Supreme Court of the United States

Michigan, et al., Petitioners, v. Environmental Protection Agency, et al.[1]

Nos. 14-46, 14-47, 14-49
Argued March 25, 2015
Decided June 29, 2015

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, and ALITO, JJ., joined. THOMAS, J., filed a concurring opinion. KAGAN, J., filed a dissenting opinion, in which GINSBURG, BREYER, and SOTOMAYOR, JJ., joined.

JUSTICE SCALIA, delivered the opinion of the Court.

The Clean Air Act directs the Environmental Protection Agency to regulate emissions of hazardous air pollutants from power plants if the Agency finds regulation "appropriate and necessary." We must decide whether it was reasonable for EPA to refuse to consider cost when making this finding.

I

The Clean Air Act establishes a series of regulatory programs to control air pollution from stationary sources (such as refineries and factories) and moving sources (such as cars and airplanes). 69 Stat. 322, as amended, 42 U. S. C. §§7401-7671q. One of these is the National Emissions Standards for Hazardous Air Pollutants Program—the hazardous-air-pollutants program, for short. Established in its current form by the Clean Air Act Amendments of 1990, 104 Stat. 2531, this program targets for regulation stationary-source emissions of more than 180 specified "hazardous air pollutants." §7412(b).

For stationary sources in general, the applicability of the program depends in part on how much pollution the source emits. A source that emits more than 10 tons of a single pollutant or more than 25 tons of a combination of pollutants per year is called a major source. §7412(a)(1). EPA is required to regulate all major sources under the program. §7412(c)(1)-(2). A source whose emissions do not cross the just-mentioned thresholds is called an area source. §7412(a)(2). The Agency is required to regulate an area source under the program if it "presents a threat of adverse effects to human health or the environment . . . warranting regulation." §7412(c)(3).

At the same time, Congress established a unique procedure to determine the applicability of the program to fossil-fuel-fired power plants. The Act refers to these plants as electric utility steam generating units, but we will simply call them power plants. Quite apart from the hazardous-air-pollutants program, the Clean Air Act Amendments of 1990 subjected power plants to various regulatory requirements. The parties agree that these requirements were expected to have the collateral effect of reducing power plants' emissions of hazardous air pollutants, although the extent of the reduction was unclear. Congress directed the Agency to "perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by [power plants] of [hazardous air pollutants] after imposition of the requirements of this chapter." §7412(n)(1)(A). If the Agency "finds . . . regulation is appropriate and necessary after considering the results of the study," it "shall regulate [power plants] under [§7412]." *Ibid.* EPA has interpreted the Act to mean that power plants become

[1] This opinion has been edited substantially, including the deletion of passages, footnotes, textual citations, and concurring and dissenting opinions.

subject to regulation on the same terms as ordinary major and area sources, see 77 Fed. Reg. 9330 (2012), and we assume without deciding that it was correct to do so.

And what are those terms? EPA must first divide sources covered by the program into categories and subcategories in accordance with statutory criteria. §7412(c)(1). For each category or subcategory, the Agency must promulgate certain minimum emission regulations, known as floor standards. §7412(d)(1), (3). The statute generally calibrates the floor standards to reflect the emissions limitations already achieved by the best performing 12% of sources within the category or subcategory. §7412(d)(3). In some circumstances, the Agency may also impose more stringent emission regulations, known as beyond-the-floor standards. The statute expressly requires the Agency to consider cost (alongside other specified factors) when imposing beyond-the-floor standards. §7412(d)(2).

EPA completed the study required by §7412(n)(1)(A) in 1998, 65 Fed. Reg. 79826 (2000), and concluded that regulation of coal- and oil-fired power plants was "appropriate and necessary" in 2000, *id.,* at 79830. In 2012, it reaffirmed the appropriate-and-necessary finding, divided power plants into subcategories, and promulgated floor standards. The Agency found regulation "appropriate" because (1) power plants' emissions of mercury and other hazardous air pollutants posed risks to human health and the environment and (2) controls were available to reduce these emissions. 77 Fed. Reg. 9363. It found regulation "necessary" because the imposition of the Act's other requirements did not eliminate these risks. *Ibid.* EPA concluded that "costs should not be considered" when deciding whether power plants should be regulated under §7412. *Id.,* at 9326.

