

Oral Argument November 3, 2021

No. 21-5028

United States Court of Appeals

for the

District of Columbia Circuit

Washington Alliance of Technology Workers,

*Appellant,**v.*United States Department of Homeland Security, *et al.*,*Appellees.*

On appeal from an order entered in the
United States District Court for the District of Columbia
No. 1:16-cv-01170-RBW
The Hon. Reggie Walton

Notice of Supplemental Authority

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June 30, 2022

Pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure, the Washington Alliance of Technology Workers submits this notice of supplementary authority.

Today the United States Supreme Court released its opinion in *West Virginia v. EPA*, slip op., 597 U.S. ____ (2022). In *West Virginia*, the Court affirmed the major questions doctrine. *Id.* at 16–19. Under the major questions doctrine, Congress must make a “clear statement” in order for an agency to regulate a fundamental sector of the economy. *Id.* at 12; *see also* Gorsuch, J. (concurring) at 9–11 (identifying circumstance where the Court applies the major questions doctrine). Applying the major questions doctrine, the Court rejected the EPA’s claim of vast authority flowing from an “ancillary” provision. *Id.* at 6, 16–19. Justice Gorsuch also noted that the Court routinely adopts narrow interpretations of statutes to avoid finding delegations of power to agencies unconstitutional under the non-delegation doctrine. Gorsuch, J. (concurring) at 7–8.

This case is relevant because Washtech has argued that a definitional provision (8 U.S.C. § 1324a(h)(3)), limited in scope to its own section, cannot confer on the Department of Homeland Security the vast authority to permit any class of aliens to engage in employment through regulation and allow the agency to create the largest guestworker program in the entire im-

migration system entirely through regulation. Op. Br. 28–30. The case is also relevant because Washtech has argued that 8 U.S.C. § 1324a(h)(3) should not be interpreted so broadly as to make it unconstitutional under the nondelegation doctrine. Op. Br. 30–32.

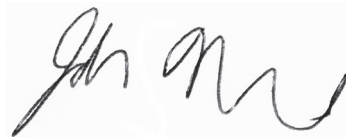
Respectfully submitted,
Dated: June 30, 2022



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CERTIFICATE OF SERVICE

I certify that on June 30, 2022 I filed Appellant's Notice of Supplemental Authority with the ECF system that will provide notice and copies to the parties' counsel of record.



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