

Pivoting on greenhouse gas regulation

July 5 2022, by Steve Cohen



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As expected, in *West Virginia v. EPA*, the Supreme Court continued its radical right-wing and ideological effort to limit the regulatory authority of federal administrative agencies. This terrible decision among a series of terrible decisions is unfortunate but far from fatal to efforts to transition from fossil fuels to renewable energy. Fortunately for our

planet, fossil fuels are already more expensive than renewable energy. Moreover, this price gap will only continue to grow. The sun is free and will outlast our species. Fossil fuels are finite and must be extracted from the ground, transported, and burned. Each step pollutes and costs money. In contrast, solar cells, wind, and battery technologies continue to advance and become more reliable, efficient, and less expensive. In the long run, there is little doubt that renewable energy will drive fossil fuels from the marketplace. The problem is that climate change requires a more rapid transition away from fossil fuels.

The Supreme Court's ill-advised decision will set a precedent that will impair critical efforts to promote America's health and welfare, but in the case of climate change, it simply compels another approach—and one that I favor. Rather than forcing utilities to switch away from fossil fuels, the [federal government](#) should pay them to do it. Rather than raise the price of energy, we should subsidize it—but limit the subsidies to renewable energy. Some may say that the right wing and fossil fuel industry will use their typical political disinformation tactics to fight this subsidy; it will be our job, then, to paint them as favoring higher energy prices.

The form of subsidy could be a long-term loan for new renewable energy generation, storage, and transmission facilities that would be repaid by the difference between fossil fuel–based electricity rates and lower renewable energy rates. Renewable energy costs less, and with federal capital, the price difference can be used to pay for new, modern renewable energy–based electrical systems. Utility bills would maintain a charge for the capital costs of renewable energy construction until the debt is retired.

The traditional method of compelling [behavior change](#)—command and control regulation or taxes and user fees—has the effect of raising prices as they compel behavior. This approach has the benefit of mass coverage

via compulsion. A pivot to a subsidy reduces political friction and would not violate the Constitution if enacted by Congress. But utilities might still resist accepting the subsidy. We saw this under Obamacare, where states run by conservative ideologues refused to accept federal subsidies to help insure people who could not afford health care. Perhaps these radical right-wing state governments will be more willing to lower energy prices for everyone than to allow the federal government to subsidize [health care](#) for their poor citizens.

The headlines last week indicated that the Supreme Court dealt a death blow to climate regulation and the drama and extremity of the action attracted attention. According to Adam Liptak in the New York Times:

"The Supreme Court on Thursday [limited the Environmental Protection Agency's ability to regulate carbon emissions from power plants](#), dealing a blow to the Biden administration's efforts to address climate change. The vote was 6 to 3, with the court's three liberal justices in dissent, saying that the majority had stripped the E.P.A. of "the power to respond to the most pressing environmental challenge of our time." Chief Justice John G. Roberts Jr, writing for the majority, only glancingly alluded to the harms caused by climate change. Justice Elena Kagan began her dissent with a long passage detailing the devastation the planet faces, including hurricanes, floods, famines, coastal erosion, mass migration and political crises. The question in the case, Chief Justice Roberts wrote, turned on the scope of the language of the Clean Air Act. Under it, he wrote, Congress had not clearly given the agency sweeping authority to regulate the energy industry."

Roberts and his colleagues must be reading a different Clean Air Act than the one enacted by Congress because, indeed, it does provide "sweeping authority." Americans had seen the smog in Los Angeles and gave the government the power to clean it up. Still, by my reading of this terrible decision, the EPA could still regulate carbon dioxide emissions

at individual [power plants](#). The people who wrote the Clean Air Act knew that technology would advance in ways they couldn't predict and left it up to EPA to address new threats as they emerged. As [I wrote](#) a few weeks ago, the impact of the Supreme Court on climate change may be far less than its impact in more complex, technical areas that are more difficult for legislators to understand. The radical, extreme view of this court precludes appropriate delegation of technical decision-making from elected officials to agency experts. Climate change is far easier to understand than issues like genetic engineering or social media algorithms. This ruling reflects a fundamental misunderstanding of the dangers of modern technology.

Despite the ideological idiocy of the Supreme Court, there are many ways to control [greenhouse gasses](#) other than the approaches now envisioned by EPA. A little creativity and a pivot away from the approach rejected by the court is certainly called for. Rather than focusing on policies to reduce [climate change](#) or greenhouse gas pollution, we should build support for the modernization of our energy system. Make it more efficient, resilient, and reliable, and power it with [renewable energy](#). If you have a home system and the grid is your backup, you may never lose power, and your cost of energy will go down. Reduction of greenhouse gasses and pollution from fossil fuel extraction would be a pleasant side effect of this more technologically advanced energy system.

A lower cost and more reliable [energy](#) system would have universal appeal. You would not need to care about a greenhouse gas reduction policy to support that goal. The importance of electricity in our daily life makes this issue highly salient. Refrigeration, the internet, smartphones, television, computers, cooling, and, in some cases, home heating and water heating all require electricity. More and more of our time is spent utilizing these technologies. Electricity is almost (but not quite) as important to modern life as food and water. If you think I'm wrong, visit

a home with teenagers lacking wi-fi or cell coverage during a power blackout. It's not a pretty picture.

While the Supreme Court has embarked on a dangerous path, I think the headlines about the death of climate policy are incorrect. The time frame of this transition needs to be addressed more realistically than it has been to date. We are hooked on [fossil fuels](#), and all the political will in the world can only do so much to speed the transition to renewables. This change will take time, and we need to approach it with determination, creativity, and flexibility.

Reading the headlines and listening to environmental advocates, I sometimes think the reaction to these setbacks simply feeds into the polarized good guy/bad guy mindset that plagues our politics. This Supreme Court, like the court that FDR faced during the New Deal, is overstepping its powers and undermining its own legitimacy. While FDR's court-packing strategy failed, his attack on the Supreme Court probably resulted in more moderate decisions. President Biden needs to study FDR and the court's attack on the New Deal and use the presidency to fight back. While he does not have FDR's congressional majority, public support for the right to choose and the right to breathe clean air and reduce [extreme weather events](#) remains strong and available to mobilize.

The Supreme Court decision in *West Virginia v. EPA* reinforces the sense of dysfunction in our national government. Action will need to focus on state and local governments along with powerful corporations and institutions to continue forward motion in the transition to environmental sustainability.

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