

# Climate Federalism & the Major Questions Doctrine:

The Future of Federal Climate Authority After  
West Virginia v. EPA



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# *Background: Federal Climate Regulation*

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## **Clean Air Act Framework**

- EPA regulates “air pollutants”
- Broad statutory delegation



## **Massachusetts v. EPA**

- Greenhouse gases = air pollutants
- EPA authority confirmed



## **Traditional Model**

- Facility-level regulation
- Agency expertise + flexibility

# *The Clean Power Plan*



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- EPA's 2015 Strategy
  - Power sector emissions
  - Generation Shifting
    - Coal → gas → renewables
    - System-wide approach
  - Significance
    - Market-wide transformation
    - Beyond traditional regulation

80 Fed. Reg. 64,662 (2015); Lazarus, *The Rule of Five* (2020)

# → *West Virginia v. EPA* ←

## Holding:

- EPA exceeded authority
- Section 111(d) of the Clean Air Act does **not** authorize the EPA to devise emissions caps based on generation shifting.

## Major Questions Doctrine:

- Clear congressional authorization required
- Applies to major policy issues

## Key Shift:

- Reduced agency deference
- Increased judicial control

West Virginia v. EPA, 597 U.S. 697, 721–24 (2022); Daniel T. Deacon & Leah M. Litman, The New Major Questions Doctrine, 109 Va. L. Rev. 1009, 1012–15 (2023).



# *Structural Shift in Governance*

- Reallocation of Authority
  - Agencies → Congress → Courts
- Three Changes
  - Limits administrative flexibility
  - Requires explicit legislation
  - Expands judicial gatekeeping
- Interpretation
  - Courts increasingly police scope of agency authority

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West Virginia v. EPA, 597 U.S. 697, 721-32 (2022); Deacon & Litman, The New Major Questions Doctrine, 109 Va. L. Rev. 1009, 1015-20 (2023).



# *Federal Policy Consequences*

- EPA Authority Narrowed
  - Facility-level focus
  - System-wide strategies restricted
- Regulatory Mismatch
  - Climate = systemic
  - Regulation = incremental
- Scholarly Insight
  - Broad delegations may be narrowed when policies are deemed major

42 U.S.C. § 7411; *West Virginia v. EPA*, 597 U.S. 697, 728–35 (2022); Deacon & Litman, *The New Major Questions Doctrine*, 109 Va. L. Rev. 1009, 1082–89 (2023).



# → *Climate Federalism + Implications* ←

- Shift to States
- State-led climate policy
- Fragmentation
  - Patchwork regulation
  - Uneven outcomes
- Broader Implications
  - Congressional inaction
  - Weakens U.S. climate commitments

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Paris Agreement (2015); Lazarus (2020)



# Conclusion

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## Core Argument:

**DOCTRINE PRIORITIZES CLEAR  
LEGISLATIVE AUTHORIZATION OVER  
AGENCY FLEXIBILITY**

## Scholarly Tension:

**ACCOUNTABILITY V. REGULATORY CAPACITY**

West Virginia v. EPA, 597 U.S. 697 (2022); Deacon & Litman, The New Major Questions Doctrine, 109 Va. L. Rev. 1009, 1012–20 (2023); Richard J. Lazarus, The Rule of Five (2020).

# Recommendations

1

Congress should enact legislation explicitly authorizing system-wide emissions regulation under the Clean Air Act

2

The EPA should design climate regulations that remain within facility-level authority while maximizing emissions reductions

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Federal and state governments should coordinate regulatory efforts to reduce fragmentation in climate policy

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# Sources

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- Clean Air Act § 111, 42 U.S.C. § 7411 (1990)
- Clean Power Plan, 80 Fed. Reg. 64,662 (Oct. 23, 2015)
- Daniel T. Deacon & Leah M. Litman, The New Major Questions Doctrine, 109 Va. L. Rev. 1009 (2023)
- Massachusetts v. EPA, 549 U.S. 497 (2007)
- Paris Agreement (2015)
- Richard J. Lazarus, The Rule of Five: Making Climate History at the Supreme Court (2020)
- West Virginia v. EPA, 597 U.S. 697 (2022)

