



Written by [Warren Mass](#) on February 10, 2016

## Supreme Court Stays EPA's Enforcement of the Obama "Clean Power Plan"

By a 5-4 vote, the Supreme Court on February 9 granted a request made by 29 states and state agencies to stay the Obama administration's Clean Power Plan. The application for the stay (*State of West Virginia, State of Texas, et al. v United States Environmental Protection Agency, and Regina A. McCarthy, Administrator, United States Environmental Protection Agency*) was made on January 26 and requested an immediate stay of the EPA's actions in enforcing the Clean Power Plan pending the final outcome of the states' petitions for review.



In granting the applicants' request, the justices have decreed that any regulations established under the administration's Clean Power Plan will not be in effect while litigation continues to determine their legality.

A report from Reuters noted that the D.C. Circuit Court of Appeals, which on January 21 had turned away a request similar to the one the High Court just granted, will hear oral arguments on June 2 and decide whether the EPA regulations are lawful.

However, according to a report in the *Christian Science Monitor*, the lower court's decision would likely be appealed to the Supreme Court, which could then rule on the regulation itself — though a final decision may not come until after the Obama presidential administration has ended.

*Politico* reported that the court's ruling is unprecedented, being the first time it has overruled a lower court to stay a regulation.

Mike Duncan, head of the American Coalition for Clean Coal Electricity, told the press: "The stay is a signal the Supreme Court has serious concerns with the [Obama administration's] Power Plan."

Shortly after the decision was announced, White House Press Secretary Josh Earnest released a statement that read, in part:

We disagree with the Supreme Court's decision to stay the Clean Power Plan while litigation proceeds. The Clean Power Plan is based on a strong legal and technical foundation, gives States the time and flexibility they need to develop tailored, cost-effective plans to reduce their emissions, and will deliver better air quality, improved public health, clean energy investment and jobs across the country, and major progress in our efforts to confront the risks posed by climate change.

Though the theory that human activity such as the emission of carbon dioxide into the atmosphere has had any significant impact on the Earth's climate is disputed by many environmental scientists, the Obama administration and its allies in Congress continue to beat the "climate change" drum.

Senate Minority Leader Harry Reid (D-Nev.), in a statement lamenting the court's decision, was quick



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to label his opponents across the aisle as climate-change deniers. He said: “Climate-denying Republicans in the House and Senate might applaud this decision, but their refusal to protect Americans from the impacts of climate change is the real loss for our country.”

President Obama announced his Clean Power Plan, which was the subject of this latest Supreme Court decision, at the White House last August. His announcement focused heavily on climate change and followed his administration’s standard position that such change is caused by man-made carbon dioxide emissions. He also pulled no punches in identifying the culprit he and his administration assert is responsible for this catastrophic dilemma, stating that “existing power plants can still dump unlimited amounts of harmful carbon pollution into the air.”

Continuing, he noted:

Two years ago, I directed [EPA Administrator] Gina [McCarthy] and the Environmental Protection Agency to take on this challenge. And today, after working with states and cities and power companies, the EPA is setting the first-ever nationwide standards to end the limitless dumping of carbon pollution from power plants.

The president’s gloom-and-doom scenario unfolded as follows:

Now, not everyone here is a scientist — [laughter] — but some of you are among the best scientists in the world. And what you and your colleagues have been showing us for years now is that human activities are changing the climate in dangerous ways. Levels of carbon dioxide, which heats up our atmosphere, are higher than they’ve been in 800,000 years; 2014 was the planet’s warmest year on record. And we’ve been setting a lot of records in terms of warmest years over the last decade. One year doesn’t make a trend, but 14 of the 15 warmest years on record have fallen within the first 15 years of this century.

Despite Obama’s assertions, many reputable climate scientists dispute that that manmade activities such as carbon emissions have had any significant effect on the world’s climate. To the contrary, many such scientists think there is evidence suggesting that even the natural cycle of global warming has reversed itself in recent years and that global temperatures have actually decreased.

As *The New American* noted [in an article last June](#), a leading British climate researcher, Lord Christopher Monckton — who was chief policy advisor to the Science and Public Policy Institute and former special advisor to former U.K. Prime Minister Margaret Thatcher from 1982 to 1986 — stated in a report that month that there has been no global warming at all for 18 years and six months.

In his report, Monckton wrote that “the predictions on which the entire climate scare was based were extreme exaggerations” and cited data collected by a private research company called Remote Sensing Systems, founded in 1974 by Frank Wentz, who was a member of NASA’s SeaSat Experiment Team. Under a heading reading “Key facts about global temperature,” Monckton wrote, in part:

The RSS satellite dataset shows no global warming at all for 222 months from December 1996 to May 2015 — more than half the 437-month satellite record.

The entire RSS dataset from January 1979 to date shows global warming at an unalarming rate equivalent to just 1.2 C° per century....

The global warming trend since 1900 is equivalent to 0.8 C° per century. This is well within natural variability and may not have much to do with us....

Recent extreme-weather events cannot be blamed on global warming, because there has not been



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any global warming to speak of. It is as simple as that.

The problem with giving a government agency such as the EPA the power to impose arbitrary regulations on private industry is, first and foremost, a constitutional matter. The Constitution does not delegate such power to the federal government. Any steps needed to protect our environment should preferably be taken by the private sector. The remedy for safeguarding our environment should not include building a massive federal bureaucracy to counter “global warming” — an unproven threat.

This federal overreach was addressed in the request for a stay taken by the states against the EPA under a section headed: “The Power Plan Unconstitutionally Commandeers And Coerces States And Their Officials Into Carrying Out Federal Energy Policy.” The states’ request noted:

By attempting to use an obscure Clean Air Act program to fulfill a major regulatory role for which it was never intended, the Power Plan not only clashes with the statutory text, but also unconstitutionally burdens the States by requiring them to carry out federal policy even if they refuse to implement a State Plan to carry out federal policy....

The Constitution prohibits the federal government from “us[ing] the States as implements of regulation” — in other words, to commandeer them to carry out federal law.

It is well that the states included a constitutional argument in the request to stay the Obama administration’s Clean Power Plan. Though many objections to the administration’s use of this plan to consolidate more power in Washington were cited (including: “numerous state regulators describe the Plan as the most far reaching and burdensome rule EPA has ever forced onto the States”) defending the Constitution should always be paramount. That the Supreme Court ruled favorably on the states’ request is promising.

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