# Exhibit C1

DIALOGUE

# The Oklahoma Attorney General's Plan: The Clean Air Act §111(d) Framework That Preserves States' Rights

*Summary*

On May 20, 2014, the Federalist Society Environmental Law and Property Rights Practice Group convened at the National Press Club to discuss the form of the appropriate federalism model for regulating $CO_2$ emissions under §111(d) of the Clean Air Act. The event featured Oklahoma Attorney General Scott Pruitt, who discussed his recent paper, "The Oklahoma Attorney General's Plan: The Clean Air Act Section 111(d) Framework That Preserves States' Rights." Under that plan, EPA would design procedures and emission guidelines, and then states would determine the legally enforceable emission standard that is as stringent as the applicable guideline, unless the state determines a less-stringent emission standard is warranted. Attorney General Pruitt's presentation was then followed by a panel discussion of the plan's merits, its understanding of CAA §111(d), and its implications for state compliance. Below, we present a transcript of the event, which has been edited for style, clarity, and space considerations.

**Jeffrey Bossert Clark** (moderator) is chair of the Federalist Society's environmental law and property rights practice group executive committee, and a partner at Kirkland & Ellis LLP.
**Scott Pruitt** is Oklahoma's Attorney General.
**F. William Brownell** is chair of the executive committee and former head of the administrative law and environmental practice groups at Hunton & Williams LLP.
**Patrick McCormick III** is Republican Chief Counsel for the U.S. Senate Energy and Natural Resources Committee.
**David Doniger** is director and senior attorney for the Natural Resources Defense Council's climate and clean air program.

**Jeffrey Bossert Clark:** Good afternoon, everyone. We'd like to begin the program with our distinguished guest, Attorney General Scott Pruitt of the state of Oklahoma. Attorney General Pruitt has one of those multifaceted resumes to envy: Georgetown University followed by law school at the University of Tulsa, then a stint in private practice, later a senator in the Oklahoma Legislature for eight years, with four years as the Republican floor leader—and for seven years, he was owner and managing general partner of the Oklahoma City Redhawks, a AAA baseball team.

Attorney General Pruitt established the first federalism unit in Oklahoma's Office of the Solicitor General to combat unwarranted regulation and overreach by the federal government. He is a national leader in the cause to restore the proper balance of power between the states and the federal government, and has led or is still leading charges on that front against not only the U.S. Environmental Protection Agency (EPA), which is our subject today, but also on the Affordable Care Act[1] and Dodd-Frank.[2] Additionally, Attorney General Pruitt has not hesitated to break with his fellow state attorneys general when necessary; for instance, when he secured, consistent with law, millions of dollars in relief for Oklahomans harmed by unfair foreclosure practices in the mortgage industry. He's also acted to protect the most vulnerable child citizens of Oklahoma by negotiating a landmark settlement designed to dramatically improve foster care in the state.

It is the Federalist Society's honor and pleasure to have the attorney general here, to speak about his plan[3] concerning §111(d) of the Clean Air Act (CAA).[4] So, give a good welcome to Attorney General Pruitt.

1. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119-1025.
2. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010).
3. Oklahoma Attorney General's Plan: The Clean Air Act Section 111(d) Framework That Preserves States' Rights (Apr. 2014), *available at* http://documents.nam.org/ERP/OK_AG_Pruitt_Plan_05.20.14.pdf.
4. Clean Air Act (CAA), 42 U.S.C. §§7401-7671q, ELR Stat. CAA §§101-618.

**Scott Pruitt:** "Multifaceted" experience; that's right—baseball to law. It's a wonderful life that I've been able to be a part of. I played baseball at the University of Kentucky, and sometimes the mistake is made that folks introduce me by saying that I played *basketball* at the University of Kentucky. Then, I step out from behind the podium and people see my very imposing stature and they say, "You didn't play basketball at the University of Kentucky," and that is a true statement.

It's been a wonderful year for me. On a personal note, my daughter has gone on to college and done very well. She's back home, so we're excited about that. I hear all these stories about kiddos who go away to school and don't stay in touch. They don't e-mail, they don't write, they don't call. McKenna has stayed in touch because she needs money, so it's gone very well. But I read with interest a story last year about a young lady who had gone off who didn't stay in touch, and then she wrote a little missive to her dad toward the end of the year, saying: "It's been a great year, Dad. Things have gone really well. The dorm did burn down and I did lose all my personal effects and textbooks, but I found a new place off campus to live, with a new roommate, Jim, and Jim is doing extraordinarily well. He's been in recovery for almost six months now, and I know that we've not stayed in touch and I've not written, and I fully understand why you didn't make it to the wedding, but I know that you're not going to miss the impeding birth of your new grandchild." And she signs it and says, "Sincerely," but adds a P.S.: "Everything above is untrue. I did flunk chemistry. I just wanted you to keep things in perspective."

In the life that I live as attorney general, particularly on these issues we're going to talk about today, we've got to keep things in perspective because they are very difficult issues from a state vantage point, and these are very adversarial, uncertain times for the states. I'm going to talk about that today. I want to say, first and foremost, thank you to the Federalist Society for hosting this event. It's very kind of them to do that. This is going to be a very engaging and, I believe, thoughtful and productive discussion.

One of my favorite books recently—well, when I say recently, I mean in the past six or seven years—one of my favorite historians is Joseph Ellis. He's written several books, and one is called *Founding Brothers*. There's a chapter that I want to call to your attention just briefly, as kind of a narrative for my comments today. It's a chapter dedicated to something called "The Dinner." That was a dinner that took place among Alexander Hamilton, James Madison, and Thomas Jefferson. If you study history, which many of you in this room do very closely, you know that Alexander Hamilton and Thomas Jefferson were not the best of friends. They did not trust each other a great deal, but they particularly distrusted each other on policy issues.

An important issue being debated in the early 1790s, after the American Revolution, concerned all the debt the colonies faced. The federal government was contemplating consolidating all that debt at the national level, at the federal level. Alexander Hamilton, as Secretary of the Treasury, was pushing for that, advancing that idea, and as you might imagine, Jefferson and Madison were very concerned about consolidation of power in the federal government, so they opposed it.

The three men had a dinner. They got together, which doesn't happen very much these days in Washington, D.C. They got together as adversaries, as competitors, as individuals who were dealing with some very consequential issues. And they worked it out. The bargain they struck was that Madison and Jefferson would not oppose the Assumption Bill, as it was called, in exchange for . . . what? That the capital of the United States would be not New York City, but instead built on the banks of the Potomac River. That's why our capital is here today.

There are big, consequential issues that we're dealing with as a country in the energy/environmental space. Many of you know that Oklahoma is very active in oil and natural gas. We do have wind sweeping down the plains, as you know, so we're very involved with renewables, but we also have coal, and we have the production and development of coal in southeast Oklahoma. We're very vertical with respect to our energy development and production.

One of the important things about our state is that, historically, it has provided very low energy costs on electricity to our manufacturers, residents, and consumers. In fact, low energy costs has been one of the primary things that has allowed us to grow our economy, compared to Texas and others around us, because their tax rates are higher, and that's been a marked advantage for us.

These are issues that we're dealing with, with respect to energy, environment, and EPA's role, and the state's role—or as micro as what it cost to turn on the lights here today. I have a responsibility as attorney general to represent ratepayers before the Oklahoma Corporation Commission. The demands upon utility companies are substantial. They're facing environmental mandates, along with all the other issues they deal with, and the combination is presenting—I don't want to say a perfect storm—but it's presenting a rather difficult situation for consumers, not only in Oklahoma, but across the country.

But I don't want you to feel that our challenges in Oklahoma are somehow unique to Oklahoma. I think many states across the country are facing exactly what Oklahoma is facing. My purpose in being here today—these gentlemen are going to discuss the merits (very few demerits, David) of the Oklahoma plan—but in my remarks, I want to provide more of a big picture on the plan as a whole.

To start with, it's important to recognize that there are some global issues up-front that I don't endeavor to yield to. Our discussion about the procedure or §111(d) and the role of the states and the role of EPA, doesn't necessarily mean that I or others yield to the fact that you take *Massachusetts v. EPA*[5] and somehow extrapolate that $CO_2$ [carbon dioxide] is considered an air pollutant under that case. Does that necessarily link with it being nonstationary sources to stationary sources and existing sources? What

5. 549 U.S. 497, 37 ELR 20075 (2007).

authority and power does EPA have? That's a fundamental question that I'm not going to get into today, but it's a question that perhaps will be litigated, will be discussed, will be a source of contention on a going-forward basis.

Even more than that, globally, I think there is a significant interplay between §111(d) and §112. As you know, §111(d) says that EPA cannot regulate categories of facilities regulated under §112, and these existing stationary sources are regulated under §112. So, the weather, I think, has been resolved on $CO_2$ and whether it's a hazardous air pollutant or not. But *how* [to regulate], I think is what we're here to talk about today. What is the procedure? What are the steps that EPA should and shall go through as it relates to cooperative federalism and the role of the states?

In that regard, Oklahoma is a bit sensitive in light of our experience under the CAA with the regional haze situation. The regional haze statute just unpacked that briefly. In fact, we're seeking certiorari at this moment before the U.S. Supreme Court. We're hoping to hear [the Court's decision to grant or deny certiorari] very soon.[6] But that section of the CAA is very specific as it relates to the authority of the states in setting up a state implementation plan.

Oklahoma did that in 2010. As you know, under the regional haze statute, we have obligations that have to be met by the year 2064. Oklahoma met those obligations, but despite its meeting the obligations, EPA swept into Oklahoma, [former EPA Administrator] Lisa Jackson swept into Oklahoma, within three months after [I was] sworn in as attorney general, and rejected the state plan, and simultaneously issued a federal plan for one reason and one reason only—EPA disagreed with the methodology, the decisions made by the state of Oklahoma. Not with the results, not with the outcomes, not whether there was compliance with the statute, but simply based upon an attitude that says we [EPA] know best.

EPA, in my estimation, is using its regulatory power to pick winners and losers, to elevate certain energy sources at the expense of others, particularly fossil fuels and, in this instance, coal. That is not the proper use of regulatory authority. EPA has an attitude. It's almost like elevating form over substance. [They take the position that] so long as we [EPA] agree with the state's decisionmaking, so long as we agree with the state's methodology as it reforms its responsibilities in the statute, so long as we agree with that, the state can put it in the state implementation plan. But if we [EPA] disagree with that, we're going to FIP [federal implementation plan] the respective states. EPA is going to force itself upon the respective states across the country, and I believe, in certain instances, exceed its authority under the statute. That's what we're here to talk about.

That theme is very evident as it relates to §111(d), and it's very timely for us to be gathering here in the beautiful month of May [2014] in Washington, D.C., because you know, on June 2d, there is going to be an unveiling by the president himself, of what EPA is going to pursue under §111(d), the "how to do it" portion of $CO_2$ regulation.

There are two or three things I want to draw your attention to with respect to Oklahoma's plan. It's intended to be a counterpoint to the plan offered by the commonwealth of Kentucky.[7] (You notice that I said the *commonwealth* of Kentucky. Having been born in Kentucky and growing up there, a commonwealth just as Virginia is, I recognize these things.) The Kentucky plan is something that has been put in the marketplace within the last three or four months, and it is intended to address the proposals that are going to come out of the Climate Action Plan[8] by the president. It's a view from a state's perspective of the relationship between the state and the federal government under the §111(d) umbrella.

