

Milad Modabber MD, MSc., FRCSC, DABO  
Cornea, Cataract and Refractive Surgeon  
Executive board, Eye Physicians and Surgeons of Ontario

### **Thoughts on Supreme Court Decision: West Virginia v. Environmental Protection Agency**

Climate change's causes and dangers are no longer subject to serious doubt. Modern science is "unequivocal that human influence"—in particular, the emission of greenhouse gases like carbon dioxide—"has warmed the atmosphere, ocean, and land."<sup>1</sup> Yet recently, the conservative majority of the U.S. Supreme Court limited the Environmental Protection Agency's (EPA) ability to regulate carbon emissions in their decision on West Virginia v. Environmental Protection Agency.<sup>1</sup>

This U.S. Supreme Court case related to the Clean Air Act and the ability of the EPA to regulate CO<sub>2</sub> emissions and its impact on climate change.

In the 6-3 decision, the court ruled that the Clean Power Plan established under the Barack Obama administration went beyond the EPA's regulatory mandate. It was asserted that the EPA had exceeded congressional authority by pushing utilities to make system-wide moves away from coal power generation and toward renewable forms of energy, such as wind and solar energy.

Congress did not grant the EPA authority to regulate emissions from existing plants based on generation shifting mechanisms, which would have invalidated the Clean Power Plan. The EPA may continue to regulate emissions at existing plants through emissions reduction technologies. However, it placed restrictions on how far that authority reaches. Now, the mere prospect of judicial review has the potential to chill EPA's regulation and lead to significant delays as the EPA determines and tests its limits of power. This in turn curbs efforts to address the climate threat where, as the dissent warns, the stakes are high.<sup>1</sup>

The American College of Physicians (ACP) expressed their grave concerns on the consequences of this Supreme Court decision upon the health of Americans and those throughout the world. This decision reverses efforts that mitigate the harm of climate change on human health, potentially resulting in even higher rates of respiratory and heat-related illnesses, as well as food and water insecurity. The elderly, the chronically ill, and the poor are especially vulnerable to these potential health consequences.<sup>2</sup>

Prior to this Supreme Court decision, Congress had not passed major legislation regarding greenhouse gas emissions since 2008, and it had appeared in political deadlock over further legislative measures. Thus, any action proposed by the EPA would have had to rest on statutes, likely drafted long before the dangers of climate change were widely recognized. This would have limited the EPA's ability to reduce emissions from the power sector. Ironically, since Congress had passed the Clean Air Act in 1970, there had been an explosion of CO<sub>2</sub> in the atmosphere. When the Clean Air Act was passed, CO<sub>2</sub> emissions were 325 parts per million (ppm). In May 2022, the emissions reached 421 ppm, the highest level in four million years.

However, in a positive development, and perhaps in response to the Supreme Court decision, the Inflation Reduction Act was signed into law by President Biden on Aug. 16, 2022. Billed as the single largest climate legislation in U.S. history, the Inflation Reduction Act will increase American energy security, invest in cleaner and renewable energy production, spur decarbonization across all sectors of the economy, and drive innovation and support companies tackling climate change. In doing so, this bill would help put the U.S. on a path to roughly 40% emissions reduction by 2030. We are thus hopeful that this bill would help counterbalance the negative impacts of Supreme Court decision.

## References

1. *WEST VIRGINIA ET AL. v. ENVIRONMENTAL PROTECTION AGENCY ET AL.*, 597 U.S. 483 (2022), [https://www.supremecourt.gov/opinions/21pdf/20-1530\\_n758.pdf](https://www.supremecourt.gov/opinions/21pdf/20-1530_n758.pdf)
2. Mire, Ryan. "Internal Medicine Physicians Concerned by Court Decision To Limit EPA Authority over Carbon Emissions." *American College of Physicians*, 30 June 2022, <https://www.acponline.org/acp-newsroom/internal-medicine-physicians-concerned-by-court-decision-to-limit-epa-authority-over-carbon>