Last June, the Supreme Court formally unveiled the "major questions" doctrine in the landmark environmental case *West Virginia v. EPA*. In rejecting EPA's plan to regulate greenhouse gas emissions from existing power plants under Section 111(d) of the Clean Air Act, the Court stated that "agency decisions of vast economic and political significance" (i.e., those that pose "major questions") must be made "pursuant to a clear delegation" from Congress.

The Court held that EPA's Clean Power Plan, which would have facilitated an ongoing power industry shift from coal and natural gas to renewable energy sources, violated the doctrine because such a shift fell outside the authority Congress created in 111(d). (Sean Hecht and I co-authored an amicus brief in support of EPA in the case.)

West Virginia portended significant changes in federal administrative law in general and environmental law in particular, given the breadth and ambition of many of core federal environmental statutes and the current Court's clear interest in restricting agency authority. Last fall, a group of Republican-led states and fossil fuel companies delivered, challenging EPA's 2021 greenhouse gas emissions standards for automobiles.

The petitioners argue that the standards, which are based in part on anticipated increases in electrification in the US light-duty vehicle market (up to 17 percent of sales by 2026) violate the "major questions" doctrine, in addition to other related claims. In short, they allege that EPA is barred from issuing rules that consider electrification as a compliance strategy because Section 202 of the Clean Air Act does not expressly discuss electrification, and because the standards would have significant impacts on vehicle manufacturing, employment in the fossil fuel sector, and the electrical grid.

I filed an amicus brief in the case (*Texas v. EPA*, D.C. Circuit) on behalf of Senator Tom Carper, Chair of the Environment and Public Works Committee, and Representative Frank Pallone, Ranking Member of the Energy and Commerce Committee, in support of EPA's standards and the ability of Congress to issue broad grants of authority to expert agencies. (I filed the brief in my individual capacity and not on behalf of UC Berkeley or CLEE.)

In addition to noting that the petitioners mischaracterize EPA's rule as an electrification mandate rather than as an emissions standard that can be achieved in part through electrification (among other options), the brief argues three main points:

- By directing EPA to issue standards that control motor vehicle emissions in order to protect public health and welfare, Congress in 1970 did expressly direct EPA to consider advanced technologies like electrification.

- Because of this clear authorization, the "major questions" doctrine does not apply in the first place–and if it did, not only are the petitioners' claims about political and economic implications overstated, but they also are so broad as to effectively handcuff almost any federal agency rulemaking on matters that relate to modern technologies and commerce and might implicate complex supply chains.
- In addition, Congress's recent passage of the Infrastructure Investment and Jobs Act and the Inflation Reduction Act, which direct billions of dollars toward electric vehicle purchases, manufacturing, and infrastructure, demonstrate Congress's clear commitment to advancing vehicle electrification, grasp of supply chain and grid issues, and intent to support reasonable regulations like EPA's rule.

While the rule is ultimately modest–many manufacturers are already committing to more ambitious electrification plans–the case has potentially significant implications for EPA's ability to address environmental challenges. The rule is squarely in line with EPA's prior decades of experience regulating vehicles under the Clean Air Act, and the relevant provisions of the law could hardly be clearer about the authority that is vested in the agency; a successful "major questions" challenge could seriously disrupt the agency's ability to execute core functions. You can access all of the briefs and case materials here.

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The following was written by Grayson Peters, Berkeley Law J.D. Candidate Class of 2024

At CLEE, we have begun to explore how federal courts are applying the major questions doctrine in the aftermath of *West Virginia v. EPA*. Working from a list of federal court opinions that discuss the major questions doctrine, we are developing a summary analysis to track when courts apply the doctrine in environmental cases, how they evaluate the existence of a "major question" (i.e., economic impacts, political significance), and when they identify a violation of the doctrine. Other criteria include the statute, rule, and environmental topic at issue and the president who appointed the author of the opinion.

To date we have identified fourteen federal court cases since *West Virginia* that mention the major questions doctrine. Of those, six identified violations and five found no violation (the remaining three cases mention, but do not apply, the doctrine). Trump-appointed judges wrote all six of the opinions that found a violation.

Of these cases, only two – *Natural Grocers v. Vilsack* and *United States v. Empire Bulkers Ltd.* – applied the major questions doctrine to environmental regulations. *Natural Grocers* concerned required disclosures in marketing materials for bioengineered foods and *Empire*

Bulkers concerned regulations of oil discharges from oil tankers, drillings rigs, and platforms. Neither court (under opinions written by an Obama appointee and a Clinton appointee) found a major questions doctrine violation.

So, *Texas v. EPA* is one of the first major environmental cases that will test the federal courts’ interpretation of the “major questions” doctrine. How the D.C. Circuit rules will be an important signal of the extent to which the judiciary may further curtail administrative agency authority to regulate pursuant to federal environmental statutes. Analyzing the outcomes in *Texas* and other “major questions” cases presents a rare opportunity to track in real time the development of a novel judicial theory with significant real-world implications for the environment and human health.