Jousting with Windmills: The Supreme Court Decision on West Virginia v. EPA

On June 30, 2022, the Supreme Court ruled on the future of regulating pollution from the U.S. electric sector, curtailing EPA's authority to set emissions reduction targets for power plants. But the federal government has never set such targets. The Clean Power Plan (under former President Barack Obama) and the Affordable Clean Energy Rule (under former President Donald Trump) never took effect. They were “vacated and remanded.” In a sense, this ruling is like Don Quixote’s jousting with windmills; it strikes down an authority that has never been deployed.

Q: Does EPA still have authority to require fossil electric generating units (EGUs) reduce greenhouse gas pollution under section 111d of the Clean Air Act?
A: Yes, the EPA maintains broad authority to regulate harmful pollutants from the power sector, including greenhouse gas emissions, under the Clean Air Act. In 2009, EPA issued an endangerment finding, which concluded that six greenhouse gases endanger the health and welfare of people in the United States. The sources of those pollutants must be addressed by the EPA through the Clean Air Act. Under long-standing federal law and current legal precedent, the EPA is obligated to regulate GHG emissions, unless Congress takes action to pass federal legislation that would preempt the EPA’s authority to regulate GHG pollution.

Q: Is EPA still required to regulate pollution including GHGs under the Clean Air Act?
A: Yes, this ruling doesn’t touch that requirement. It's a ruling on the definition of best system of emissions reduction (“BSER”) under Section 111d in particular.

Q: What happens next?
A: EPA must develop GHG pollution limits under the Clean Air Act, consistent with the Agency’s obligation to protect human health and welfare. Because West Virginia v. EPA does limit what EPA can do in the future, it underscores the need for action at the state and local level.

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