The primary thing that I find objectionable and that our plan deals with, with respect to the Kentucky plan versus our plan, is that it takes a mass emissions approach, as opposed to a unit-by-unit analysis from a state perspective. It effectively establishes a capitated or a cap and trade without the trade. It says to the states across the country: Here's what the emissions standards should be for your state. Now, you figure it out from there.

As that occurs, as a capitated objective is defined on a state-by-state basis, it seems to run counter specifically to the language in the statute. The U.S. Congress has been very specific, since the 1970s as these environmental laws were passed and signed into law, that it is very important to have the involvement, the partnership of the states in the regulatory process. In November of last year, I testified before Congress. Ms. Janet McCabe,[9] who heads the air division of EPA, testified ahead of me and said all of the right things about the respect that EPA has for the states, and the role of the states in each of these key areas that we're talking about.

I followed Ms. McCabe in testifying. Shortly thereafter, Energy and Power Subcommittee Chairman Ed Whitfield (R-Ky.) asked me "How is that working for you?" My answer was, "Not very well." This elevation of form over substance, this attitude that says we [EPA] know best, this dictatorial attitude that says so long as you agree with us then everything is kosher and everything is okay, is exactly the opposite of what Congress has said repeatedly in the role of the states. The states have a meaningful role. It's not an administrative role. The states are not a vessel to carry out the desires of EPA. The states are actually there to make important decisions, balancing factors between industry and consumers and meeting the obligations of air and water quality in their respective states. That's important to

6. The Supreme Court denied certiorari. *See* Oklahoma v. EPA, No. 13-921, *cert. denied* (U.S. May 27, 2014).

7. Commonwealth of Kentucky Energy & Environment Cabinet, Greenhouse Gas Policy Implications for Kentucky Under Section 111(d) of the Clean Air Act (Oct. 2013), *available at* http://eec.ky.gov/Documents/GHG%20Policy%20Report%20with%20Gina%20McCarthy%20letter.pdf.

8. Executive Office of the President, President's Climate Action Plan (June 2013), *available at* http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf.

9. Janet McCabe is Acting Assistant Administrator for EPA's Office of Air and Radiation.

recognize. I think the attitude here in this city, and the attitude amongst the regulators, and the attitude at times amongst those who come into our states, is that [they are] going to change that and review that, and make sure that the states are acting merely in an administrative fashion.

Let's go to a quote by Justice Felix Frankfurter, because the statutes are clear here, in many instances. Justice Frankfurter said this: "Standards must be enforced to be respected. If they are merely left as something on paper, they might as well be written on water."[10] That's what we're facing, as a collection of states. We're trying to give meaning and life to the words as drafted by Congress, and making sure that our responsibilities are protected and we can actually do our job as provided for by statute.

This mass emissions, unit-by-unit review is something that is, I think, the primary point, the primary distinction between the Kentucky plan and the Oklahoma plan. It's an arbitrary emissions baseline that's made upline at the state level and then it affects all decisions downline, on a unit-by-unit basis. It takes away the discretion from the states. You find that [discretion] in our plan.

The second point that I wanted to highlight for you in the distinction between the Kentucky plan and Oklahoma's plan is the way that it relates to §111(d). That distinction, which emanates from the mass emissions approach versus an inside-the-fence approach, is where the approach takes discretion away from the states as far as making decisions about more or less stringent standards on a unit-by-unit basis. The applicable regulations say very clearly that "states may prescribe, on a case-by-case basis, for particular designated facilities, or classes of facilities, less stringent emissions standards, upon unreasonable cost of control, physical impossibility, and other factors specific to the facility."[11] Now, how do you do that as a state if you have a mass emissions approach and a capitated approach, as presented by the Kentucky plan? We're hopeful that EPA is more persuaded by our position in the plan.

The third point I would mention to you as central to our proposal is that it maintains the primacy of the states. I reject—in fact, I find it offensive—that regulators in Washington believe that regulators in the states somehow aren't interested in the air we breathe and the water we drink in our respective places that we call home. I reject that utterly. In fact, I would say to you that Washington, D.C., EPA, and other agencies that are involved in these areas could learn a lot with respect to the expertise of the states.

Let me add this as an aside: Hydraulic fracturing—its regulation, our involvement as a state—in certain sections of the country, they think that's a new technology or a new phenomenon. We've been regulating hydraulic fracturing since the late 1940s in the state of Oklahoma. We have a very robust regulatory regime, tremendous expertise, and I think that this attitude that regulators at the state level are somehow dismissive or disregard the importance of air quality is something that I find unfortunate. The federal government and EPA, through its §111(d) proposal, can recognize the importance of the states as it relates to primacy. Primacy is not something that is editorial. It's not something that we're asserting. It is something that is maintained and protected by the statutory constructs that Congress has put out.

So, these areas are important on primacy, and we need to make sure that we protect them, and that's what brings litigation to the bearer, Jeff. I've kidded [Texas Attorney General] Greg Abbott. When I came into office, I think he had roughly 13 lawsuits against EPA. I'm trying to catch up; we only have, I think, six or seven. I met him the other day in Oklahoma—we were having an event for him in Oklahoma—and [I learned that] he's up to 31 lawsuits. Now, let me say to you, as I share that with you, I don't want you to hear that we at the state level are simply trying to find ways to challenge or sue EPA. There are multiple examples. We have to prioritize, unfortunately, and it is in response to this attitude of command and control, as I talked about earlier, a D.C.-centric viewpoint that states cannot be trusted to exercise the authority given to them by Congress to meet the objectives and goals established under the environmental laws.

Oklahomans care about their air quality. They care about their water. We want clean air and we want clean water, and we've done it very, very well for decades. That balance between consumers and industry, and meeting the demands of environmental regulations by Congress, is something that we will continue to do in a responsible way. Our proposal, which will be discussed today, is an effort to establish guidelines for EPA. As the proposed rule comes out June 2, I'm hopeful that our proposal will find persuasion with EPA, and that as the rule is finalized in June of 2015, EPA will recognize that a mass emissions approach is not the way to go, that a cap and trade without the trade is not the way to go, that a unit-by-unit, inside-the-fence strategy that gives discretion, maintains discretion to the states to balance these factors, to evaluate cost, to make sure that all factors at the site are considered, will be maintained.

It is a pleasure to present that to you today, and I'm hopeful that the discussion we have together will be instructive. Thank you, Jeffrey, for the time to make the opening comments, and I wish the panelists well as they discuss the Oklahoma plan. Thank you.

**Jeffrey Bossert Clark:** Thanks, Attorney General Pruitt. I wanted the attorney general to be the star of the show. Let me at this point introduce myself and the other panelists. I'm Jeff Clark from Kirkland & Ellis, and I'm the chair of the Federalist Society environmental law and property rights practice group. We have two panelists with us to discuss the attorney general's paper, and we're hoping to be joined by a third. He is a staffer in the U.S. Senate and he's held up by a hearing there, but we hope he'll be joining us later.

10. Ferguson v. Moore-McCormack Lines, Inc., 352 U.S. 521, 537 (U.S. 1957) (Frankfurter, J., dissenting).
11. 40 C.F.R. §60.24(f).

One panelist we have is David Doniger. He is director of the Natural Resource Defense Council (NRDC) climate change and clean air program. He previously served as an attorney at the NRDC, and was an advisor in the Clinton Administration, primarily as director of the climate change policy issues at EPA, where he helped to negotiate the storied Kyoto Protocol. He's been involved in numerous high-profile lawsuits and policy initiatives related to carbon emissions, dating back to that time and going forward into the present.

We also have Bill Brownell, the chair of Hunton & Williams LLP, where he previously led the administrative law group and the environmental law team. His practice covers a broad range of environmental issues involving proceedings before federal and state agencies, courts, and Congress. He has represented the utility industry in proceedings under the CAA for over 30 years.

I will also introduce our third panelist, although he is not here yet. That third panelist is Patrick J. McCormick III. Pat McCormick is Republican chief counsel to the Senate Committee on Energy and Natural Resources. Prior to assuming his current role in 2011, he was a partner at Hunton & Williams, specializing in energy regulation and infrastructure development. Earlier in his career, he served as an attorney with the Federal Energy Regulatory Commission (FERC), and in the private sector at the Potomac Electric Power Company.

We're going to hear from each of our panelists in turn for about eight to 10 minutes, and then we will take questions.

**F. William Brownell:** Thank you, Jeff, and thank you to the Federalist Society for making this forum available. This is an interesting and timely topic. As you all know, there has been a lot of policy debate on the issue of §111(d) regulation over the past year. I thought that I would look at the statutory language, because that ultimately is what defines the scope of EPA's authority.

One of the things I remember from law school was from a comparative law course on the difference between a common-law country and a civil-law country. The professor said, "In common-law countries, everyone is worried about precedent. In civil law, you look at the statute. You look at the regulations." What's important, even in the common-law country, is to read the statute, read the statute, read the statute. I think that's really important here, as we go into the §111(d) rulemaking.

First, §111(d) talks about standards of performance for existing sources. It talks about the performance of sources, not about what other sources do, not about demand-side management, but about what is the performance of the regulated source. Second, in terms of EPA's regulatory responsibility, the statute says that EPA must provide by regulation a procedure similar to that under CAA §110, the state implementation plan (SIP) provision, for developing state plans. The regulations that EPA is to develop are procedural, they address the procedure for states to develop state plans. The states, however, develop the plans.

Third, the statute goes on to say that state plans must address two things. First, they address the performance standards for the existing sources. Second, they address implementation and enforcement of those performance standards.

Now, what guidance does the statute provide for plan content, both the performance standards and the implementation and enforcement provisions of the state plan? A standard of performance is defined in §111 as a standard for emissions of air pollutants that reflects the degree of emissions limitation achievable, using the best system of emission reduction that the EPA Administrator determines has been adequately demonstrated. So, the EPA Administrator has a role. The Administrator determines what systems of emission reduction have been adequately demonstrated. But then the state formulates the plan, defines the standard, and takes into account the systems of emission reduction that have been adequately demonstrated to define a performance standard that's achievable—an important role for the state.

As important, and perhaps more importantly, §111(d) then goes on to provide that, in formulating these plans, the states are to take into account the remaining useful life of sources in defining the performance standards for individual sources, among other factors. This is very interesting: remaining useful life, *among other factors*. Well, what are those other factors? They are the factors that states commonly consider when they develop SIPs; for example, factors that reflect the local and state considerations and conditions that inform commonsense regulation. So, that's all for the state in developing the state plan.

Now, if a state does not adopt a plan, EPA has what's called FIP [federal implementation plan] authority under §111(d). EPA can impose a FIP if it finds that the state plan is not satisfactory. This is not an equivalency test. Instead, the statute asks: Is the state plan satisfactory? Similar to the law that's developed under §110, which is the starting point of the procedural regulations that EPA issues, the determination of what is "satisfactory" is established by consideration of the range of factors under §111(d) considered in formulating the plan, the factors that we've talked about. If the state considers the factors, then its plan is satisfactory.

There are other limitations on EPA's authority with respect to §111(d) standards. Some of them were referred to by Attorney General Pruitt. For example, as he mentioned, if a pollutant is regulated under §108 and §109, the national ambient air quality standards (NAAQS) program, or under §112, you don't regulate it under §111(d) as well. If the source category is regulated under §112, you don't regulate it under §111(d).

