

Two Important Supreme Court Cases Strongly Support the CO₂ Coalition's Supreme Court Strategy

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Two recent Supreme Court cases validate the CO₂ Coalition's Supreme Court Strategy to file comments that can be used in briefings by those challenging various Net Zero regulations in the Courts of Appeal and then the Supreme Court. Coalition comments were filed by Drs. William Happer (Princeton) and Richard Lindzen (MIT) in challenges to:

- The latest Environmental Protection Agency (EPA) attempt to eliminate fossil fuel electric power plants, [Regulations.gov](https://www.regulations.gov)
- A Securities and Exchange Commission (SEC) rule to make companies disclose supposed climate risks, [s71022-20132171-302668.pdf \(sec.gov\)](https://www.sec.gov/section1022-20132171-302668.pdf).
- A Department of Energy (DOE) rule to effectively eliminate gas stoves, [Regulations.gov](https://www.regulations.gov)
- Supplemented by “Net Zero Policies Will Have a Trivial Effect on Temperature, But Disastrous Effects on People Worldwide”, [Net Zero Policies Will Have a Trivial Effect on Temperature, But Disastrous Effects on People Worldwide - CO₂ Coalition](https://www.co2coalition.org/Net-Zero-Policies-Will-Have-a-Trivial-Effect-on-Temperature-But-Disastrous-Effects-on-People-Worldwide)

One case, *Loper Bright Enterprises v. Raimondo*, decided June 28, overruled the so-called *Chevron deference* to agencies' interpretation of ambiguous statutes. In the Court's words: “Courts [must] ... exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous; *Chevron* is overruled.” In this case, lower courts had deferred to the agency interpretation of a statute to allow the agency to impose the cost of having observers on herring fishermen's boats paid by the fishermen. The Supreme Court rejected that interpretation.

As a practical matter, until this ruling, courts routinely dismissed cases because of deference to agency interpretations. *Loper* is a major opportunity to challenge agency statutory interpretations without this deference.

The second case, *Ohio v. EPA*, was decided the day before. There, the Supreme Court ruled the EPA's “Good Neighbor” rule regarding ozone and nitrous oxide should be stayed. It is very important in two ways.

First, *Ohio v. EPA* validates the CO₂ Coalition's strategy to focus on the Supreme Court because of its power to stop the EPA and any other federal agency from imposing wrongful regulations as it did in the Obama and previous Biden EPA regulatory attempts to shut down fossil fuel power plants, this case, allowing the Mountain Valley Pipeline to proceed and a number of other cases.

Second, *Ohio v. EPA* uses the legal theory that the Coalition is using in all of its comments, based on the Supreme Court *State Farm* decision that holds an agency action is unlawful if it “entirely failed to consider an important aspect of the problem.” *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

In *Ohio v. EPA*, the Court stayed the EPA from implementing its Good Neighbor rule, reasoning, *inter alia*: “Although commenters posed their concern to EPA during the notice and comment

period, ... EPA offered no reasoned response” and “ignored an ‘important aspect of the problem’ before it.”

Similarly for example, the *State Farm* theory can be applied to the EPA’s latest Power Plant Rule. The EPA always, like every other agency we are familiar with, “entirely failed to consider” the extensive science in Profs. Happer’s and Lindzen’s comment filed by the CO₂ Coalition that contradicts EPA’s theory that fossil fuels and carbon dioxide will cause catastrophic global warming and demonstrates that eliminating both would be disastrous for people worldwide. They conclude in their EPA Power Plant Rule comment:

EPA has failed to consider critical aspects and data that reflect the enormous social benefits of CO₂, the enormous social benefits of fossil fuels, the scientific proof that there is no danger of catastrophic global warming from the use of fossil fuels and resulting CO₂ emissions, and the disastrous consequences of restricting or eliminating them, including eliminating 61% of electricity in the United States provided by fossil fuel electricity plants. Under *State Farm* and its progeny, failing to consider such crucial aspects of the problem that the rule purports to address is the hallmark of arbitrary and capricious agency action.

The CO₂ Coalition can play an important role in assisting with its filed comments and otherwise those challenging various Net Zero regulations in court and elsewhere. Please contact the CO₂ Coalition if we can help.

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