In accordance with Executive Order, the Agency issued a "Regulatory Impact Analysis" alongside its regulation. This analysis estimated that the regulation would force power plants to bear costs of $9.6 billion per year. *Id.,* at 9306. The Agency could not fully quantify the benefits of reducing power plants' emissions of hazardous air pollutants; to the extent it could, it estimated that these benefits were worth $4 to $6 million per year. *Ibid.* The costs to power plants were thus between 1,600 and 2,400 times as great as the quantifiable benefits from reduced emissions of hazardous air pollutants. The Agency continued that its regulations would have ancillary benefits— including cutting power plants' emissions of particulate matter and sulfur dioxide, substances that are not covered by the hazardous-air-pollutants program. Although the Agency's appropriate-and-necessary finding did not rest on these ancillary effects, *id.,* at 9320, the regulatory impact analysis took them into account, increasing the Agency's estimate of the quantifiable benefits of its regulation to $37 to $90 billion per year, *id.,* at 9306. EPA concedes that the regulatory impact analysis "played no role" in its appropriate-and-necessary finding. Brief for Federal Respondents 14.

Petitioners (who include 23 States) sought review of EPA's rule in the Court of Appeals for the D. C. Circuit. As relevant here, they challenged the Agency's refusal to consider cost when deciding whether to regulate power plants. The Court of Appeals upheld the Agency's decision not to consider cost, with Judge Kavanaugh concurring in part and dissenting in part. *White Stallion Energy Center, LLC v. EPA,* 748 F. 3d 1222 (2014) (*per curiam*). We granted certiorari.

II

Federal administrative agencies are required to engage in "reasoned decisionmaking." *Allentown Mack Sales & Service, Inc. v. NLRB,* 522 U. S. 359, 374 (1998). "Not only must an agency's decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational." *Ibid.* It follows that agency action is lawful only if it rests "on a consideration of the relevant factors." *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.,* 463 U. S. 29, 43 (1983).

EPA's decision to regulate power plants under §7412 allowed the Agency to reduce power plants' emissions of hazardous air pollutants and thus to improve public health and the environment. But the decision also ultimately cost power plants, according to the Agency's own estimate, nearly $10 billion a year. EPA refused to consider whether the costs of its decision outweighed the benefits. The Agency gave cost no thought *at all*, because it considered cost irrelevant to its initial decision to regulate.

EPA's disregard of cost rested on its interpretation of §7412(n)(1)(A), which, to repeat, directs the Agency to regulate power plants if it "finds such regulation is appropriate and necessary." The Agency accepts that it *could* have interpreted this provision to mean that cost is relevant to the decision to add power plants to the program. Tr. of Oral Arg. 44. But it chose to read the statute to mean that cost makes no difference to the initial decision to regulate.

We review this interpretation under the standard set out in *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). *Chevron* directs courts to accept an agency's reasonable resolution of an ambiguity in a statute that the agency administers. *Id.*, at 842-843. Even under this deferential standard, however, "agencies must operate within the bounds of reasonable interpretation." *Utility Air Regulatory Group v. EPA*, 573 U. S. ___, ___ (2014) (slip op., at 16). EPA strayed far beyond those bounds when it read §7412(n)(1) to mean that it could ignore cost when deciding whether to regulate power plants.

