

ONE HUNDRED SIXTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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WASHINGTON, DC 20515-6115  
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September 23, 2022

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The Honorable Jessica Rosenworcel  
Chair  
Federal Communications Commission  
45 L Street, N.E.  
Washington, DC 20554

Chair Rosenworcel:

I write to bring to your attention *West Virginia v. EPA*, a recent Supreme Court decision that clarified the limitations of certain agency action.<sup>1</sup> Although Article I, Section 1 of the United States Constitution vests “all legislative powers” in Congress,<sup>2</sup> 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 undermines our system of government. Our founders provided Congress with legislative authority to ensure lawmaking is done by elected officials, not unaccountable bureaucrats. Given this administration’s track record, we are compelled to underscore the implications of *West Virginia v. EPA* and to remind you of the limitations on your authority.

In *West Virginia v. EPA*, the Court invoked the “major questions doctrine” to reject an attempt by the EPA 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, the EPA could not point to such authorization. Rather, the EPA “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 the EPA’s attempt to so plainly exceed its statutory authority.

Unfortunately, EPA’s attempt to invent new authorities is not unusual for the Biden administration. Recently, the Court 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 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 Federal Communications Commission (FCC) is an agency charged by Congress to regulate “interstate and foreign commerce in communications by radio and wire.”<sup>14</sup> As part of that responsibility, the FCC initiates rulemakings in compliance with the Administrative Procedures Act (APA) that seek to expand connectivity to all Americans, regulate broadcast stations and multichannel video programming distributors (MVPDs) in the media marketplace, limit the transmission of illegal robocalls, preserve the capability for reliable 911 and emergency alerting services, and remove untrusted communications equipment and services from U.S. communications networks. However, in recent years the FCC has taken it upon itself to misinterpret its authority to initiate rulemakings with “economic and political significance” that fit the Chair’s political leanings.<sup>15</sup>

As the committee of jurisdiction overseeing the FCC, 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 FCC under Democrat leadership does not continue to exceed Congressional authorizations. Accordingly, to assist in this effort, please answer the following no later than October 7, 2022:

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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).

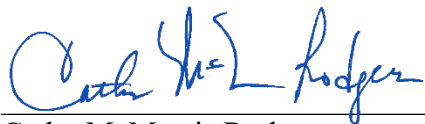
<sup>14</sup> *Communications Act of 1934*, 47 U.S.C. 151

<sup>15</sup> “In the matter of Protecting and Promoting the Open Internet,” *Report and Order on Remand, Declaratory Ruling, and Order*, Federal Communications Commission. (GN Docket No. 14-28), Rel. March 12, 2015.

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.
  - b. A list of all expected rulemakings and the specific Congressional authority for each rulemaking.
  - c. A list of all pending or expected Declaratory Rulings issued by a Bureau or Office of the FCC on delegated authority pursuant to 47 C.F.R. Subpart B.

If you have any questions, please contact Kate O'Connor or Evan Viau with the Republican 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 the name.

Cathy McMorris Rodgers  
Republican Leader  
House Committee on Energy and  
Commerce