Further, there has to be a new source performance standard in place for the source category. Section 111(d) talks about applying performance standards to existing sources that would be subject to a standard if the source were a new source. That, of course, raises a range of additional issues. There is a proposal out there right now—the comment period just closed last week—on new source performance

standards for greenhouse gases for the electric utility industry.[12] There are lots of issues with respect to whether, at the end of the day, that proposed rule will go into place, including the very important issue of the Energy Policy Act (EPAct),[13] which limits the authority of EPA and others to rely on U.S. Department of Energy (DOE)-funded projects as the basis for an adequately demonstrated technology determination. All of that is being debated in the context of this rulemaking and related litigation.

There are other considerations that we can talk about during the discussion, but I wanted to lay out the statutory structure for you because I think it provides important context for the discussion. The statutory structure very clearly delineates, I think, the roles of EPA and the roles of the state in developing plans and regulating under §111(d).

Finally, I want to quote a sentence from a brief that NRDC filed in the U.S. Court of Appeals for the District of Columbia (D.C.) Circuit on emissions trading—and I'm sure David will have something to say about this—under §111(d). This was in the context of the Clear Air Mercury Rule, an issue never ultimately addressed by the D.C. Circuit because they vacated the program on other grounds.[14] "Trading is unlawful. The statute mandates that each state plan, under 111(d), apply the best system of emission reduction to any existing source, on a source-specific basis."[15] That's §111(d). Jeff, those are my remarks, and I'm happy to take questions later.

**Jeffrey Bossert Clark:** Thanks, Bill, for those remarks. Now, it is David's turn.

**David Doniger:** Thank you very much for inviting me into the lion's den. I have to confess that the first time I spoke in front of the Federalist Society, I was under the misimpression that I was going to be addressing the World Federalist Society, and I came rather unprepared, but I hope I'm a little better prepared this time. I thought, what is Boyden Gray doing in a meeting of the World Federalist Society, and suddenly I realized what was going on.

I want to stipulate, at least for the purposes of today—nobody else has put this point in play—I want to stipulate, at least for my purposes, that climate change is a very real problem. The science is strong. The threat is real. Many of you are familiar with the reports that have come out in the last few months. They are just icing on the cake, further scientific studies showing that the problem is real and the impacts are already on us. So, our goal [at NRDC] is to do something to abate this pollution, to abate it in the United States, in concert with a program of negotiation with other countries to get them to take on their roles. But now let me just talk about the U.S. role.

The CAA is an important tool, a law already on the books, for addressing the climate change problem, and that's not just my opinion. That actually has been determined three times by the Supreme Court already, once in *Massachusetts v. EPA*, with respect to vehicles. In 2011, also, the Supreme Court held that the CAA empowers EPA to regulate $CO_2$ from power plants,[16] and that was part of its disposition of a tort suit on the climate issue, so you can't bring a federal common-law case because this is EPA's job under the CAA.

More recently, after EPA issued the endangerment determination and the motor vehicle standards, there was litigation to challenge those, as well as some permitting regulations that follow from the motor vehicle standards. The Supreme Court pointedly denied the certiorari petitions on all matters except the permitting issues, saying "We're not going back there." And in oral argument in *Utility Air Regulatory Group*, Chief Justice John Roberts in essence said, "We're not going back over that again."[17] Justice Anthony Kennedy, to paraphrase, said, "This is settled law," citing *American Electric Power*[18] and *Massachusetts*. And the *American Electric Power* case is a riff on §111 and §111(d). So, this is not virgin territory to the Supreme Court.

The Obama Administration issued landmark vehicle regulations in 2010 and 2012. The car industry is currently making cars that comply with these standards, which go out to 2025, so at that point, the vehicles will be getting twice the mileage and emitting one-half the $CO_2$ and other greenhouse gases that they did just a few years ago. This is a major achievement, and the auto industry is prospering under the standards. The power plants are the only source larger than the transportation sector. Forty percent of the $CO_2$ in the country comes from power plants. You can't address the problem of climate change unless we address power plants.

So, let's put aside for a moment the new source rule. I'm happy to answer questions about that, but we're here to talk about the coming approach to existing sources. EPA has been engaged in an outreach, a stakeholder process, direct engagement with states, with air regulators, with public utility commissions, with utilities, with environmental stakeholders, and others all across the country, since August of last year, on the proposed rule coming out in June [2014]. This is the most massive pre-proposal stakeholder outreach and engagement process that EPA has ever held, to my knowledge, and they have solicited and received lots of input from states.

My favorite piece of input is a letter from the Texas Environmental Agency and the Public Utility Commis-

12. Standards of Performance for Greenhouse Gas Emissions From New Stationary Sources: Electric Utility Generating Units, 79 Fed. Reg. 1429 (Jan. 8, 2014).
13. Energy Policy Act of 2005 (EPAct), Pub. L. No. 109-58, 119 Stat. 594 (codified as amended in scattered sections of 7, 10, 15, 16, 22, 26, 30, 40, and 42 U.S.C.).
14. New Jersey v. EPA, 517 F.3d 574 (D.C. Cir. 2008).
15. Opening Brief of Environmental Petitioners in *New Jersey v. EPA*, at 25-29 (filed Jan. 12, 2007).
16. American Elec. Power Co. v. Connecticut, 131 S. Ct. 2527, 41 ELR 20210 (2011).
17. Utility Air Reg. Grp. v. EPA, Nos. 12-1146 et al., 44 ELR 20132 (U.S. 2014) (for a transcript of oral arguments, visit http://www.supremecourt.gov/oral_arguments/argument_transcripts/12-1146_768c.pdf).
18. *American Elec. Power Co.*, 131 S. Ct. 2527.

sion. The first two or three pages say, "Go away. Forget it. We hate you. Don't do this." The last seven or eight pages say, "When you do this, please structure your regulations to give us credit for all the good things we've been doing on energy efficiency, wind energy, and the transition from coal to gas." I thought that letter was really interesting because the proposals in the latter half of the letter closely mirror the thinking that NRDC has put forward about how the power plants standards should be set, could be set, to achieve the most carbon reductions at the lowest cost, and with the most flexibility for the industry and for the states.

The first thing in our plan, which we published in 2012—we updated it in March of this year—the first element of our plan is the recognition that the power sector is different in every state. The mix of generation, coal versus gas, for example, is different in every state. And since this part of the CAA calls for federal standards implemented through state plans, it makes sense to account for the diversity of the starting point that the states have in the structure of the standards. So, we recommended that every state be given a baseline, which could be in 2005 or 2008. What were its emissions at that point, and what was the mix of coal versus gas in that state? There's been a lot of transition toward gas, toward renewables, buildup of energy efficiency, and every reduction that came from those transitions, no matter whether they were induced by regulation or by markets or by happenstance—everything counts, including, for example, under our plan, increases in output from nuclear plants.

Any kind of zero-emitting generation counts for credit toward reducing the emissions of the system of power plants in a state. We don't think it makes sense to limit the view to the relatively minor modifications that a plant could make on its own site. Why should it not have more compliance options than just that? It should have the option of getting credit, in effect, for switching the dispatch between the units in a company's fleet more toward the cleaner ones, away from the dirtier ones. This is happening already. Why shouldn't they get credit for it, and then why shouldn't that be built into the further improvements that a standard might require, looking out to 2020 or 2025?

The cheapest way to reduce emissions—and it results in lower consumer bills, not higher consumer bills—is to emphasize energy efficiency in buildings and in the machinery, the appliances, all the goodies we use that consume electricity. If they're more efficient, you don't need as much electricity. Therefore, you need less generation. That less generation results in less pollution. There should be a way to get credit for that, so we propose formulas in which increases in efficiency become a compliance option for the operator of a coal plant or a gas plant. I'll be happy to take further questions about how all that stuff works. It's not overly difficult. It's complicated, but it's not hard. There's a difference.

So, we propose a standard that takes into account those opportunities, differentiated state by state, graduated over time. We ran the proposals that we came up with through the same model that the utility industry uses and EPA uses (the integrated planning model of the ICF Corporation), to see what it would cost and how much emission reduction you would get if you posited this set of standards or that set of standards, and we proposed combinations of standards that can achieve as much as 35-40% reduction in the total fleet carbon emissions by 2020. Really dramatic reductions, and yet they would cost less than the Mercury and Air Toxics Standard.[19]

When you do cost-benefit analysis, in which you take into account the benefits of achieving carbon reductions—again, if you accept the science, which as I stipulated at the beginning I do—and when you take into account the public health benefits that come from further reducing sulfur dioxide and nitrogen oxide emissions, you end up with $30-60 billion in quantifiable dollar-value benefits, against roughly $10 billion in costs to comply with these standards.

So, we think this is a massively good deal on a cost-benefit basis. It's legal under the CAA. The question, by the way, whether §111(d) can't be used because power plants are regulated for other pollutants under §112, I predict that will take the courts less than five minutes to dispose of, and I'll explain why if you have questions about that. It's a classic *Chevron*[20] ambiguity question, and it will go away very quickly.

EPA has been upheld, most recently in the *Homer City*[21] case. It's not exactly on point, but it does involve analogous provisions, analogous problems. It's a very ringing affirmation of EPA's authority and responsibility to solve problems that come up, even if they were not entirely, precisely anticipated, because that's the way the CAA is written. It gives EPA that authority and responsibility, so long as the Agency does it reasonably and rationally. That opinion was joined by Chief Justice Roberts and Justice Kennedy.

So, we think EPA is operating from a very strong position. They have a serious responsibility and a big opportunity, but at the same time, we want to see every state have proper differentiation and proper access to flexible compliance. We want to do this as cheaply and as reasonably as possible, and NRDC is very eager to talk to anybody about how to do this in a sound way. Thank you very much.

**Jeffrey Bossert Clark:** Thank you, David. We have been joined by our fourth panelist, Patrick McCormick, who is chief counsel to the Senate Energy and Natural Resources Committee.

**Patrick McCormick III:** Thank you very much for having me, and I apologize for my being late. When I was in practice and used to come to events such as this one, it always annoyed me that the guy from the Hill showed

19. Mercury and Air Toxics Standard (MATS), 77 Fed. Reg. 9304 (Feb, 16, 2012) (codified at 40 C.F.R. pts. 60, 63).
20. Chevron U.S.A., Inc. v. Natural Res. Def. Council, 467 U.S. 837, 14 ELR 20507 (1984).
21. EPA v. EME Homer City Generation, L.P., 134 S. Ct. 1584, 44 ELR 20094 (2014).

up late, didn't listen to the material, and had things to say that were so ephemeral I could read them in the trade press tomorrow.

So, I apologize for fitting the bill. I also want to commend the Federalist Society for engaging this debate, and thanks obviously to the attorney general for writing that very thoughtful paper, and especially to David for coming and being part of this discourse. On our committee, the senators on both sides of the dais have a real commitment to discourse about the subjects that divide us. It's good to be with you.

I should also say by way of disclaimer that obviously my views here are my own. They're not the views of any senator, certainly not of Sen. Lisa Murkowski (R-Alaska), who is our ranking member, and as much as I would welcome the opportunity to be the chief counsel of the committee, I am in fact the minority chief counsel, a situation that may change imminently, but we don't know.

With that having been said, I should note that my colleague Margaret Caravelli is here, and the committee for which she is a staff person has jurisdiction over the CAA. While it is true that I was once a partner of Bill Brownell's, I really don't pretend to know even the things he has forgotten about the CAA.

