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SUPREME COURT SMACKDOWN: OBAMA'S OVERREACHING CLEAN POWER PLAN HALTED

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On February 9, 2016, the Supreme Court dealt a major blow to Obama's "climate change" agenda. Divided five to four, the Supreme Court ordered the Obama administration not to proceed on the "Clean Power Plan," which may stall the proposal until after President Barack Obama leaves office next January.^[i]

The EPA's coal power plant regulations requiring the reduction of carbon dioxide emissions have been controversial from their inception, for two reasons: (1) lack of statutory authority and (2) manipulation of the administrative law procedures.^[ii] This controversy led twenty-nine states to challenge the 1,500 page rule, which established "final emission guidelines for states to follow in developing plans to reduce greenhouse gas (GHG) emissions from existing fossil fuel-fired electric generating units (EGUs)," and calls for three specific standards:

- (1) Carbon dioxide (CO₂) emission performance rates representing the best system of emission reduction (BSER) for two subcategories of existing fossil fuel-fired EGUs – fossil fuel-fired electric utility steam generating units and stationary combustion turbines
- (2) State-specific CO₂ goals reflecting the CO₂ emission performance rates
- (3) Guidelines for the development, submittal and implementation of state plans that establish the state goals.^[iii]

However, nowhere in the "Clean Air Act," the "Clean Air Act Amendments of 1990," or the United States Code of Statutes can one find the language the EPA uses to claim statutory authority to regulate carbon dioxide emissions in general, or carbon dioxide emissions from existing power plants specifically.^[iv] Therefore, the lack of statutory language regarding carbon dioxide may have been what drove the Supreme Court to place a stay on the implementation of the plan.

The case will now be heard before a three-judge panel on the D.C. Circuit, and may be heard before the full court of appeals before making its way back to the Supreme Court. This bodes well for the Obama administration because the D.C. Circuit refused to order a stay before the states brought the case to the Supreme Court.

As far as economic impact, Laurence H. Tribe, a law professor at Harvard University, said the Court should act to stop a “targeted attack on the coal industry” that would “artificially eliminate buyers of coal, forcing the coal industry to curtail production, idle operations, lay off workers and close mines.”^[v] Additionally, there has been one industry estimate that the plan would lead to the closing of more than fifty coal-fired plants, but obviously the EPA and the Justice Department’s lawyers dispute that estimate.^[vi]



(<https://stateimpact.npr.org/texas/2011/11/17/if-austin-goes-coal-free-could-the-rest-of-texas-follow/>)

[i] Lyle Denniston, *Carbon Pollution Controls Put On Hold*, SCOTUSblog (Feb. 9, 2016, 6:45 PM), <http://www.scotusblog.com/2016/02/carbon-pollution-controls-put-on-hold/>.

[ii] Michael Patrick Leahy, *Supreme Court Power Plant Stay A 'Monumental Victory' for the Rule of Law*, Breitbart (Feb. 10, 2016), <http://www.breitbart.com/big-government/2016/02/10/supreme-court-power-plant-stay-a-monumental-victory-for-the-rule-of-law/>.

[iii] 40 C.F.R. § 60 (2015).

[iv] Michael Patrick Leahy, *Obama's Coal Power Edict: Scott Walker, John Kasich, and Bobby Jindal Join Legal Challenge*, Breitbart (Aug. 5, 2015), <http://www.breitbart.com/big-government/2015/08/05/obamas-coal-power-edict-scott-walker-john-kasich-and-bobby-jindal-join-legal-challenge/>.

[v] Adam Liptak & Coral Davenport, *Supreme Court Deals Blow to Obama's Efforts to Regulate Coal Emissions*, NYTimes (Feb. 9, 2016), http://www.nytimes.com/2016/02/10/us/politics/supreme-court-blocks-obama-epa-coal-emissions-regulations.html?_r=1.

[vi] Denniston, *supra* note i.

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