A

The Clean Air Act treats power plants differently from other sources for purposes of the hazardous-air-pollutants program. Elsewhere in §7412, Congress established cabined criteria for EPA to apply when deciding whether to include sources in the program. It required the Agency to regulate sources whose emissions exceed specified numerical thresholds (major sources). It also required the Agency to regulate sources whose emissions fall short of these thresholds (area sources) if they "presen[t] a threat of adverse effects to human health or the environment . . . warranting regulation." §7412(c)(3). In stark contrast, Congress instructed EPA to add power plants to the program if (but only if) the Agency finds regulation "appropriate and necessary." §7412(n)(1)(A). One does not need to open up a dictionary in order to realize the capaciousness of this phrase. In particular, "appropriate" is "the classic broad and all-encompassing term that naturally and traditionally includes consideration of all the relevant factors." 748 F. 3d, at 1266 (opinion of Kavanaugh, J.). Although this term leaves agencies with flexibility, an agency may not "entirely fai[l] to consider an important aspect of the problem" when deciding whether regulation is appropriate. *State Farm, supra,* at 43.

Read naturally in the present context, the phrase "appropriate and necessary" requires at least some attention to cost. One would not say that it is even rational, never mind "appropriate," to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits. In addition, "cost" includes more than the expense of complying with regulations; any disadvantage could be termed a cost. EPA's interpretation precludes the Agency from considering *any* type of cost—including, for instance, harms that regulation might do to human health or the environment. The Government concedes that if the Agency were to find that emissions from power plants do damage to human health, but that the technologies needed to eliminate these emissions do even more damage to human health, it would *still* deem regulation appropriate. No regulation is "appropriate" if it does significantly more harm than good.

There are undoubtedly settings in which the phrase "appropriate and necessary" does not encompass cost. But this is not one of them. Section 7412(n)(1)(A) directs EPA to determine whether "*regulation* is appropriate and necessary." (Emphasis added.) Agencies have long treated cost as a centrally relevant factor when deciding whether to regulate. Consideration of cost reflects the

understanding that reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions. It also reflects the reality that "too much wasteful expenditure devoted to one problem may well mean considerably fewer resources available to deal effectively with other (perhaps more serious) problems." *Entergy Corp. v. Riverkeeper, Inc.*, 556 U. S. 208, 233 (2009). Against the backdrop of this established administrative practice, it is unreasonable to read an instruction to an administrative agency to determine whether "regulation is appropriate and necessary" as an invitation to ignore cost.

Statutory context reinforces the relevance of cost. The procedures governing power plants that we consider today appear in §7412(n)(1), which bears the caption "Electric utility steam generating units." In subparagraph (A), the part of the law that has occupied our attention so far, Congress required EPA to study the hazards to public health posed by power plants and to determine whether regulation is appropriate and necessary. But in subparagraphs (B) and (C), Congress called for two additional studies. One of them, a study into mercury emissions from power plants and other sources, must consider "the health and environmental effects of such emissions, technologies which are available to control such emissions, *and the costs of such technologies*." §7412(n)(1)(B) (emphasis added). This directive to EPA to study cost is a further indication of the relevance of cost to the decision to regulate.

In an effort to minimize this express reference to cost, EPA now argues that §7412(n)(1)(A) requires it to consider only the study mandated by that provision, not the separate mercury study, before deciding whether to regulate power plants. But when adopting the regulations before us, the Agency insisted that the provisions concerning all three studies "provide a framework for [EPA's] determination of whether to regulate [power plants]." 76 Fed. Reg. 24987. It therefore decided "to interpret the scope of the appropriate and necessary finding *in the context of all three studies.*" 77 Fed. Reg. 9325 (emphasis added). For example:

• EPA considered environmental effects relevant to the appropriate-and-necessary finding. It deemed the mercury study's reference to this factor "direct evidence that Congress was concerned with environmental effects." 76 Fed. Reg. 24987.

• EPA considered availability of controls relevant to the appropriate-and-necessary finding. It thought that doing so was "consistent with" the mercury study's reference to availability of controls. *Id.*, at 24989.

• EPA concluded that regulation of power plants would be appropriate and necessary even if a single pollutant emitted by them posed a hazard to health or the environment. It believed that "Congress' focus" on a single pollutant in the mercury study "support[ed]" this interpretation. *Ibid.*

EPA has not explained why §7412(n)(1)(B)'s reference to "environmental effects . . . and . . . costs" provides "direct evidence that Congress was concerned with environmental effects," but not "direct evidence" that it was concerned with cost. *Chevron* allows agencies to choose among competing reasonable interpretations of a statute; it does not license interpretive gerrymanders under which an agency keeps parts of statutory context it likes while throwing away parts it does not.

