

Supreme Court Resurrects CSAPR

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The Supreme Court today reversed the D.C. Circuit's vacatur of the Cross-State Air Pollution Rule (CSAPR) by a vote of 6-2 in *EPA v. EME Homer City Generation*. In an opinion written by Justice Ginsburg, the Court upheld EPA's authority to promulgate FIPs contemporaneously with the rule, holding that the Clean Air Act "does not command that States be given a second opportunity to file a SIP after EPA has quantified the State's interstate pollution obligations." The Court also "conclude[d] that the Good Neighbor Provision does not require EPA to disregard costs and consider exclusively each upwind State's physically proportionate responsibility for each downwind air quality program." The Court upheld "EPA's cost-effective allocation of emission reductions among upwind States [as] a permissible, workable, and equitable interpretation of the Good Neighbor Provision."

In a scathing dissent joined by Justice Thomas, Justice Scalia argued that EPA exceeded its authority under the Clean Air Act by requiring some upwind states to reduce emissions by more than their significant contribution to downwind nonattainment. Justice Scalia also reasoned that it "is literally unbelievable" for EPA to assert that upwind states can "implement the Good Neighbor Provision without knowing what the Agency considers their obligations to be," likening the exercise to "pin the tail on the donkey."

The Court remanded the case to the D.C. Circuit for further proceedings consistent with its decision. Given that the rule has been stayed for over two years, it is anticipated that EPA will revise CSAPR based on the current NAAQS rather than implementing the rule as written.

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