

Supreme Court Presses Pause on Carbon Regulation

By David Gomez, J.D. Candidate 2018 | February 14, 2016

The Obama Administration and the Environmental Protection Agency (“EPA”) suffered a setback on February 9, 2016 when the Supreme Court put a temporary halt on enforcement of the EPA’s [Clean Power Plan](#). The Clean Power Plan is an attempt to reduce carbon pollution from its largest source, power plants, by returning the costs of negative externalities stemming from the worst carbon-producing power plants back to them. It punishes heavy carbon-producing power sources such as coal while simultaneously rewarding investment in cleaner energy-producing alternatives such as solar, wind, and natural gas.

New York Governor Andrew Cuomo has [gone on record](#) as stating, “[the Clean Power Plan is] crucial to ensuring a cleaner, greener, and safer future for all.” U.S. Solicitor General Donald Verrilli [stated](#) in his legal filings that “[a] stay that delays all of the rule’s deadlines would postpone reductions in greenhouse gas emissions and thus contribute to the problem of global climate change even if the rule is ultimately sustained.”

Tuesday’s [5-4 decision](#) was not a judgment on the merits. It was an unprecedented suspension of regulatory action pending lower court litigation. Jeff Holmstead, an EPA official during the Bush administration said that this was an unusual move and that “it is the first time the Supreme Court has actually stayed a regulation.” This decision was made based on emergency requests from 29 states that are heavily dependent on coal power plants and the energy industry. The states asked the Court to temporarily suspend enforcement of the plan until the legality of the plan can be litigated at trial. In their requests, the states feared that they will be unable to achieve the carbon levels required of them [six years](#) from now. The Court did not publish the reasoning behind the order granting the stay.

Proponents of the plan warn that the Supreme Court’s stay will cause irreparable harm to the environment—even if the stay is ultimately lifted and the EPA is successful at trial. California Governor Jerry Brown [stated](#), “This arbitrary roadblock does incalculable damage and undermines America’s climate leadership,” and accused the justices of being “tone-deaf.”

[Patrick Morrisey](#), the Republican attorney general of West Virginia, one of the states which brought the suit and that is heavily dependent on its coal industry, said that he is “thrilled” by the stay. He praised the Court’s decision and stated that this will save the state “countless dollars as our fight against its legality continues.”

The Obama administration appears confident that once the merits of the Clean Power Plan are litigated, they will ultimately be victorious. White House deputy press secretary Eric Schultz [stated](#) that despite the Court’s stay, “[w]e do remain confident that we’re going to prevail on the merits when the clean power plant rule gets its full day in court.” Meanwhile, the governors of California, Colorado and New York have publicly stated that they would push ahead on their state-level climate action plans despite the Court’s ruling.

Oral arguments at the appeals level are not slated until June, so it is unlikely that the Obama administration will even be in power to see the merits litigated in the Supreme Court. However, the death of Justice Scalia allows the administration [the possibility](#) to affect the outcome by appointing a new Justice to the Supreme Court empathetic to the EPA's goals.