

ONE HUNDRED SIXTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641

September 23, 2022

The Honorable Michael S. Regan  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Administrator Regan:

I write concerning the Supreme Court’s ruling in *West Virginia v. EPA* this past June, which clarified the limitations of certain agency action.<sup>1</sup> Article I, Section 1 of the United States Constitution vests “all legislative powers” in Congress.<sup>2</sup> Our founders provided Congress with legislative authority to ensure lawmaking is done by elected officials, not unaccountable bureaucrats.

The Biden administration has largely relied on executive action to advance its radical agenda. For example, in his first year, President Biden issued more executive orders<sup>3</sup> and approved more major rules<sup>4</sup> than any recent president. Such reliance on the administrative state risks undermining our system of government when the executive actions exceed the authority provided by Congress.

In *West Virginia v. EPA*, the Court invoked the “major questions doctrine” to reject an attempt by your agency to exceed its statutory authority.<sup>5</sup> As the Court explained, “[p]recedent teaches that there are ‘extraordinary cases’ in which the ‘history and breadth of the authority that [the agency] has asserted,’ and the ‘economic and political significance’ of that assertion,

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<sup>1</sup> *West Virginia v. Environmental Protection Agency*, 597 U.S. \_\_\_ (2022).

<sup>2</sup> U.S. Const. art. I, § 1.

<sup>3</sup> Federal Register, *Executive Orders* (accessed Aug. 2022), available at <https://www.federalregister.gov/presidential-documents/executive-orders>

<sup>4</sup> Deep Dive, *How Biden Has Made Policy With Short-Term, Costly Rules: Charts*, Bloomberg Law (May 2022), available at <https://news.bloomberglaw.com/environment-and-energy/how-biden-has-made-policy-with-short-term-costly-rules-charts>

<sup>5</sup> *West Virginia*, 597 U.S. at 5-6.

provide a ‘reason to hesitate before concluding that Congress’ meant to confer such authority.’<sup>6</sup> Under this doctrine, an agency must point to “clear congressional authorization for the authority it claims.”<sup>7</sup> However, EPA could not point to such authorization. Rather, it “discover[ed] an unheralded power representing a transformative expansion of its regulatory authority in the vague language of a long-extant, but rarely used, statute designed as a gap filler.”<sup>8</sup> Notably, such discovery “allowed [EPA] to adopt a regulatory program that Congress had conspicuously declined to enact itself.”<sup>9</sup> As a result, the Court rejected EPA’s attempt to so plainly exceed its statutory authority.

Unfortunately, the attempt to invent new authorities is not unusual for the Biden administration. The Court has also struck down the Centers for Disease Control and Prevention’s attempt to impose an eviction moratorium<sup>10</sup> and the Occupational Safety and Health Administration’s attempt to impose a vaccine or testing mandate.<sup>11</sup> Thankfully, in *West Virginia v. EPA*, the Court made clear that such reliance on expansive interpretations of legislative authorities by the administrative state will no longer be allowed. To be clear, “the Constitution does not authorize agencies to use pen-and-phone regulations as substitutes for laws passed by the people’s representatives.”<sup>12</sup> In the United States, it is “the peculiar province of the legislature to prescribe general rules for the government of society.”<sup>13</sup>

The EPA was established in 1970 to implement a number of federal environmental laws. The majority of your agency’s legal authority is derived from statutes which are, pursuant to Rule X of the Rules of the House of Representatives, under the jurisdiction of the Committee on Energy and Commerce. These acts include the Clean Air Act, the Safe Drinking Water Act, the Solid Waste Disposal Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and the Superfund Amendments and Reauthorization Act of 1986.

As the committee of jurisdiction overseeing your agency, I assure you the Committee and its members will exercise our robust investigative and legislative powers to not only forcefully reassert our Article I responsibilities, but to ensure the Biden administration does not continue to exceed Congressional authorizations. Accordingly, to assist in this effort, please answer the following no later than October 7, 2022:

1. As it relates to your agency, please provide the following:
  - a. A list of all pending rulemakings and the specific Congressional authority for each rulemaking.

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<sup>6</sup> *Id.* at 4 (citing *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 129, 159-160).

<sup>7</sup> *West Virginia*, 597 at 4.

<sup>8</sup> *Id.* at 5.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Alabama Assn. of Relators v. Department of Health and Human Servs.*, 594 U.S. \_\_\_ (2021).

<sup>11</sup> *National Federation of Independent Business v. Occupational Safety and Health Administration*, 595 U.S. \_\_\_ (2022).

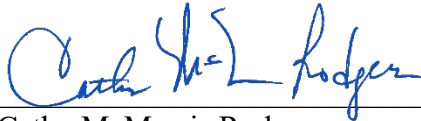
<sup>12</sup> *West Virginia*, 597 at 56 (Gorsuch, J., concurring).

<sup>13</sup> *Fletcher v. Peck*, 6 Cranch 87, 136 (1810).

- b. A list of all expected rulemakings and the specific Congressional authority for each rulemaking.
2. A list of each change to each Environmental Protection Agency program, practice, or rule made pursuant to each executive order issued by President Biden.
3. A list of reviews, assessments, and actions implemented by your agency in response to *West Virginia v. EPA*.

If you have any questions, please contact Minority committee staff at (202) 225-3641.

Sincerely,

A handwritten signature in blue ink that reads "Cathy McMorris Rodgers". The signature is written in a cursive style with a horizontal line underneath it.

Cathy McMorris Rodgers  
Republican Leader  
House Committee on Energy and  
Commerce