations. However, any cases that question the implementation of the "Existing Source Rule" must be dismissed because the reasonableness of the regulation is upheld by the SCOTUS decision.

D. Climate Change

Lastly, the SCOTUS decision will have great implications on climate change. "Coal (...) is the energy source that is most responsible for accumulated fossil-fuel CO₂ in today's atmosphere,"⁶² therefore, under the implementation of the "Existing Source Rule," coal-fired power plants will be eliminated by 2030, which means the elimination of coal as a power source. Since coal is the leading source of greenhouse gas emissions, removing coal as an emission source would substantially slow the speed at which the world is heading into

⁶¹ 42 U.S.C. § 7401 (b).

⁶² Betts, "Can the U.S. Phase out Coal's Greenhouse Gas Emissions by 2030?"



a climate crisis.⁶³ Researchers and scientists fighting climate change could then also focus on reducing the emissions from other greenhouse gas emitters without needing to focus their energy into decreasing coal emissions.

IV. Recent Developments

On August 16th, 2022, the Inflation Reduction Act of 2022, H.R.5376, became law.⁶⁴ The act has been worked into the Fiscal Year 2022 budget and “allocates hundreds of billions of dollars to facilitate a clean energy transition, primarily through clean energy tax credits.”⁶⁵ The act, while primarily a fiscal document, makes major strides toward environmental justice. In the next paragraphs, I will analyze Lisa Friedman’s report from the *New York Times* and Marlo Lewis, Jr.’s article from the *Competitive Enterprise Institute* about how the Inflation Reduction Act could affect the EPA’s regulation power.

A. Democrats Designed the Climate Law to Be a Game Changer. Here’s How

Lisa Friedman starts her article by boldly stating that Congress has now given the EPA the authority to make regulations that would move the U.S. away from needing to burn fossil fuels. According to the Act and Friedman’s report, “That language (...) explicitly gives the E.P.A. the authority to regulate greenhouse gasses and to use its power to push the

⁶³ Betts, “Can the U.S. Phase out Coal’s Greenhouse Gas Emissions by 2030?”

⁶⁴ “Inflation Reduction Act of 2022.” H.R.5376, 117th Congress (2021-2022).

⁶⁵ “5 Things to Know about the Inflation Reduction Act’s Environmental Provisions,” 2022.



adoption of wind, solar, and other renewable energy sources.”⁶⁶ Furthermore, she states that the Act grants billions of dollars to the EPA to fund the means in which emissions are reduced and work to ensure that carbon dioxide is not emitted into the atmosphere. In short, Friedman reports that only *some* environmental experts claim the Inflation Reduction Act will not have any large effect on policies. However, the overall tenor of the piece points towards the conclusion that this act is legislatively understood to be Congress giving the EPA the authority to address the climate crisis regarding the power sector.⁶⁷

B. Inflation Reduction Act and West Virginia v. EPA:

Legislative History Refutes Sen. Carper’s Spin

In contrast, Marlo Lewis, Jr. refers to Friedman’s article and claims that her understanding of the Inflation Reduction Act is flawed. From his viewpoint, the provisions of the Act could in no way authorize the EPA to implement new or stronger regulatory measures. Rather, he reports that the Act is merely a vessel for fiscal power that could lead to better technology with the power to change emission standards. Lewis criticizes the former interpretation of taking too much liberty in dictating what the undertones of the Act could mean, rather than focusing on the actual content of the Act. Both Lewis and Friedman agree that the Inflation Reduction Act can cause positive changes to curb the climate crisis. While Lewis believes those changes are coming from the budget giving way for new technologies, Friedman contends that those changes

⁶⁶ Friedman, “Democrats Designed the Climate Law to Be a Game Changer,” 2022.

⁶⁷ Friedman, “Democrats Designed the Climate Law to Be a Game Changer,” 2022.



can come directly from the EPA itself based on the expansion of regulatory powers.⁶⁸⁻⁶⁹

C. H.R. 5376

The precept of the Inflation Reduction Act yields two contrasting understandings of the EPA's potential new regulatory power. This section will briefly relay how the Act touches upon environmental policies. First, this Act introduces the Methane Emissions Charge which will mandate a fee on greenhouse gas emissions. Second, the Act is slated to budget \$30 billion dollars to go towards greenhouse gas emission reduction projects. Lastly, the Act "has a strong focus on environmental justice."⁷⁰ The budget will be used to improve communities who are greatly affected by the climate crisis. In short, the Act does not give the EPA the direct authority to make regulations regarding greenhouse gas emissions, however, it does outline the harmful nature of greenhouse gasses and provides means of which to lessen the emissions for the sake of the common good.⁷¹

V. Conclusion

Overall, it is unclear how exactly the Inflation Reduction Act will affect future environmental policies. As of August 22, 2022, the EPA has not commented on the Act or how the Agency itself could be affected by the Act.⁷² At

⁶⁸ Lewis, "Inflation Reduction Act and West Virginia v. EPA," 2022.

⁶⁹ Friedman, "Democrats Designed the Climate Law to Be a Game Changer," 2022.

⁷⁰ "5 Things to Know about the Inflation Reduction Act's Environmental Provisions," 2022.

⁷¹ "5 Things to Know about the Inflation Reduction Act's Environmental Provisions," 2022.

⁷² Friedman, "Democrats Designed the Climate Law to Be a Game Changer," 2022.



face-value, the Act could potentially lead to legislation that will create a positive impact on the environment, such as the law and effect proposed in the hypothetical case.



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