B

EPA identifies a handful of reasons to interpret §7412(n)(1)(A) to mean that cost is irrelevant to the initial decision to regulate. We find those reasons unpersuasive.

EPA points out that other parts of the Clean Air Act expressly mention cost, while §7412(n)(1)(A) does not. But this observation shows only that §7412(n)(1)(A)'s broad reference to appropriateness encompasses *multiple* relevant factors (which include but are not limited to cost); other provisions' specific references to cost encompass just cost. It is unreasonable to infer that, by expressly

making cost relevant to other decisions, the Act implicitly makes cost irrelevant to the appropriateness of regulating power plants. (By way of analogy, the Fourth Amendment's Reasonableness Clause requires searches to be "[r]easonable," while its Warrant Clause requires warrants to be supported by "probable cause." Nobody would argue that, by expressly making level of suspicion relevant to the validity of a warrant, the Fourth Amendment implicitly makes level of suspicion categorically *irrelevant* to the reasonableness of a search. To the contrary, all would agree that the expansive word "reasonable" encompasses degree of suspicion alongside other relevant circumstances.) Other parts of the Clean Air Act also expressly mention environmental effects, while §7412(n)(1)(A) does not. Yet that did not stop EPA from deeming environmental effects relevant to the appropriateness of regulating power plants.

Along similar lines, EPA seeks support in this Court's decision in *Whitman v. American Trucking Assns., Inc.,* 531 U. S. 457 (2001). There, the Court addressed a provision of the Clean Air Act requiring EPA to set ambient air quality standards at levels "requisite to protect the public health" with an "adequate margin of safety." 42 U. S. C. §7409(b). Read naturally, that discrete criterion does not encompass cost; it encompasses health and safety. The Court refused to read that provision as carrying with it an implicit authorization to consider cost, in part because authority to consider cost had "elsewhere, and so often, been expressly granted." 531 U. S., at 467. *American Trucking* thus establishes the modest principle that where the Clean Air Act expressly directs EPA to regulate on the basis of a factor that on its face does not include cost, the Act normally should not be read as implicitly allowing the Agency to consider cost anyway. That principle has no application here. "Appropriate and necessary" is a far more comprehensive criterion than "requisite to protect the public health"; read fairly and in context, as we have explained, the term plainly subsumes consideration of cost.

Turning to the mechanics of the hazardous air pollutants program, EPA argues that it need not consider cost when first deciding *whether* to regulate power plants because it can consider cost later when deciding *how much* to regulate them. The question before us, however, is the meaning of the "appropriate and necessary" standard that governs the initial decision to regulate. And as we have discussed, context establishes that this expansive standard encompasses cost. Cost may become relevant again at a later stage of the regulatory process, but that possibility does not establish its irrelevance at *this* stage. In addition, once the Agency decides to regulate power plants, it must promulgate certain minimum or floor standards no matter the cost (here, nearly $10 billion a year); the Agency may consider cost only when imposing regulations *beyond* these minimum standards. By EPA's logic, someone could decide whether it is "appropriate" to buy a Ferrari without thinking about cost, because he plans to think about cost later when deciding whether to upgrade the sound system.

EPA argues that the Clean Air Act makes cost irrelevant to the initial decision to regulate sources other than power plants. The Agency claims that it is reasonable to interpret §7412(n)(1)(A) in a way that "harmonizes" the program's treatment of power plants with its treatment of other sources. This line of reasoning overlooks the whole point of having a separate provision about power plants: treating power plants *differently* from other stationary sources. Congress crafted narrow standards for EPA to apply when deciding whether to regulate other sources; in general, these standards concern the volume of pollution emitted by the source, §7412(c)(1), and the threat posed by the source "to human health or the environment," §7412(c)(3). But Congress wrote the provision before us more expansively, directing the Agency to regulate power plants if "appropriate and necessary." "That congressional election settles this case. [The Agency's] preference for symmetry cannot trump an asymmetrical statute." *CSX Transp., Inc. v. Alabama Dept. of Revenue,* 562 U. S. 277, 296 (2011).

