President Biden hoped to go to the international climate summit in Glasgow with momentum behind him. He wanted to reestablish US credibility with concrete progress on climate change. Instead, the ability of the US to take action on climate change is shrouded in doubt. Biden suffered an embarrassing defeat at the hands of members of his own party in the House, while the Supreme Court gave a menacing signal that it would block any effort at bold climate action by EPA.

As a sign of the uncertainties surrounding congressional action, progressives blocked passage of an infrastructure bill in the House. Progressives wanted firmer evidence that a companion bill, with much greater funding for climate issues, would pass the Senate. That bill could pass the Senate without facing a filibuster under the "reconciliation" process, but only with unanimous support from Democrats. The key Democrats in the Senate, Manchin and Sinema, have been moving toward support for a pared down bill, one that offers less money and weaker incentives for clean energy. Still, the deal wasn't solid enough for House progressives, so they torpedoed the infrastructure bill — a bill that contained substantial funding for climate-related projects like new power transmission lines. The continuing conflict and distrust between factions within the Democratic party does not augur well for further legislative efforts.

One key provision that Manchin had already axed would have rewarded utilities that made progress on cutting emissions and penalized those that failed to do so. No matter, the Administration said, EPA regulation can fill the gap. Barely were those words spoken when the Supreme Court took aim at this option. The legal issues in the case are abstruse, but they come down to a single question: Can the administration use open-ended existing laws to take bold action on urgent problems? The Court seems poised to say that the answer is no. Worse, it is doing so in a case that it has no reason to hear, brought by parties whose standing to sue is dubious.

The case involves the Trump rollback of the Obama EPA's signature climate policy, the Clean Power Plan (CPP). The plan required utilities to change the mix of generation they used in favor of cleaner power, switching from coal to natural gas or renewables, or from gas to renewables. The Trump EPA overturned the Obama policy on the ground that EPA only had the power to regulate activities within a single power plant ("inside the fence line"), as opposed to the mix of power plants used to produce power. An appeals court said that the statute gave EPA the power to consider broader options, not just "inside the fence line" measures and sent the rule back to EPA.

Normally, the Supreme Court wouldn't intervene at this point, because EPA might or might not end up opting for "outside the fence line" measures. That's why none of the utilities in the case sought Supreme Court review. Only a few coal mining companies and states sought review. Their theory was that a future EPA rule *might* end up imposing significant restrictions on the use of coal which might then cause them significant economic harm. That's by no means a foregone conclusion. They had also opposed the Trump rule, not for overturning the Obama rule but because they thought even Trump's fairly pathetic substitute was beyond EPA's power. The Supreme Court refused to hear argument on the point.

But the Court did agree to consider whether EPA had the power to issue a rule of such "sweeping economic and political significance" as the Clean Power Plan without explicit congressional directions. The Court's willingness to jump into this litigation in midstream is an ominous indication of what the answer is going to be. It's all the more striking because the actual economic impact and political stakes involving some future EPA rule are hard to predict. It turned out, for instance, that the Clean Power Plan would have cost much less than industry predicted at the time. Anyway, we really have no idea what a future EPA effort would look like, let alone its cost and political impact. There have been serious arguments by some experts that an "inside the fence line" approach would be best after all.

Requiring express congressional decisions on all matters of "sweeping economic and political significance" may sound good. But that vague standard puts administrative actions taken under broader mandates at the mercy of highly subjective decisions by judges regarding the economic and political stakes of a dispute — matters that are well outside their competence. Moreover, it foists the Court directly into the heart of these disputes, putting it at the center of the biggest policy issues facing society. Furthermore, the test seems to be asymmetric — the conservative Justices appear to see no problem with regulatory rollbacks, however sweeping, economically significant, or controversial — it's only expanded regulations that worry them. Yet, it seems all too likely that a majority of current Justices are just itching to have that kind of veto power over regulations.

Both the fumbled legislative effort in the House and the Court's latest conservative activism are bad news for US climate policy and a poor prelude to international negotiations. The congressional deadlock is also a worrisome sign for efforts to achieve major action of any kind from Congress, while the Supreme Court seems intent on cementing its reputation as more ideological than principled.

House leaders say they're going to try again this week. If they have better luck this time, last week's loss may look like a blip. Biden might also be able to head off a harmful Supreme Court opinion, beginning with a formal repeal of the Clean Power Plan just to take that off the table. Proposing stringent "inside the fence line" requirements on coal plants might persuade the Court that it should stay out of the controversy for now.

Last week wasn't an irretrievable disaster. But there's no denying that the events of the week were serious setbacks at at a time when there's an urgent need for progress.