**F. William Brownell:** A little bit more each year.

**Patrick McCormick III:** In any case, I will leave to the discourse you have already had the proper reading of §111 and all of that.

Something that might be worth considering, as part of this conversation, is that from the time of—I think it's called the Ash Council Memo,[22] which is the memorandum that went to President Richard Nixon, outlining the case for EPA (and if you haven't read that memo, I really commend it to you)—from that time, there has been a real concern about balance and the rule of law and not having environmental regulation completely swallow regulations of other kinds. That concern is one that's been wrestled with by Congress and the courts over time.

As we think about §111(d) and how it might be implemented in the next year, or two years, or five years, we really do go back to those fundamental questions. The fundamental question for the senators on our side of the dais on the Energy Committee—and I think also for Sen. Joe Manchin (D-W. Va.) and some others on the other side of the dais—is how do we ensure what Senator Murkowski says repeatedly and has written on extensively: abundant, affordable, clean, diverse, and secure energy; specifically with respect to electricity. The key to that is electric reliability and the affordability of electricity. Those issues are very squarely within the jurisdiction of our committee.

The reason I was late is that I came from the confirmation hearing for two nominees to FERC, one of whom is already serving there. Although we disagree with her on policy grounds on many things, including the administration of FERC's authorities as they relate to the administration of EPA's authority, she is a very studious, very fine, and balanced commissioner whom Senator Murkowski strongly supports.[23]

I tell you that because in the hearing I just came from, §111(d) was indeed a subject of discussion. That's not surprising because the Kentucky plan—and David, I apologize, I have not read your paper, which is cited in the attorney general's paper—the Kentucky plan essentially calls for, I think the attorney general called it a mass emissions approach, and that approach is very similar to cap and trade, for which the Waxman-Markey bill[24] was jurisdictional to our committee, and Congress never moved on that. In fact, in the Senate, it's interesting to recall that the Waxman-Markey bill—well, the Senate variant—was on the calendar for months, almost one year, at a time when the current majority commanded a greater than 60-vote margin, and yet it never came to a vote.

The points that the attorney general makes, I think, are very consistent with the overall themes that Senator Murkowski and the senators on our side of the dais have taken, which is that although we don't have jurisdiction over the environmental laws, we want to see that the environmental laws are administered according to their terms and are not supplanting the energy policy of the United States. I thought some of the points in the Oklahoma plan were really right on target in terms of trying to get back to that balance, and although I like the idea of flexibility, and I seem to recall—David or Bill, you can correct me—I seem to recall that the idea of mass emissions or a sort of overall cap was a Republican idea originally.

I like the flexibility that it affords, and I credit David for wanting to work within that flexibility. But as the attorney general's paper points out—and I'm sorry I don't have the quotation right at hand—the flexibility offered under the Kentucky plan is a [mere] guise of flexibility because of the vast authority that it would cede to EPA. So, that's my reaction from my perspective, and I hope that it's helpful.

**Jeffrey Bossert Clark:** Let's proceed this way: With Attorney General Pruitt's indulgence, if I could ask for your reactions to the panelists, first, and then I'd like to exercise my prerogative as the moderator to toss out the first question to the panel. Attorney General Pruitt?

**Scott Pruitt:** Thanks, Jeffrey. I appreciate the comments by all the panelists. Here's one of the things, David, that I did want to ask you about: You made the reference to emissions baselines based upon historical—you pick a year, 2008, 2010—that recognizes the steps that states have taken

22. Letter from Roy L. Ash, Chairman, President's Advisory Council on Executive Organization, to Executive Office of the President (Apr. 29, 1970), *available at* http://www2.epa.gov/aboutepa/ash-council-memo.

23. The Senate confirmed Chairman Cheryl A. LaFleur for a second term on July 15, 2014. *See* http://www.ferc.gov/media/news-releases/2014/2014-3/07-15-14.asp#.VD1mFVeaUW4.

24. American Clean Energy and Security Act, H.R. 2454, 111th Cong. (2009). The bill was approved by the House on June 26, 2009, by a vote of 219-212, but was defeated in the Senate.

historically. How do you reconcile that emissions baseline approach, which would be defined on a state basis, with the language that Bill cited in his comments? Just to reiterate, the language was: "Congress explicitly required the EPA to allow the states to permit the state, in applying the standard of performance to any particular source, under a plan to take into consideration, among other factors, the remaining useful life of the existing source to which the standard applies." Clearly, Congress contemplated that the states were going to look at unit-by-unit basis, with that type of language, at least from my perspective. Do you not see any kind of conflict between that language and an emissions standard that's based at the state level?

**David Doniger:** That's a good question. Thank you. The language "remaining useful life" doesn't have a definition. I can think of a number of different ways to define it. The focus might be on how old a facility is, or its economic value, how much economic value it still has left. Whichever way you think about that, I do believe in the approach that we're suggesting the states have—and in fact the power companies have—the ability to take into account the remaining useful life of a facility. For example, under the proposal that we've launched, it turns out that Oklahoma is a 50/50 state. It's the state that had an equal dependence on coal and gas-fired power in the baseline period that we looked at, just hypothetically, which was an average of 2008-2010.

So, if Oklahoma had that distribution, and then a standard was established, and it's essentially a formula—this much for gas, this much for coal, and in your case, it would be equally balanced—but there's a lot of flexibility in how to achieve that. So, if you wanted to keep a particular coal asset or a particular gas asset running longer, you would be able to use the mechanisms I described of crediting, basically of doing something else, in order to cover the emissions of that plant to the extent it was over the limit. There would be total flexibility at the state level, or at the corporate level, to decide how long to run each facility, so long as its emissions were properly covered.

If I may, let me just say that our proposal is not a cap-and-trade proposal. There is no cap in the NRDC proposal. We proposed an emission rate. It would be a rate, as I said, differentiated from state to state. But it would mean that if power demand went up in a particular fast-growing region of the country, the rate could still be met. Mass emissions might go up, but it wouldn't be required to meet a given cap.

What our proposal does include is an option, at the state level, for states that want to use cap-and-trade approaches, that want to use mass-based approaches, to choose to do that and to convert from the rate-based—you multiply the rate by the expected electric demand in the year 2020, and you end up with a number of tons, and if the state wants to manage its situation under a cap-and-trade-based formula, so be it. Now, the eastern states and California already have those kinds of programs. Kentucky has expressed some interest in it, but it would be a Kentucky choice. Montana has expressed some interest in it, but it would be a Montana choice. And other states, under our proposal, could continue to operate with no caps, although there would be these emission rates, and averaging and trading between sources, in order to achieve the most reduction feasible at a reasonable cost.

**Jeffrey Bossert Clark:** Thank you, David. You're going to be a popular panel member, because the first question that I want to put is to you. So, that's giving you a lot of the speaking time. First, in terms of your remarks, I do think that the science is contestable, and I also think that your interpretation of cases like *American Electric Power* are contestable, but we're not here for that purpose. Let me stipulate that they're just not on the agenda for today.

The issue for today, it seems to me, and you've been addressing it, is compliance with §111(d)'s terms. You said that it would take the Supreme Court or any court all of five minutes to reject an argument that what the EPA is doing here, or we suspect that they will be doing, is improper.

I think there are three textual limitations. First, the last time I checked, there's still a Step One in *Chevron*—it's not all *Chevron* Step Two—embedded in §111(d). One of those that you've been talking about is the useful life reference, which I think is inconsistent with the whole notion of picking winners and losers that Attorney General Pruitt was talking about. I think you're going to have problems there, but let's put that one to the side because you spent so much time talking about it already.

The other two key textual limitations are the fact that the statute is structured to give EPA the power to create procedure, not substance; and the second one is the source category limitation, which was your jumping-off point for your claim of the five minutes it would take a court to reject that. It seems to me that those two limitations in the statute are very strong. They're framed in mandatory and very clear terms. Why, in your view, would they be rejected as *Chevron* Step One grounds for a challenge?

**David Doniger:** Well, my glib remark about five minutes was about the second one, the source category limitation, so let me address that. The basic idea of the *Chevron* case is that if Congress settles on one form of word formulation and it is crystal clear, then that crystal-clear meaning has to be observed; but if there are gaps or ambiguities in it, the Agency gets considerable discretion to resolve those ambiguities. (And by the way, I argued and lost the *Chevron* case. I sometimes feel it's better to be really unhappy 30 years ago and pretty satisfied now, rather than the other way around.)

That's the principle of the *Chevron* case. Now, when you look at this particular statute, it turns out that Congress really kind of screwed up in 1990. They adopted two provisions, in two different sections of the 1990 CAA Amendments, that both modified the same sentence in §111. The codifiers didn't know what to do, so

they tried to pick one version of it and put it into the *U.S. Code*. But what really is the law of the land is found in the *Statutes at Large*. So, you have to reconcile these two inconsistent amendments adopted at the same time to a single sentence of the CAA.

If there ever was a place where the *Chevron* doctrine applies, it's got to be that: where the statute is a mutation in the process of dividing and combining between the U.S. House of Representatives and the Senate, and the Agency is going to end up with the leeway to resolve that. EPA did produce a resolution of that in—I believe it was the mercury regulations, or maybe it was the more recent ones—and I think the federal Circuit Court and the Supreme Court will literally spend, together, maybe 10 minutes resolving that one.

As for your other textual limitation, the question is what does the term "procedure" mean? What §111(d) does is it says: Think about how it came to be. In 1970, they were writing this law, and there was a section on ambient air quality standards, so there are these concentration values in the atmosphere and state plans to implement them. EPA sets the former. States do the plans. EPA judges whether the state plans are going to meet those concentration values, approves or disapproves them, and issues FIPs if the state plans don't.

Bump over to §111. They wrote a section that said we should have new source performance standards, standards for new plans. Bump over to §112, which actually was carved out of §111 during the legislative process. It said that for special pollutants called hazardous air pollutants, we're going to have not only new source standards, but also existing source standards set by EPA. Very near the end of the legislative process in 1970, the drafters realized that they had a gap. They hadn't provided for regulation of existing sources of pollutants that are neither the ones for which the air quality standards are set nor the hazardous air pollutant standards, but they are dangerous. Those pollutants have been determined to endanger. So, §111(d) was written to fill the gap by providing that EPA would set a performance standard and the states would write implementation plans through a procedure like the one used to meet the air quality standards. That's it. That's how it came to be.

It's quite clear that it also says EPA has the same authority to approve and disapprove FIPs and to write federal plans as it does under the program to meet the air quality standards. It says that, very explicitly. The state plans have to be satisfactory to be approved. If they're not satisfactory, they have to be disapproved, and then there is a requirement issue of federal plans. So, again, I don't think there's much ambiguity there. If there is, then it's going to get resolved, so long as EPA is reasonable about the way it's interpreted, in the Agency's favor.

**Jeffrey Bossert Clark:** Before we open it to questions from the audience, are there any panelists who want to make remarks, especially about the issue of the Senate and House amendments that were both adopted in conference, whether they conflict or not, and how any conflict would be resolved?

**Patrick McCormick III:** Yes. I can't speak to the legislative history that you've outlined, but you are outlining my worst nightmare as someone who works in Congress. Of course, it wouldn't be a nightmare to be actually legislating on subjects such as these. I think that would be very important.