EPA persists that Congress treated power plants differently from other sources because of uncertainty about whether regulation of power plants would still be needed after the application of the rest of the Act's requirements. That is undoubtedly *one* of the reasons Congress treated power plants

differently; hence §7412(n)(1)(A)'s requirement to study hazards posed by power plants' emissions "after imposition of the requirements of [the rest of the Act]." But if uncertainty about the need for regulation were the *only* reason to treat power plants differently, Congress would have required the Agency to decide only whether regulation remains "necessary," not whether regulation is "appropriate *and* necessary." In any event, EPA stated when it adopted the rule that "Congress did not limit [the] appropriate and necessary inquiry to [the study mentioned in §7412(n)(1)(A)]." 77 Fed. Reg. 9325. The Agency instead decided that the appropriate-and-necessary finding should be understood in light of all three studies required by §7412(n)(1), and as we have discussed, one of those three studies reflects concern about cost.

* * * * *

D

Our reasoning so far establishes that it was unreasonable for EPA to read §7412(n)(1)(A) to mean that cost is irrelevant to the initial decision to regulate power plants. The Agency must consider cost—including, most importantly, cost of compliance—before deciding whether regulation is appropriate and necessary. We need not and do not hold that the law unambiguously required the Agency, when making this preliminary estimate, to conduct a formal cost-benefit analysis in which each advantage and disadvantage is assigned a monetary value. It will be up to the Agency to decide (as always, within the limits of reasonable interpretation) how to account for cost.

Some of the respondents supporting EPA ask us to uphold EPA's action because the accompanying regulatory impact analysis shows that, once the rule's ancillary benefits are considered, benefits plainly outweigh costs. The dissent similarly relies on these ancillary benefits when insisting that "the outcome here [was] a rule whose benefits exceed its costs." *Post,* at 16. As we have just explained, however, we may uphold agency action only upon the grounds on which the agency acted. Even if the Agency *could* have considered ancillary benefits when deciding whether regulation is appropriate and necessary—a point we need not address—it plainly did not do so here. In the Agency's own words, the administrative record "utterly refutes [the] assertion that [ancillary benefits] form the basis for the appropriate and necessary finding." 77 Fed. Reg. 9323. The Government concedes, moreover, that "EPA did not rely on the [regulatory impact analysis] when deciding to regulate power plants," and that "[e]ven if EPA had considered costs, it would not necessarily have adopted . . . the approach set forth in [that analysis]." Brief for Federal Respondents 53-54.

* * *

We hold that EPA interpreted §7412(n)(1)(A) unreasonably when it deemed cost irrelevant to the decision to regulate power plants. We reverse the judgment of the Court of Appeals for the D. C. Circuit and remand the cases for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, concurring.

The Environmental Protection Agency (EPA) asks the Court to defer to its interpretation of the phrase "appropriate and necessary" in §112(n)(1)(A) of the Clean Air Act, 42 U. S. C. §7412. JUSTICE SCALIA's opinion for the Court demonstrates why EPA's interpretation deserves no deference under our precedents. I write separately to note that its request for deference raises serious questions about the constitutionality of our broader practice of deferring to agency interpretations of federal statutes.

Chevron deference is premised on "a presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows." *Smiley v. Citibank (South Dakota), N. A.,* 517 U. S. 735, 740-741 (1996). We most often describe Congress' supposed choice to leave matters to agency discretion as an allocation of interpretive authority. But we sometimes treat that discretion as though it were a form of legislative power. Either way, *Chevron* deference raises serious separation-of-powers questions.

