

United States Senate

COMMITTEE ON
AGRICULTURE, NUTRITION, AND FORESTRY
WASHINGTON, DC 20510-6000
202-224-2035

July 19, 2022

The Honorable Thomas J. Vilsack
Secretary
United States Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Dear Secretary Vilsack:

Recently in *West Virginia v. EPA*, Docket No. 20-1530 (Jun. 30, 2022), the Supreme Court (the Court) issued a decision that will affect the ability of federal agencies to issue regulations or take actions relating to politically or economically significant matters. In turn, I request information about any efforts of the United States Department of Agriculture (USDA) to review its regulatory actions related to this decision.

In this case, the Court invoked the major questions doctrine to block EPA from implementing a Clean Air Act (CAA) regulation limiting carbon dioxide emissions from power plants. This doctrine precludes agencies from taking regulatory actions that are politically or economically significant without explicit congressional authorization. The Court found that the EPA regulation at issue would have transformed the nation's energy market and, as such, was an extraordinary action subject to the doctrine. Upon analyzing the CAA, the Court determined that the CAA was not sufficiently specific or clear on delegating authority to EPA to issue the regulation. Further, the EPA failed to identify clear congressional authority for the regulation.

Although the decision concerned EPA, it will have significant implications for government-wide rulemaking efforts moving forward, including USDA. For example, the Department recently proposed rules that arguably carry substantial economic and political consequences, such as those concerning competition in the livestock and poultry industries.¹ The Department has also announced initiatives to address climate change and promote climate-smart farming and forestry practices, which may also implicate the major questions doctrine.

Considering the significance of these rules and initiatives, I request any information about any of USDA's efforts to review current regulations, proposed rules, and other agency actions that may be affected by this recent Supreme Court decision. Further, I would like to be notified when the Department expects to complete its review to identify any regulatory actions, including proposed rules, that the Department anticipates modifying or rescinding as a result of its review.

I am also concerned the court's decision could impact the next Farm Bill. Like previous farm bills, it will likely require the Department to promulgate implementing regulations to accomplish various Congressional policy objectives. As such, I request the Department's cooperation and

assistance with developing statutory language that clearly establishes USDA's authority to craft and issue implementing regulations.

I thank you for your anticipated cooperation and look forward to receiving the Department's response by July 29, 2022. If the Department has any questions or concerns about this request, please contact Fitzhugh Elder IV, Republican Staff Director, at (202) 224-5648 or fitzhugh_elder@ag.senate.gov.

Sincerely,



John Boozman
Ranking Member
Committee on Agriculture, Nutrition, and Forestry