There is one part of the paper and one aspect of the debate as outlined in the paper that is jurisdictional to our committee. I'm reminded of it by your comment, because I think that in the EPAct, Congress went the extra mile to be very specific about certain demonstrations for purposes of §111(d). On page 8 of the paper there is a good discussion, a long paragraph that raises the issue we're engaged with here, the question of whether carbon capture and sequestration is adequately demonstrated. Congress, in sort of the opposite situation to the one you're describing, was trying to harmonize laws and said very clearly in EPAct that for purposes of §111(d), you couldn't say that a technology was adequately demonstrated if it was a technology that was receiving assistance from the DOE's Clean Coal Power Initiative.

I mention that as a mere footnote to the much broader and important question you're raising, but the point is that Congress doesn't always get it wrong. And I'm not suggesting you were wrong.

**David Doniger:** I love the CAA. You talked about the founding brothers. I think of the people who wrote the CAA as a kind of second set of founding brothers. That may scare you; I don't know.

**Patrick McCormick III:** I will disclose that one of my children is named after the first general counsel at EPA.

**David Doniger:** On the point you raised, what those provisions say is that, first of all, I don't anticipate any reliance by EPA in the §111(d) rule on carbon capture and storage, but that has to do with the new source rule, the subsection (b) rule. What those provisions say is that you cannot rely solely—*solely*—on a federally supported project to support the demonstration of a technology. EPA's position is that they have not relied solely. They have a solid basis in facts that flow from projects and experience that has no EPAct support, that is sufficient to demonstrate that carbon capture and storage is demonstrated achievable technology for the new plants, and the EPAct plants would provide a kind of verification. But if you didn't have that, if it didn't exist, there is still a basis for the standard.

**F. William Brownell:** Jeff, if I could just jump in, because there's a different side of the story on each of the points that David and others have discussed. Just very briefly: On the §111(d) limitations on EPA's authority under the clauses on regulation of pollutants under other sections, including reg-

ulation of source categories under §112, the other side of the story is that there are two limitations on EPA's authority. At the end of the day, they're both there in the statute, and they both should be applied. No pollutant that's regulated under §108, §109, or under §112, and no source category regulated under §112, gets regulated under §111(d).

On procedure, you know, the response is: Procedure is procedure, substance is substance. Congress knew what it was talking about when it talked about procedures. Look at CAA §307(d), which provides different standards for judicial review of substantive and procedural decisions. And in EPAct, "solely" does appear, but it appears in only one of the clauses that limits EPA's authority with respect to consideration of technologies as adequately demonstrated: "No technology, no level of emission reduction achieved solely by that technology, or no level of emission reduction achieved shall be considered as a basis for an adequately demonstrated determination." "Solely" is confined to one clause, and that clause does not modify technology. So, that's the other side of the debate on this, and that's what may take—

**Scott Pruitt:** That's why it may take a bit more time than five minutes.

**Jeffrey Bossert Clark:** On the point that Bill was talking about, in terms of the Senate version and the House amendments, and the fact that both should be given effect, there's a paper that I'll commend to you that's up on the Federalist Society website, written by William Hahn, I believe. It covers the legislative history and basically takes the position that both the Senate and House amendments are directionally deregulatory. I think his prediction would be that it's going to be tough going for EPA and the courts if they try to say that because the House and the Senate amendments are not identical (even though in conference they adopted both), then that somehow creates ambiguity and EPA can do whatever it wants and ignore the deregulatory purposes of both of those amendments. That would be pretty dicey for the Agency to try. So, take a look at that paper, if you would.

With that, let's kick it open to the first question from the audience. Sir?

**Attendee:** Greetings and thank you very much to the panel. It was wonderful. Quick question: I'm having a tough time wrapping my head around what an FIP would look like under a beyond-the-fence, mass emissions §111(d) regime for greenhouse gases. Utilities normally plan on four-year horizons with these integrated resource plans. Would an FIP, under the Kentucky plan or the NRDC plan, would it empower EPA to impose a de facto IRP [integrated resource plan], and is that within the Agency's technical and functional expertise?

**David Doniger:** I'm glad I came. My view is that what a state plan will provide, if it's developed by the state as it should be, it will impose an emission rate—I mean, this is the plain vanilla version—impose an emission rate on the sources. Those that are over the limit would have a compliance obligation. Those that are under it, the state could choose to turn them into credit generators. The plan would also provide what the compliance tools are that a source above the standard is entitled to use, and at least in our proposal, that would be things they do to ratchet down the emission rate of the source itself by improvements to the physical plant. But it would also count credits through the kinds of approaches that we describe in our report, to move toward cleaner dispatch order, and credit for wind plants, the zero-emission generation of wind plants built after the baseline. That would count. Uprates of nuclear plants would count, and, as I explained, credit for the reduction in power demand by making our buildings, homes, and appliances more efficient.

Now, if the state chose not to do that, the question is, what would the federal government's plan provide? It might provide only that same emission limit and at that point, as it is under the CAA, there is always the prerogative of the state to resume the lead. I'm not speaking for EPA. I don't know how they're going to do this, but this is just our idea. The federal plan would specify the emission limit. If the tools to bring all of those compliance measures into play are really state tools, well, that's the state's option. Bring them into play if you want.

**F. William Brownell:** Let me answer that a little differently. Under the Federal Power Act, FERC doesn't have authority to override, to dictate integrated resource planning at the state level, much less EPA, so that's the first point. The second point is that this whole discussion illustrates the difficulty you get into if you go beyond the source-focused performance standards authorized by §111(d). If you're focusing on what the performance of a source is, based on best adequately demonstrated technology for that source, then theoretically, if the state doesn't adopt a plan and EPA has to, EPA can then determine what's adequately demonstrated technology for the source in the source category, by looking at what's the appropriate performance standard for the source, taking into account, as the statute says, things like remaining useful life of the individual facility.

Now, as David says, that might not be as flexible as something the state could do in implementation. The state could always come back with its own §111(d) plan after that. But if you confine it to the proper statutory authority, what is the performance standard for the source, I think you avoid some of those problems you raise.

**Patrick McCormick III:** I would like to add that not only does FERC not have the power to impose integrated resource planning under the Federal Power Act, but the Federal Power Act specifically ousts FERC of any jurisdiction over electricity generation. It's very clear in the Federal Power Act that electricity generation is a state matter, and

that, I think, goes along nicely with an inside-the-fence §111(d) analysis consistent with the Oklahoma plan.

**Scott Pruitt:** David, your comments have been constructive as far as our discussion here today, but it seems to me that the NRDC's approach (hopefully not EPA's approach) is that this section provides substantive authority to EPA, not procedural, which has a direct corollary effect on what the state can do. It converts the state's role from a substantive position to an administrative or procedural position. It takes away the authority of the states to contemplate the useful life that Bill made reference to, in addition to these other factors on less-stringent standards for a unit-by-unit designation. The statute clearly contemplates that.

**David Doniger:** Actually, the explanations are in the regulations and were created by EPA, but could be changed by EPA.

**Scott Pruitt:** But you're dismissing those factors. If you could reconcile that, it would be helpful, because I'm trying to understand the reconciliation.

**David Doniger:** The statute says—and there's no denying this—that there needs to be consideration of remaining useful life. What I've argued is that in a flexible structure, which has a limit for each source, but doesn't command that the limit has to be met all by itself at that source, it has other tools available—then the state and the source operators have flexibility to decide how long they believe it's valuable to operate that plant and continue doing that by use of the flexible compliance methods. That should be welcome rather than—

**Scott Pruitt:** If states have the ability and authority to determine a less-stringent rate on a facility-by-facility basis, based upon a physical impossibility, based on factors at the site, how do you achieve that if you are starting from the top down, with a mass emissions approach? How do you achieve that?

**David Doniger:** I don't expect EPA to set the standard in terms of mass emissions. I expect them to set the standard in terms of rate of emissions, and I've explained that. Here's another way to look at it: In the 1975 regulations that you're referring to, EPA was thinking of standards that were set in a way that most of you are recommending: in other words, a uniform standard that's the same for every plant of a given type. Then, the Agency contemplated, in accordance with the remaining useful life language, that maybe there would be something different about the economic position of one of those plants, so you need a variance. If you're going to have a uniform standard, you need a variance. That's the way EPA interpreted the statute to read. The regulations flesh out the procedures and the considerations that go into the variance provisions that EPA was thinking about at that time.

But if you think about the standards differently, that they're not set on the basis that every single plant is the same and every single plant has to meet this by itself, then you have other mechanisms of compliance and other ways to take into account the underlying concern, which is that when plants have a different cost structure or a different situation, there needs to be a way to recognize that. So, built into this flexible emission rate standard approach that we are recommending is consideration of remaining useful life.

**F. William Brownell:** If I could just follow up on that—and this is a discussion that could go on the entire afternoon, quite easily—when I look at the Oklahoma plan and others who have come out and emphasized that it's the state's responsibility to develop the plan, it's not about imposing a uniform standard of performance across a source category under §111(d). It's about looking at the technologies that EPA has determined are adequately demonstrated for the source category in determining, first, what is achievable at specific sources, using adequately demonstrated technology? Then, what is best in light of the statutory considerations? What is appropriate for the source in light of the remaining useful life? And other factors that are particularly relevant at the state and local level. So, the plan, far from providing uniform regulation of sources in the source category, would provide for tailored regulation of individual sources, depending on the factors that I've discussed.

**Jeffrey Bossert Clark:** Before we go to another question, let me just hop in here because I think some of these questions—and I'm a specialist in the CAA, as well—can get very abstruse, so let me try to tie it to something that a more lay audience would understand. President Obama very famously said that, "Oh, you can build coal-fired power plants but if you do so, you will be bankrupt," and that approach seems to be running through all of the greenhouse gas regulations. Certainly, I think that will be part of industry's argument in challenging the rules, if EPA goes in the direction of making existing coal-fired power plants impracticable.

Isn't the self-evident purpose of that language in the statute, about considering the remaining useful life of plants, something that was designed specifically, David, by Congress to ensure that preexisting investments in any technology, but in this case primarily coal-fired power plants, would not be effectively rendered useless or have their life cut short by a stringent regulatory regime? Wasn't that the purpose of Congress in 1990?

**David Doniger:** That dates from 1970, I think, but no, I don't think there is a guarantee in the CAA that all the sources continue to remain in the same economic position that they would be if they were allowed to continue discharging dangerous pollution without any restrictions. The whole point of pollution control legislation is to internalize the cost of pollution that is being imposed on the

rest of us. Again, it's important, and I'm sure there's disagreement in the room about whether this is a serious kind of pollution, but I stipulate that it is at least from NRDC's vantage point.

So, when any kind of source is required to limit its pollution, its cost of operating changes. Sometimes, actually, it goes down. The car regulations have the fortunate impact of making cars cheaper to own and operate than they would have been if there were no standards, because of the payback in savings on the gas you don't have to buy. But sometimes, and probably most of the time, pollution regulations raise the cost of operating a source that is emitting pollution, and that's going to shorten its economic life, reduce its economic value. The question always is how much or what is the right balance. But you can't start with a proposition that Congress didn't want anything to change.

**Patrick McCormick III:** I'm going to show my ignorance here. I'm not a CAA lawyer, so please correct me, but I thought that the purpose of the CAA was to protect the public health and to reduce pollution. I don't think that it's an economic statute whose purpose is to internalize the cost of pollution. That may be a consequence of pollution control, but from my point of view as a Power Act lawyer who works for the Energy Committee, that's precisely the kind of assertion about the reach of the environmental laws that is problematic from our point of view as people who are responsible for safeguarding the energy system and making sure that it's balanced. I'm all for public health, and I wasn't kidding when I said one of my children is named after the first general counsel of the EPA. I admire the work that was done in the early '70s, and I'm all for pollution control, but internalizing the cost of pollution, while it may be a consequence, is not a purpose.

