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The EPA's Costly 'Clean Power Plan' Power Grab

GUEST POST WRITTEN BY
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This time, the feds are not even trying to say: “If you like your power plan you can keep it.” Under the EPA’s proposed Clean Power Plan, the agency will accomplish a wholesale transfer of site-based power plant regulatory authority to the federal government, while cutting states out of prioritization and affordability concerns.

Where Obamacare comes between the doctor and the patient, the CPP comes between the states and their energy plants. Obamacare was at least an unseemly legislative reconciliation product. The Clean Power is agency

invention with only tangential basis in statutory legitimacy.

The EPA has already acted outside of the Clean Air Act provisions to regulate *stationary* power sources, *existing* generating units, and now greenhouse gases. The EPA has admitted that some of these assumptions "'would have been unrecognizable to the Congress that designed' the governing statutory framework.

The Clean Power Plan will impose a rate-based standard that caps the ratio of carbon pollution per megawatt hour of electricity with the goal of cutting emissions nationwide by 30% over 15 years. The centralized cap-and-trade plan features largely arbitrary standards for each state and uses "building blocks" to force a combination of reduced or preferred energy generation and increased reliance on renewable sources. California has already opted in and industries are reporting cost hikes—utilities and consumers are subsidized in early years—of more than a $1 billion. Even Democrats are threatening a revolt over an expected gasoline tax hit of .25 – .40 per gallon.

Also, like Obamacare, if the states do not submit their plans by the deadline of June 2016, the EPA can step in. When states opted out of Obamacare exchanges, IRS-mandated tax subsidies were imposed anyway. The Clean Power Plan administrators are poised to also override non-compliant states in direct conflict with many standing state energy management laws.

Federal Energy Regulatory Commission (FERC) Chairman Whitfield has registered critical congressional comment saying that the "EPA is embarking on this comprehensive effort to federalize energy planning even though the

agency has absolutely no energy policy-setting authority or expertise."

This accelerated transformation of the energy industry will leave little opportunity for reconsideration. If states tolerate this unlawful substitution of federal agency priorities for traditional state prerogatives, it will hand the feds discretion to target any politically disfavored energy source for essential extinction.

Oklahoma's Attorney General Pruitt describes the EPA's Plan as devoid of authority to fundamentally alter the traditional state implementation role "inside the fence" of generating plants. The Supreme Court has also recognized that the Clean Air Act expects "each State to take the first cut at determining how best to achieve EPA emissions standards within its domain."

When a federal agency acts to pre-empt state authority as the EPA does here by relegating states to the dramatically altered role of mere satellites, the Supreme Court "start[s] with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress."

The United States Supreme Court also spoke directly to the EPA about this same kind of power grab just weeks ago in the *Utility Air Regulatory Group v. EPA* when it warned that the EPA should not "bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization."

Twelve states have filed suit against formalization of this Plan with Oklahoma leading the way. But a political response is also urgently needed since a court remedy is not likely to address the core overreach at stake here. Courts will usually defer to congressional delegation power, and judges often leave already institutionalized systems in place.

If the Clean Power Plan is not rejected now by a significant number of resolved states, there may be no other opportunity to stop this wholesale centralization of energy administration. In fact, if the Clean Power Plan stands as a precedent for the federal usurpations states will tolerate, there may be no other time or place that states will reassert sovereign interests beyond this transfer of power.

Congress must be held accountable to curb the EPA's regulatory excesses or the states will pay a price steep price in lost sovereignty and respect for retained state police powers.

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