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**From:** Swanson, Nicholas [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3A03C53D255D4581ACB3CB66F04E5DF1-SWANSON, NICHOLAS]  
**Sent:** 7/1/2022 2:48:36 PM  
**To:** Pastor, Dan [Pastor.Dan@epa.gov]  
**Subject:** RE: Discussion/debrief of SCOTUS decision - WV vs EPA

Hey Dan,

Welcome to EPA and glad you got to listen in yesterday.

The major questions doctrine doesn't really have any bounds; it is the discretion of the courts. However, I don't think it will have as broad of an impact across our EPA rules. Basically the major questions doctrine contemplates whether what we are doing is outside of the bounds or beyond what Congress would have envisioned within the writing of the Clean Air Act (at least for our purposes). When the CAA was last revised in 1990 (and originally written), they didn't foresee GHGs being regulated, let alone to the degree and impact that we are using under section 111. Congress did foresee EPA using specific provisions that are explicit in how we regulate and what we regulate (HAPs from 112 is a great example). Therefore, if we have a VERY impactful rule of similar structure as other rules in the program and we are regulating pollutants that we have expressed authority to regulate, I don't think that it would trigger the major questions doctrine as it would be in line with what and how Congress envisioned the program.

This is my non-lawyer explanation and thought process on it but hope it helps. What you are posing about lower courts certainly could happen, but I would doubt it would

Nick

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**From:** Pastor, Dan <Pastor.Dan@epa.gov>  
**Sent:** Thursday, June 30, 2022 7:40 PM  
**To:** Swanson, Nicholas <Swanson.Nicholas@epa.gov>  
**Subject:** RE: Discussion/debrief of SCOTUS decision - WV vs EPA

Hi Nicholas,

I just hired in as an Economist in the HEID/AEG and I listened in today on the chat about the recent SCOTUS ruling. I'm, still getting up to speed with sections 111 and 112 of the CAA so please forgive me if I'm asking a naïve question.

After hearing the comments and reading a bit of the opinion, one thing question I have is regarding the limiting principle of the Major Questions doctrine. Specifically, is there one? Is it possible that a rule such as an adjustment to the ozone levels (which I think is already well within our authority) could be found to be a Major Question since it could have a potentially large impact? I wonder if a lower court judge could expand the application of that rule to impact more of what we do under existing law.

Anyway, thanks for taking the time today. I enjoyed hearing a legal perspective, if only an informal one.

Best,  
Dan

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**From:** Swanson, Nicholas <Swanson.Nicholas@epa.gov>  
**Sent:** Thursday, June 30, 2022 10:05 AM  
**To:** Stenhouse, Jeb <Stenhouse.Jeb@epa.gov>; Hutson, Nick <Hutson.Nick@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Keaveny, Brian <Keaveny.Brian@epa.gov>; Assmus, Phillip <Assmus.Phillip@epa.gov>;

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**Cc:** Pastor, Dan <[Pastor.Dan@epa.gov](mailto:Pastor.Dan@epa.gov)>; Sasser, Erika <[Sasser.Erika@epa.gov](mailto:Sasser.Erika@epa.gov)>; Choudhury, Mayesha <[Choudhury.Mayesha@epa.gov](mailto:Choudhury.Mayesha@epa.gov)>

**Subject:** RE: Discussion/debrief of SCOTUS decision - WV vs EPA

I am sure that there will be good summaries in short order, but attached is the SCOTUS opinion

-----Original Appointment-----

**From:** Swanson, Nicholas

**Sent:** Tuesday, June 28, 2022 4:18 PM

**To:** Swanson, Nicholas; Stenhouse, Jeb; Hutson, Nick; Culligan, Kevin; Keaveny, Brian; Assmus, Phillip; Howard Hoffman ([hoffman.howard@epa.gov](mailto:hoffman.howard@epa.gov)); Vijayan, Abi; Adamantiades, Mikhail; Ashley, Jackie; Profeta, Timothy; Sherry, Christopher; Birnbaum, Rona; Hogan, Stephanie; LaCount, Melanie; Fellner, Christian; Honda, Gregory; Sims, Ryan; Marcy, Cara; Eschmann, Erich; Sugerik, Corey; Callihan, Ryan; Vetter, Cheryl; Huettelman, Justine; Argentieri, Sabrina; Torres, Elineth; Lalani, Imran; Greenglass, Nora; Ashley, John; Caparoso, Jennifer; Benish, Sarah; Weatherhead, Darryl; Macpherson, Alex ([Macpherson.Alex@epa.gov](mailto:Macpherson.Alex@epa.gov)); Landau, Rebecca; Lawson, John; Smith, Korbin

**Cc:** Pastor, Dan; Sasser, Erika; Choudhury, Mayesha

**Subject:** Discussion/debrief of SCOTUS decision - WV vs EPA

**When:** Thursday, June 30, 2022 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

**Where:** Microsoft Teams Meeting

No SCOTUS decision today so rescheduling.

Open forum to discuss the debrief. Time set aside to discuss the SCOTUS decision on West Virginia vs EPA for those that desire (provided we receive the decision on Wednesday). Feel free to forward others that might have interest

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