**David Doniger:** Please don't mistake me. I didn't say it was a purpose; I said it was a consequence. It is a necessary consequence of controlling pollution to meet a health or environmental objective, because that's done to protect public health and welfare, which includes the climate. That's explicit in the statute, and the Supreme Court has so held. But when you do that, you cannot do that without—let me put it this way—you cannot do that and have a purpose or a principle limitation where you hold harmless the economic position of a polluting source. So, I'm not saying that it's our purpose to change the economic position. It's not. Our purpose is to control the pollution.

**F. William Brownell:** That's why you have that language in the statute.

**Jeffrey Bossert Clark:** Yes. We realize we've gone over a little, but Attorney General Pruitt has prevailed on me to take one last question from the back.

**Scott Pruitt:** You've been very persistent.

**Attendee:** Gentlemen, thank you all for a wonderful discussion, including you, my dear cousin. David is always very sharp and very—

**David Doniger:** He claims to be my cousin.

**Attendee:** I'm trading on that. It's really helped my career a lot, such as it is. Look, the original carbon pollution rule, which came out in April 2012, was deeply weird because in that rule, EPA decided that the performance standard for new coal power plants would be based on the emissions profile of a natural gas plant, and, in effect, EPA defined a gas turbine as an adequately demonstrated system of emission reduction for a coal boiler. So, it was a blatant fuel-switching mandate, and I think that may be the main reason why they pulled it, why they needed a do-over, because it is so obviously contrary to congressional intent.

But it seems to me that these other options that are being discussed, for existing power plants, are very much in the same spirit. In other words, you're not going to require an existing coal plant to meet the emissions profile of the natural gas plant, but you're going to propose a performance standard, or a performance standard guideline, which basically says that each coal plant must split the difference between itself and a natural gas-combined cycle plant. It's still very much a fuel-switching mandate, it seems to me, that's being talked about here. In fact, David, that was one of the options that you said states could use in order to come into compliance.

The question I would raise is: Do you really think, does the panel really think, that Congress intended that the §111(d) provision would be used to set standards for existing sources that no existing source in that category can meet, and that the only way that it can meet it is by reducing its operation, maybe even going out of business, and having the covered entity shift to a different type of facility? Does anyone think that that's a plausible reading of congressional intent?

**F. William Brownell:** My answer is probably shorter than David's. It's no.

**David Doniger:** Well, yes is about the same length.

**Jeffrey Bossert Clark:** Any last remarks before we close out? Thanks to all of our panelists, to Attorney General Pruitt, to Bill and David and Patrick, and to all of you and your patience.

# Exhibit C2

THE DAILY CALLER

# AG: EPA's 'Cap-And-Trade Scheme' Would Violate The Clean Air Act

Posted By Michael Bastasch On 1:27 PM 05/29/2014 In | 1 Comment

The Environmental Protection Agency's upcoming climate rule that would push policies like cap and trade violates the Clean Air Act and will be challenged in court by the states, said Oklahoma Attorney General Scott Pruitt.

News reports have said the EPA's carbon dioxide regulations would force states to significantly lower their emissions from existing power plants. The agency will reportedly give the states a menu of options to choose from to lower emissions, including cap-and-trade schemes.

But cajoling the states into imposing cap-and-trade on their energy sectors would be in violation of the Clean Air Act and almost certainly face numerous legal challenges from states and the coal industry, said Pruitt.

"The Clean Air Act clearly sets out a role for EPA to suggest guidelines, while granting states authority to develop and implement specific proposals to achieve the goals of the Clean Air Act," Pruitt told The Daily Caller News Foundation.

"Should the EPA's proposed regulation force states to adopt a 'cap and trade' scheme or any other specific proposal, it would violate the law and likely be challenged in court," he said.

Pruitt has set out a plan that he says "properly construes" the EPA's authority under the Clean Air Act. Called OKAG Plan, Pruitt's plan would have the EPA design the guidelines for emissions reductions and the states set the actual emissions standards for their power plants.

OKAG Plan differs from what others have argued the EPA should do in that it institutes what's called a unit-by-unit plan — which means that each power plant would have their own unique emissions standards as opposed to a one-size-fits-all approach.

"It is not feasible for EPA to establish any assumed numeric efficiency to any existing unit, much less a numerical standard for the approximately 1,200 coal-fired EGUs in the country," wrote a coalition of states' environmental protection agency heads.

Environmental regulators from nine states — including North Carolina, Alabama and West Virginia — said, "the EPA should ensure that its guidelines allow states to set GHG performance standards that are based on measures that can be applied at each EGU rather than include activities beyond the unit itself."

"The OKAG Plan preserves state primacy and does not turn over management of local generation fleets to EPA under the guise of 'flexibility,' according to OKAG Plan.

But news reports about the EPA's upcoming rules for existing power plants suggest the agency did not consider the wishes of some states. The Wall Street Journal reported the proposal will "include a cap-and-trade component where a limit is set on emissions and companies can trade allowances or credits for emissions" to meet new federal rules.

Power plant operators could also "trade emissions credits or use other offsets in the power sector, such as renewable energy or energy-efficiency programs, to meet the target," according to the Journal.

This would be a boon to states that already have cap-and-trade systems, like California and a group of nine East Coast states in the Regional Greenhouse Gas Initiative. The White House is selling this option as a "flexible" one, even though it would likely result in the closing of more coal-fired power plants.

White House energy and climate adviser Dan Utech said the rule is "going to enable states to move forward in a way that works best for them with the energy resources they have."

But a U.S. Chamber of Commerce report from Wednesday found that EPA's climate rule would cost $50 billion per year — the most expensive the agency has come up with. The chamber report also found that an additional 114 gigawatts of coal-fired power would be shut down — 40 percent of the coal fleet.

Even the drastic cuts to carbon dioxide emissions in the U.S. would do nothing to lower global emissions. Developing nations' rapidly increasing carbon dioxide emissions will outpace any cuts made here in the U.S. — negating efforts to fight global warming.

"To put this in perspective, the International Energy Agency estimates that over the 2011-30 forecast period, the rest of the world will increase its power sector CO2 emissions by nearly 4,700 million metric tons (MMT), or 44 percent," the chamber noted. "Those non-U.S. global emissions increases are more than six times larger than the U.S. reductions achieved in the Policy Case from 2014-30."

*Follow Michael on Twitter and Facebook*

# Exhibit C3

Print Article

## Press Release

Tuesday, December 16, 2014

# The Hill: EPA'S clean power plan is wrong for states

By Scott Pruitt and Jonathan Small

Imagine a rule that raises the cost of electricity, hurts the most poor among us, cuts domestic jobs and results in a dramatic re-shaping of the American electricity system. Now imagine that this rule was never voted on by Congress.

This is the U.S. Environmental Protection Agency's proposed Clean Power Plan, a rule that undercuts the states' abilities to manage their own power grid and will raise the cost of energy dramatically.

Those hurt most by the Clean Power Plan will be the most vulnerable among us-the poor, the single mothers, the elderly and minorities. Households earning less than $10,000 per year spend an astounding 60-80 percent of income on energy costs, and those earning between $10,000 and $30,000 per year spend greater than 20 percent of their income on energy. It is no surprise that the inability to pay utility bills is a leading cause of homelessness in U.S.

The EPA's proposed rule could increase the typical household's annual electricity and natural gas bills by $680, or 35 percent, by 2020, escalating each year thereafter as EPA regulations grow more stringent, according to a study by Energy Venture Analysis.

While cost of energy will certainly be impacted, the reliability of our states' power grid is also threatened. When federal regulators mandate that states use more renewable energy sources, nuclear or hydro-electric power than -fossil-fuel fired power the state's infrastructure may not be prepared for the fuel switch.

The Southwest Power Pool, a regional transmission organization that serves an eight-state region that includes Oklahoma, has warned that the rule "introduce[es] the very real possibility of rolling blackouts or cascading outages that will have significant impacts on human health, public safety and economic activity within the region."

Oklahoma and other states have managed their retail electricity markets in such a way that has provided affordable, reliable energy to their citizens for nearly a century. States' individual departments of environmental quality have protected the well-being of their state's air quality and the health of their citizens. It is an insult that this administration assumes that the EPA knows better than state regulators close to home.

In the words of Federal Energy Regulatory Commission Commissioner Tony Clark, "[States] will have entered a comprehensive 'mother may I?' relationship with the EPA that has never before existed."

The Obama administration implemented this plan because they believe that climate change is an issue. However, it is not certain that this rule will make a demonstrable impact on greenhouse gas emissions. One projection estimates that by 2050, the proposed guidelines would reduce sea level rise by only 1/100th of an inch (the thickness of three sheets of paper) and reduce the average global temperature increase by less than 2/100th of a degree. EPA justifies the proposal by counting reductions ("co-benefits") in emissions of other pollutants already regulated by EPA.

Not only do states not need the ineffective hand of the federal government determining what fuel sources it uses, but the EPA does not have legal authority granted under the Clean Air Act. States should be left to make decisions on the fuel diversity that best meets their electric generation needs. The EPA's proposal overrides state authority by forcing states to prioritize non-fossil-fuel generation over fossil-fueled generation. This is a direct violation of states' traditional role in making their individual energy policies.

EPA is attempting to make fundamental and irreversible changes that will jeopardize our power grid while offloading responsibility to the states that have to answer to their citizens. Oklahoma will always challenge the EPA, or any other federal agency, when it exceeds the statutory authority it is granted.

The Oklahoma Attorney General's Office along with attorneys general in 16 other states and state think tanks like the Oklahoma Council for Public Affairs and legislators in 17 other states have voiced concerns over the U.S. Environmental Protection Agency's proposed Clean Power Plan. This proposed rule should be withdrawn, or at least stayed, until the courts have a chance to weigh in on legal challenges against these regulations.

*Pruitt is the attorney general of Oklahoma. Small is the executive vice president of the Oklahoma Council of Public Affairs.*

# Exhibit C4

# Tulsa World: U.S. Sen. Jim Inhofe and Oklahoma Attorney General Scott Pruitt: Senate Bill 676 protects Oklahoma businesses, families from EPA's overreach

**By: Sen. Jim Inhofe and Attorney General Scott Pruitt**

Click here to read at Tulsa World

Wednesday, April 1, 2015

As two of the most ardent critics of President Obama's Climate Action Plan, we are pleased Oklahoma is taking a leading role at the state and federal level in challenging the administration's attempt to use EPA regulations to set forth a national energy plan. For years, state environmental regulators worked to improve the state's air quality and protect the health of local citizens. Despite long-standing success, the Obama administration is attempting to commandeer the role of state environmental regulators, taking it a step further to dictate what type of power can be used to power Oklahoman's homes and businesses.

In order to comply with the proposed rule, Oklahoma, for instance, would be required to cut power plant emissions of carbon dioxide by 35 percent. With coal and natural gas making up 90 percent of Oklahoma's electricity supply, EPA knows there are only so many ways Oklahoma can achieve its arbitrary goals. EPA's plan threatens energy affordability and reliability for consumers and businesses by forcing states into shuttering coal-fired power plants and eventually other sources of fossil-fuel-generated electricity.

