12-1182 EPA V. EME HOMER CITY GENERATION

DECISION BELOW: 696 F.3d 7

LOWER COURT CASE NUMBER: 11-1302, et al.

QUESTION PRESENTED:

The Clean Air Act, 42 U.S.C. 7401 et seq. (Act or CAA), requires the Environmental Protection Agency (EPA) to establish National Ambient Air Quality Standards (NAAQS) for particular pollutants at levels that will protect the public health and welfare. 42 U.S.C. 7408, 7409. "[W]ithin 3 years" of "promulgation of a [NAAQS]," each State must adopt a state implementation plan (SIP) with "adequate provisions" that will, *inter alia*, "prohibit[]" pollution that will "contribute significantly" to other States' inability to meet, or maintain compliance with, the NAAQS. 42 U.S.C. 7410(a)(1), (2)(D)(i)(I). If a State fails to submit a SIP or submits an inadequate one, the EPA must enter an order so finding. 42 U.S.C 7410(k). After the EPA does so, it "shall promulgate a [f]ederal implementation plan" for that State within two years. 42 U.S.C. 7410(c)(1).

The questions presented are as follows:

1.Whether the court of appeals lacked jurisdiction to consider the challenges on which it granted relief.

2.Whether States are excused from adopting SIPs prohibiting emissions that "contribute significantly" to air pollution problems in other States until after the EPA has adopted a rule quantifying each State's interstate pollution obligations.

3.Whether the EPA permissibly interpreted the statutory term "contribute significantly" so as to define each upwind State's "significant" interstate air pollution contributions in light of the cost-effective emission reductions it can make to improve air quality in polluted downwind areas, or whether the Act instead unambiguously requires the EPA to consider only each upwind State's physically proportionate responsibility for each downwind air quality problem.

LIMITED TO THE QUESTIONS PRESENTED BY THE PETITION IN NO. 12-1182.

CONSOLIDATED WITH 12-1183 FOR ONE HOUR ORAL ARGUMENT.

ORDER OF 11/26/2013: JUSTICE ALITO TOOK NO PART.

CERT. GRANTED 6/24/2013