As I have explained elsewhere, "[T]he judicial power, as originally understood, requires a court to exercise its independent judgment in interpreting and expounding upon the laws." *Perez v. Mortgage Bankers Assn.,* 575 U. S. ___, ___ (2015) (opinion concurring in judgment) (slip op., at 8). Interpreting federal statutes—including ambiguous ones administered by an agency—"calls for that exercise of independent judgment." *Id.,* at ___ (slip op., at 12). *Chevron* deference precludes judges from exercising that judgment, forcing them to abandon what they believe is "the best reading of an ambiguous statute" in favor of an agency's construction. *Brand X, supra,* at 983. It thus wrests from Courts the ultimate interpretative authority to "say what the law is," *Marbury v. Madison,* 1 Cranch 137, 177 (1803), and hands it over to the Executive. Such a transfer is in tension with Article III's Vesting Clause, which vests the judicial power exclusively in Article III courts, not administrative agencies. U. S. Const., Art. III, §1.

In reality, as the Court illustrates in the course of dismantling EPA's interpretation of §112(n)(1)(A), agencies "interpreting" ambiguous statutes typically are not engaged in acts of interpretation at all. Instead, as *Chevron* itself acknowledged, they are engaged in the "'formulation of policy.'" 467 U. S., at 843. Statutory ambiguity thus becomes an implicit delegation of rulemaking authority, and that authority is used not to find the best meaning of the text, but to formulate legally binding rules to fill in gaps based on policy judgments made by the agency rather than Congress.

Although acknowledging this fact might allow us to escape the jaws of Article III's Vesting Clause, it runs headlong into the teeth of Article I's, which vests "[a]ll legislative Powers herein granted" in Congress. U. S. Const., Art I., §1. For if we give the "force of law" to agency pronouncements on matters of private conduct as to which "'Congress did not actually have an intent,'" *Mead, supra,* at 229, we permit a body other than Congress to perform a function that requires an exercise of the legislative power.

These cases bring into bold relief the scope of the potentially unconstitutional delegations we have come to countenance in the name of *Chevron* deference. What EPA claims for itself here is not the power to make political judgments in implementing Congress' policies, nor even the power to make tradeoffs between competing policy goals set by Congress, *American Railroads, supra,* at ___-___ (opinion of THOMAS, J.) (slip op., at 20-21) (collecting cases involving statutes that delegated this legislative authority). It is the power to decide—without any particular fidelity to the text—which policy goals EPA wishes to pursue. Should EPA wield its vast powers over electric utilities to protect public health? A pristine environment? Economic security? We are told that the breadth of the word "appropriate" authorizes EPA to decide for itself how to answer that question. Compare 77 Fed. Reg. 9327 (2012) ("[N]othing about the definition [of "appropriate"] *compels* a consideration of costs" (emphasis added)) with Tr. of Oral Arg. 42 ("[T]he phrase appropriate and necessary doesn't, by its terms, *preclude* the EPA from considering cost" (emphasis added)).[2]

[2] I can think of no name for such power other than "legislative power." Had we deferred to EPA's interpretation in these cases, then, we might have violated another constitutional command by abdicating our check on the political

Perhaps there is some unique historical justification for deferring to federal agencies, but these cases reveal how paltry an effort we have made to understand it or to confine ourselves to its boundaries. Although we hold today that EPA exceeded even the extremely permissive limits on agency power set by our precedents, we should be alarmed that it felt sufficiently emboldened by those precedents to make the bid for deference that it did here.[3] As in other areas of our jurisprudence concerning administrative agencies, we seem to be straying further and further from the Constitution without so much as pausing to ask why. We should stop to consider that document before blithely giving the force of law to any other agency "interpretations" of federal statutes.

[The dissenting opinion of Justice Kagan, with whom Justices Ginsburg, Breyer, and Sotomayor joined, is omitted.]

branches—namely, our duty to enforce the rule of law through an exercise of the judicial power. *Perez v. Mortgage Bankers Assn.*, 575 U. S. ___, ___-___ (2015) (THOMAS, J., concurring in judgment) (slip op., at 14-16).

[3] This is not the first time an agency has exploited our practice of deferring to agency interpretations of statutes. See, *e.g., Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc., ante,* at 6-7 (THOMAS, J., dissenting).