The EPA doesn't have the authority under the Clean Air Act to impose this rule. Under the act, states are to submit a plan for emissions reductions, and EPA retains the authority to enforce those plans. State governments are then left with two options: submit no plan or submit a plan that would surrender sovereign powers of a state over its electricity markets to federal bureaucrats.

At the federal level, the Senate Environment and Public Works Committee has held two hearings in the 114th Congress with witnesses from EPA as well as state regulators. The committee will continue to hold these oversight hearings to highlight the problems with the Obama administration's plan while Congress works toward effective legislative solutions to limit and roll back EPA's proposals.

At the state level, the Oklahoma Attorney General's Office is leading a bipartisan group of states in a lawsuit challenging the EPA's authority to issue the unlawful rule. Our goal in challenging the EPA is to protect the role granted to state policy makers under the Clean Air Act to make decisions on what type of fuel can be used to generate electricity.

The Obama administration refuses to acknowledge questions about this proposed rule and despite the threat of a legal challenge, EPA continues moving forward with finalizing the rule.

We are encouraged Oklahoma policy makers are lending their voices to the chorus of those who oppose the Obama administration's overreach. Gov. Mary Fallin and other governors sent a letter to the president expressing concern about the rule's failure to strike a balance in the partnership between the states and the federal government. The Oklahoma Legislature also is considering a proactive approach to protect our state from federal environmental mandates that are outside the scope of the Clean Air Act.

Senate Bill 676 authored by Sen. Greg Treat, R-Oklahoma City, and Rep. Jon Echols, R-Oklahoma City, would allow for legislative oversight of carbon dioxide emissions plans submitted to EPA to ensure the plan in fact complies with the Clean Air Act. This common-sense bill will ensure any decisions about Oklahoma's energy future will ultimately be held in the hands of our elected officials, not federal bureaucrats.

No state should comply with this rule if it will mean surrendering decision-making authority to the EPA, a power that has not been granted to the agency. States should be left to make decisions on the fuel diversity that best meets their electric generation needs. We will continue to fight for these issues in the U.S. Senate and in the federal courts.

We applaud Sen. Treat and his colleagues in the Oklahoma state Senate for passing SB 676. We encourage members of the Oklahoma House to join us in supporting this common-sense bill that will protect families and business and ensure Oklahoma maintains access to affordable and reliable power.

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Jim Inhofe, a Republican, is Oklahoma's senior U.S. Senator. Scott Pruitt, a Republican, is the Oklahoma attorney general.

# Exhibit C5

http://www.tulsaworld.com/opinion/readersforum/u-s-sen-jim-inhofe-and-oklahoma-attorney-general-scott/article_3ab87bba-6f7e-579f-aa41-624caa84b63b.html

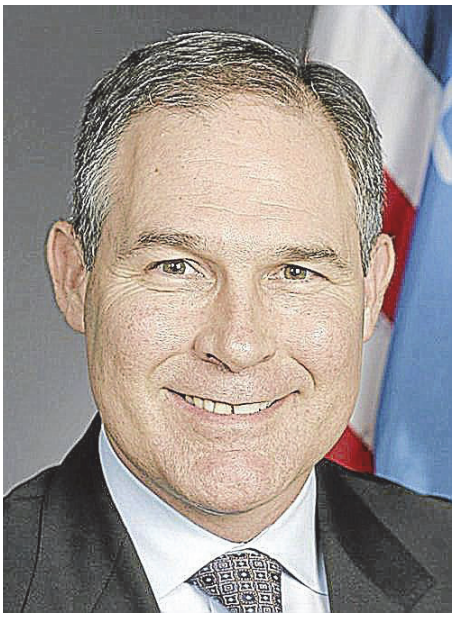
# U.S. Sen. Jim Inhofe and Oklahoma Attorney General Scott Pruitt: Senate Bill 676 protects Oklahoma businesses, families from EPA's overreach

By U.S. SEN. JIM INHOFE & ATTORNEY GENERAL SCOTT PRUITT Apr 1, 2015

**TRANSPORTATION DEAL**

**Sen. Jim Inhofe:** The chairman of the Senate Environment and Public Works Committee has agreed with the ranking Democrat to work on a surface transportation bill next month. The dwindling value of federal fuel taxes and rising cost of construction have created a funding gap on highways.

US Senate Photo Studio



**CRITICIZES EPA CARBON STANDARDS**

**Scott Pruitt:** The Oklahoma attorney general contends the Environmental Protection Agency is using an “obscure” section of law to tell states what mix of sources to use to generate electricity. “States should be left to make decisions on fuel diversity that best meet their power generation needs,” he said.

OKtul

**NEGOTIATOR**

**Sen. Jim Inhofe:** He said the $3.6 billion that Oklahoma is set to receive will be “the largest single infrastructure investment in Oklahoma’s history.”

US Senate Photo Studio

As two of the most ardent critics of President Obama’s Climate Action Plan, we are pleased Oklahoma is taking a leading role at the state and federal level in challenging the administration’s attempt to use EPA regulations to set forth a national energy plan. For years, state environmental regulators worked to improve the state’s air quality and protect the health of local citizens. Despite long-standing success, the Obama administration is

attempting to commandeer the role of state environmental regulators, taking it a step further to dictate what type of power can be used to power Oklahoman's homes and businesses.

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*Jim Inhofe, a Republican, is Oklahoma's senior U.S. Senator. Scott Pruitt, a Republican, is the Oklahoma attorney general.*

# Exhibit C6

Print Article

## News Stories

Thursday, April 16, 2015

# Financial Times: Obama's climate change legacy at risk from conservative heartland

By Barney Jopson in Oklahoma City ©Bloomberg

President Barack Obama's attempt to leave a legacy of domestic action on climate change faces a proliferation of legal threats just as a global climate deal hangs in the balance, according to a state lawyer fighting the White House.

Scott Pruitt, Oklahoma's attorney-general, said that a Thursday court hearing on plans to slash greenhouse gas emissions from coal power plants was only "round one" in a fight he is leading from the US's conservative heartland.

Mr Pruitt argues that the president's green regulator, the Environmental Protection Agency, is breaking the law by imposing state-by-state targets for cuts in carbon dioxide emissions and denying state governments a final say.

If his arguments prevail in the courts it will be a devastating blow for Mr Obama, jeopardising his effort to leave a legacy of decisive action on global warming with a policy dubbed the Clean Power Plan.

"What we see with the current EPA approach is almost an attitude that the states are a mere vessel of federal will," Mr Pruitt said in his Oklahoma City office. "The [EPA] cannot simply bypass the statute. The process matters. And they have breached that with this proposed rule."

An EPA spokesman said that lawsuits challenging the proposal before it was finalised were "premature", but added: "We are confident in the legal underpinnings and the foundation on which the Clean Power Plan is built."

A defeat for the White House would upset talks on a global climate change deal due to be finalised in Paris at the end of this year, not least because the US needs to close more coal power plants to achieve goals set in a landmark climate deal with China last year.

The US pledged to emit 26–28 per cent less greenhouse gas in 2025 than it did in 2005, while Beijing said it would ensure Chinese emissions peaked by about 2030.

Thomas Lorenzen, a former environmental lawyer at the justice department under Mr Obama and former president George W Bush, said the EPA did appear to have "usurped" the role of states.

"If [the plaintiffs] win the states' rights challenge the EPA will have to rethink and it'll be much harder to meet the emissions reduction targets it set," he said. "It would be disastrous for the administration's international agreements."

On Thursday the US court of appeals for the DC circuit will hear arguments on two lawsuits against the proposed power plant regulations, which were unveiled last June. One comes from a group of states led by West Virginia and Oklahoma and the other is from Murray Energy, a coal company.

If the proposals survive those challenges, Mr Pruitt – who accused the White House of having an "anti-fossil fuel mentality" – said there would be a new round of attacks once the regulations are finalised this June.

"There's going to be litigation and there should be . . . because agencies should not be able to make it up as they go," he said.

Electricity generation is the largest single source of carbon dioxide in the US, accounting for about one-third of emissions. The rest come from transportation, industry and agriculture.

Mr Pruitt said humanity's contribution to global warming was "subject to considerable debate". Told that 97 per cent of scientists endorsed the idea that humans had caused climate change, he said: "Where does that fit with the statutory framework? That's not material at all. So that's why I don't focus on it."

The Obama administration, he said, was naive to believe that US action on global warming would set an example to the rest of the world.

"To think that somehow this country taking aggressive steps like the [president's] climate action plan is going to somehow influence India and China to magically change how they do business is absolutely legendary. It's fanciful."

He predicted fierce resistance if the EPA, as expected, tries to impose a federal compliance plan on US states that refuse to devise their own means of meeting EPA emissions targets by, for example, using cleaner energy or improving grid efficiency.

"That is wholly, wholly inconsistent with [the EPA's] authority under the Clean Air Act," he said, referring to the 1970 law the Obama administration is using to tackle climate change.

Environmental groups strongly disagree. Mr Pruitt's case was "meritless", said David Doniger, director of the climate programme at the Natural Resources Defense Council.

He said the EPA was asserting its unambiguous authority over polluters – not the states – while giving states the opportunity to shape polluters' responses.

Mr Pruitt bristled at the suggestion that if left to its own devices, Oklahoma might do nothing to cut carbon emissions, noting that the state already generated about 15 per cent of its electricity from wind, making it the US's fourth-biggestwind power state.

"We drink the water, we breathe the air here in Oklahoma. To think that we don't care about that, and somehow are being led to sacrifice those things is . . . not accurate," he said.

"It's a paternalism that's exercised by DC to say: 'We know best, you cannot take care of yourselves.'"

# Exhibit C7

Print Article

## News Stories

Wednesday, February 3, 2016

# The Hill: State AGs bullish about challenge to 'unlawful' Obama climate rule

By Timothy Cama - 02/03/16 10:58 AM EST

The state attorneys general leading the court fight against President Obama's landmark climate change rule say they are optimistic that their unusual legal strategy will work.

While admitting that asking the Supreme Court to block the rule before a lower court decision is a gamble, the officials for West Virginia and Texas say their argument is sound.

"We acknowledge that an application for a stay at this stage isn't typical," West Virginia Attorney General Patrick Morrisey (R) told reporters Wednesday.

"But what the EPA has done here is literally unprecedented, and they're acting in a manner that's clearly in violation of the rule of law, and recent Supreme Court cases," he said.

Morrisey and Oklahoma Attorney General Scott Pruitt (R), along with representatives of 24 other states, asked the Supreme Court last week to stop the Environmental Protection Agency from enforcing the power plant rule while it is being litigated in federal court.

The states took the unusual step after the Court of Appeals for the District of Columbia Circuit, which is considering the merits of their lawsuit, declined earlier in January to issue a judicial stay.

The attorneys general argue that their states will experience irreparable harm during the litigation and that only a stay would prevent that.

Morrisey cited last year's Supreme Court ruling in against the EPA's mercury rule for power plants as an example of when a ruling comes too late, since most power plants had already complied with the standard.

"The court may feel the need to come in and look at these cases closely and give these states the opportunity to have a hearing and a decision on the merits before these harms continue," he said.

Pruitt said the EPA is betting on a long litigation process so that states and power plants comply with the climate rule before the Supreme Court decides its fate.

