There's been a lot of recent talk about whether the Inflation Reduction Act (IRA) indirectly overrides *West Virginia v. EPA*. The answer to that is probably "no." However, some IRA provisions *will* help lawyers defend certain regulatory actions. IRA may also have an important framing effect when courts are considering the reasonableness of agency actions. Finally, it could help California's claim of authority to phase out gas and diesel.

EPA authority.

The argument made in the media is that IRA overrides the Supreme Court because of provisions that characterize greenhouse gases as pollutants or otherwise indicate EPA has authority to regulate them. Moreover, IRA § 60107 provides EPA with $87 million "to ensure that reductions in greenhouse gas emissions are achieved through use of existing authorities of [the Clean Air Act]." Which pretty clearly says that EPA *has* existing authority.

That can't hurt but it may not be that much help either. The Court ruled in 2007 that greenhouse gases are pollutants and that EPA has authority to regulate them. It seems very unlikely that the Court would actually overrule the 2007 decision anyway. Not a single Justice in *West Virginia v. EPA* called for reconsidering that decision. What the majority did say is that a specific EPA regulation went too far, which has nothing to do with whether EPA has jurisdiction over greenhouse gases.

I doubt that IRA would be enough to change the Court's view that EPA had gone too far in the *West Virginia case,* given the Court's belief that EPA was leveraging slender legal authority to make vast changes in the energy sector. However, I can imagine closer cases in which IRA might shape a court's view of the reasonableness of agency action. The statute does show that Congress is comfortable with the idea of major changes over relatively short time periods. In addition, by lowering the costs of those changes through tax credits and cash subsidies, IRA may have made some regulations financially feasible for industry that might not have been otherwise.

This may be very helpful to EPA when it tries to rewrite the regulation that the Court struck down in the *West Virginia* case. It still seems pretty clear that EPA can't simply try the same thing again. Nevertheless, EPA may have more flexibility because of IRA to try something relatively big.

One other point might be worth mentioning. IRA § 60111 provides a small amount of

funding for EPA to strengthen corporate emissions disclosures. This provision arguably shows that Congress regards standardized disclosures as good. That may give a little bit of a boost for the SEC's current corporate disclosure rule-making, by undermining the argument corporate climate disclosures are so radical that SEC needs special legislation to require them.

State authority

There's one important area where IRA may indirectly increase *state* regulatory power. IRA §60105(g) gives states funding to "adopt and implement greenhouse gas and zero-emission standards for mobile sources pursuant to section 177 of the Clean Air Act." If you turn to section 177, you'll find that it allows other states to adopt California emissions standards. By implication, Congress seems to be endorsing California's power to adopt greenhouse gas standards and require zero-emission vehicles.

Both the Bush and Trump Administrations argued that California lacked authority to adopt emissions standards for greenhouse gases. IRA doesn't completely blow that position out of the water but it will make it much harder for courts or a later Republican president to go that way. It also makes it harder to argue that EPA approval of California standards triggers the "major question doctrine," which requires that an agency have exceptionally clear statutory authority.