

20-1778 WESTMORELAND MINING HOLDINGS V. ENVIRONMENTAL PROTECTION AGENCY

DECISION BELOW: 985 F.3d 914

LOWER COURT CASE NUMBER: 19-1140, 19-1165, 19-1166, 19-1173, 19-1175, 19-1176, 19-1177, 19-1179, 19-1185, 19-1186, 19-1187, 19-1188

QUESTION PRESENTED:

Clean Air Act Section III(d), 42 U.S.C. § 7411(d), authorizes EPA to impose standards of performance for existing sources' emission of certain pollutants. In *American Electric Power Co. v. Connecticut*, 564 U.S. 410,424 (2011), this Court endorsed EPA's longstanding view that it may not apply Section III(d) to sources that are already regulated under the Act's stringent Section 112 "hazardous air pollutants" program. Nonetheless, EPA promulgated its "Clean Power Plan" to impose carbon dioxide emission limits under Section III(d) on coal-fired power plants that are already regulated under Section 112. "[O]ne of the most consequential rules ever proposed by an administrative agency," Pet.App.172a, the Clean Power Plan would fundamentally transform the U.S. energy system by "shifting" generation from fossil-fuel-fired plants to other sources of electricity. After EPA repealed the Clean Power Plan as *ultra vires*, the D.C. Circuit vacated that action on the ground that Section III(d) effectively places "no limits" on EPA.

Accordingly, the questions presented are:

1. Whether EPA may employ 42 U.S.C. § 7411(d) to impose standards of performance on existing stationary sources that are regulated under the "hazardous air pollutants" program of 42 U.S.C. § 7412.

2. Whether 42 U.S.C. § 7411(d) clearly authorizes EPA to decide such matters of vast economic and political significance as whether and how to restructure the nation's energy system.

LIMITED TO QUESTION 2 PRESENTED BY THE PETITION.

Consolidated with 20-1530, 20-1531, and 20-1780 and a total of one hour is allotted for oral argument

CERT. GRANTED 10/29/2021