

Court watchers and environmentalists are waiting with bated breath for the Supreme Court to rule on *West Virginia v. EPA*, the Court's most important climate change case in a generation. The issue in that case is what, if anything, EPA can do to regulate carbon emissions from power plants and factories. Yesterday, conservative states asked the Court to intervene in another climate change case. How the Court responds could give us hints into just how far the activist conservative majority is likely to go in the *West Virginia* case.

The new case is a challenge to the government's use of the social cost of carbon in making decisions about regulation. The social cost of carbon is an estimate of the harm done by the emission of a single ton of carbon. The Biden Administration is preparing to issue a new estimate of the harm, which is guaranteed to be much higher than the Trump Administration's estimate. Conservative states sued to stop the issuance of this new estimate. Among other things, they argued that the estimate ran afoul of the major questions doctrine, which says that Congress must be explicit in giving agencies the authority to decide certain high-profile issues. The "major question" regarding the social cost of carbon is supposedly whether to include damage from climate change outside the borders of the United States in the estimate. That doctrine is also a central issue in the *West Virginia* case.

A hyper-activist district judge banned the government from using any estimate of the social cost of carbon in any decision. The conservative Fifth Circuit reversed. It ruled that the states lacked standing since the new estimate had never been issued and the states could not point to any concrete injury. There is a broad consensus among experts that the district judge's decision was way out of bounds.

That brings us to the shadow docket case. The states have [asked](#) the Supreme Court to stay the Fifth Circuit's decision. The federal government has until May 9 to respond, and we should get a ruling about the request soon afterward. The votes should give us a signal of the strength of conservative fervor to squelch climate action. Here are the possible outcomes and how we should view them:

**The stay request is granted.** *Interpretation:* conservative activism has reached a fever pitch and we can expect a disastrous outcome in *West Virginia v. EPA*. Hold onto to your hats!

**The state request is denied but with separate concurring or dissenting opinions.** *Interpretation:* The opinions will give us important clues about how the Justices are thinking about climate regulation.

**The state request is denied outright with no separate opinions.** *Interpretation:* The Court hasn't gone totally nuts.

Stay tuned for further developments.