**"You have the EPA and this administration taking steps to basically engage in unlawful action, and they're trying to accelerate it so that the states are forced to comply before there's ever a ruling on the merits, with respect to the unlawfulness of the rule," Pruitt said.**

**"There's really been almost an intimidation to act before this president leaves office to put into motion compliance with what we believe to be an unlawful rule," he continued.**

Supreme Court Chief Justice John Roberts has asked the Obama administration to respond to the stay request by Thursday.

He will then either decide on the request himself or allow the full court of nine justices to decide.

Usually, the states would have to wait for the lower court to rule on the case and appeal it to the higher court for the justices to weigh in on it.

# Exhibit C8

Print Article

## News Stories

Wednesday, February 10, 2016

# ICYMI: U.S. Supreme Court grants stay on implementing Clean Power Plan

The Oklahoman ~ February 10, 2015

by Paul Monies

The U.S. Supreme Court on Tuesday halted implementation of the Clean Power Plan, granting a stay sought by Oklahoma and more than two dozen other states, utilities and coal companies.

The court ruled 5-4 to reverse an earlier decision by the U.S. Court of Appeals for the District of Columbia that denied a stay on the Obama administration's plan to reduce carbon dioxide emissions and other greenhouse gases from power plants.

The Supreme Court halted the plan until the appeals court could issue its decision on several lawsuits against the rule. The appellate court has consolidated those cases and scheduled oral arguments for June 2.

Oklahoma Attorney General Scott Pruitt said granting the stay gives states some clarity. His office joined in the stay appeal on behalf of Oklahoma and the Department of Environmental Quality.

"They can sit back, take a breath and let the legal process work," Pruitt said Tuesday. "I think at the end of the day, the Supreme Court has indicated that we're going to win on the merits, as well. It's a huge step, and something that illustrates how seriously the Supreme Court is taking these types of issues."

David Doniger, director of the climate and clean air program at the Natural Resources Defense Council, said his group was confident the rule ultimately will be upheld.

"The electricity sector has embarked on an unstoppable shift from its high-pollution, dirty-fueled past to a safer, cleaner-powered future, and the stay cannot reverse that trend," Doniger said in a statement. "Nor can it dampen the overwhelming public support for action on climate change and clean energy."

In a statement, EPA expressed its disappointment with the stay.

"We're disappointed the rule has been stayed, but you can't stay climate change and you can't stay climate action," the agency said. "Millions of people are demanding we confront the risks posed by climate change. And we will do just that. We believe strongly in this rule and we will continue working with our partners to address carbon pollution."

Pruitt has fought the Clean Power Plan at every stage, including in the draft stage before the rule was finalized last year. Tuesday's granting of a stay from the Supreme Court was his first victory on the environmental rule.

Pruitt said his office has won stays from courts on other Obama administration rules on water and immigration.

"Our involvement in each of those of three signature issues of the president stops them dead in their tracks," he said. "Each of those rules will be dormant and not survive his presidency."

**Carbon regulation**

Pruitt said Congress, not the EPA, should decide how to regulate carbon dioxide emissions from power plants. He said the section of the Clean Air Act under which the Clean Power Plan is based is an unprecedented use of that part of the law.

"The EPA doesn't have the latitude to make it up," Pruitt said. "If the policymakers in Washington, D.C., along with the executive branch, determine that CO2 is a hazardous air pollutant under Section 112 and should be regulated, they should pass that law and give that authority to the EPA. Until that occurs, the EPA can't simply make it up and act in the space of Congress."

U.S. Sen Jim Inhofe, R-Tulsa, called the stay a "major blow to President Obama's legacy on climate change."

"These regulations were the foundation of the president's commitment to the Paris Climate Agreement," Inhofe said in a statement. "The court's action should demonstrate once again to the world that this president has committed the U.S. to actions that are unenforceable and legally questionable."

**Little state effect**

In practical terms, the Clean Power Plan stay will have little effect in Oklahoma, which already has an executive order from Gov. Mary Fallin stopping the Department of Environmental Quality from planning for the rule's implementation.

Under the plan, the Environmental Protection Agency expects Oklahoma to cut its greenhouse gas emissions rate from power plants 32 percent by 2030. The first deadline for implementation is in 2022, but states were supposed to submit preliminary plans by September. If states don't submit compliance plans, the EPA will impose a federal plan.

Oklahoma Gas and Electric Co. and Public Service Co. of Oklahoma previously said their plants likely could meet the Clean Power Plan goals, largely because earlier EPA rules for mercury and regional haze already forced them to make changes to their fossil-fuel generation.

The utilities continue to study how the rule might affect the Southwest Power Pool, which plans transmission and operates a wholesale electricity market in Oklahoma and parts of 13 other states.

# Exhibit C9

# MEET SCOTT



Conservative columnist George Will has called Scott Pruitt, "one of the Obama administration's most tenacious tormentors." The Economist magazine says, "Barack Obama has no more committed adversary than Scott Pruitt."

Attorney General Pruitt has become a national leader in the fight against the current White House regime's continuing attempts to usurp state sovereignty. Specifically, Scott has led Oklahoma's legal challenges to ObamaCare, the President's unilateral (and unconstitutional) executive actions on illegal immigration, the EPA's intrusion into property rights, Dodd-Frank and President Obama's excessive use of "recess appointments" to bypass Congress.

In 2010, Scott became only the second Republican in Oklahoma history to serve as Attorney General. Recognized for his effective leadership, Scott Pruitt served two terms as president of the Republican Attorneys General Association.

Attorney General Pruitt's first stint in public office began in 1998 when, as a young family man, he took on the political establishment and won a seat in the State Senate. As a Senator, Scott was tapped by then-Governor Frank Keating to be the point person on workers' compensation reform.

Eventually serving four years as Assistant Republican Floor Leader, Scott led the successful effort to pass the Religious Freedoms Act and was a key figure on legislation related to lawsuit reform and government accountability.

After earning his Bachelor's Degree from Georgetown College and graduating from the University of Tulsa's School of Law, Scott Pruitt went into private legal practice, specializing in Constitutional Law.

A successful and energetic entrepreneur, Scott became co-owner and managing general partner of Oklahoma City's Triple-A minor league baseball affiliate, the Oklahoma City Redhawks. Scott took over the team's marketing operations and helped the team become one of the minor league leaders in attendance and merchandise sales.

Scott Pruitt is, first and foremost, a family man. Scott and Marlyn, his wife of 25 years, are proudly raising their daughter, McKenna, and son, Cade, in Tulsa. Scott has made it a priority to pass on to his children the same principled, family values with which he was raised.

## A Record Of Success

A two-term president of the Republican Attorneys General Association, General Pruitt has very much established himself as a national leader in the cause to restore the proper balance of power between the states and federal government. George Will has described General Pruitt as "one of the Obama administration's most tenacious tormentors " (link at the bottom), and for good reason.

In addition to leading the fight to dismantle the Affordable Care Act (chronicled in Josh Blackman's upcoming book Unraveled), Pruitt has led the litigation that halted President Obama's three major second term executive initiatives. First, Pruitt led a coalition of thirty states who have obtained an injunction barring the EPA's "Waters of the United States" rule, which seeks to greatly expand the federal governments regulatory jurisdiction under the Clean Water Act.

Second, Pruitt was a leader of the nearly thirty state coalition of states who obtained an injunction barring the President's DAPA program for illegal immigrants. The constitutional arguments that General Pruitt developed and which are at the core of that challenge are highlighted in John Yoo and Dean Reuter's recently released book, Liberty's Nemesis: the Unchecked Expansion of the State , which contains a chapter authored by Pruitt titled "Preemption without Representation," which explains why Obama's executive actions violate the Constitution.

Lastly, Pruitt has led a nearly thirty state coalition of states who obtained an unprecedented injunction from the Supreme Court barring the EPA's "Clean Power Plan" from going into effect. The Wall Street Journal Editorial Board noted that "Oklahoma AG Scott Pruitt deserves particular credit for developing the federalist arguments and exposing how the Clean Power Plan commandeers states. "

In addition to his work in the litigation arena, General Pruitt has also started an initiative that he's dubbed "The State Overreach Project," an effort designed to ensure that while pushing back against overreach by the federal government, the States also work to reduce regulatory and licensing burdens at the state and local level. This effort has been enormously well received and has positioned Oklahoma as a national leader on regulatory and licensing reform.

It's fair to say that since 2010, General Pruitt has established himself as the thought leader amongst Republican Attorneys General with respect to federalism and regulatory overreach issues, and his work continues in the remaining months of the Obama presidency.

Links referenced above:

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# Exhibit C10

THE WALL STREET JOURNAL.



OPINION | THE WEEKEND INTERVIEW

# Scott Pruitt's Back-to-Basics Agenda for the EPA

The new administrator plans to follow his statutory mandate—clean air and water—and to respect states' rights.

*By Kimberley A. Strassel*
Feb. 17, 2017 6:57 p.m. ET

Republican presidents tend to nominate one of two types of administrator to lead the Environmental Protection Agency. The first is the centrist—think Christie Todd Whitman (2001-03)—who might be equally at home in a Democratic administration. The other is the fierce conservative—think Anne Gorsuch (1981-83)—who views the agency in a hostile light.

Scott Pruitt, whom the Senate confirmed Friday, 52-46, doesn't fit either mold. His focus is neither expanding nor reducing regulation. "There is no reason why EPA's role should ebb or flow based on a particular administration, or a particular administrator," he says. "Agencies exist to administer *the law*. Congress passes statutes, and those statutes are very clear on the job EPA has to do. We're going to do that job." You might call him an EPA originalist.

Not that environmentalists and Democrats saw it that way. His was one of President Trump's most contentious cabinet nominations. Opponents objected that as Oklahoma's attorney general Mr. Pruitt had sued the EPA at least 14 times. Detractors labeled him a "climate denier" and an oil-and-gas shill, intent on gutting the agency and destroying the planet. For his confirmation hearing, Mr. Pruitt sat through six theatrical hours of questions and submitted more than 1,000 written responses.



When Mr. Pruitt sat down Thursday for his first interview since his November nomination, he spent most of the time waxing enthusiastic about all the good his agency can accomplish once he refocuses it on its statutorily defined mission: working cooperatively with the states to improve water and air quality.

"We've made extraordinary progress on the environment over the decades, and that's something we should celebrate," he says. "But there is real work to be done." What kind of work? Hitting air-quality targets, for one: "Under current measurements, some 40% of the country is still in nonattainment." There's also toxic waste to clean up: "We've got 1,300 Superfund sites and some of them have been on the list for more than three decades."

ILLUSTRATION: KEN FALLIN

Such work is where Washington can make a real difference. "These are issues that go directly to the health of our citizens that should be the absolute focus of this agency," Mr. Pruitt says. "This president is a fixer, he's an action-oriented leader, and a refocused EPA is in a great position to get results."

That, he adds, marks a change in direction from his predecessor at the EPA, Gina McCarthy. "This past administration didn't bother with statutes," he says. "They displaced Congress, disregarded the law, and in general said they would act in their own way. That now ends."

Mr. Pruitt says he expects to quickly withdraw both the Clean Power Plan (President Obama's premier climate regulation) and the 2015 Waters of the

United States rule (which asserts EPA power over every creek, pond or prairie pothole with a "significant nexus" to a "navigable waterway"). "There's a very simple reason why this needs to happen: Because the courts have seriously called into question the legality of those rules," Mr. Pruitt says. He would know, since his state was a party to the lawsuits that led to both the Supreme Court's stay of the Clean Power Plan and an appeals court's hold on the water rule.

Will the EPA regulate carbon dioxide? Mr. Pruitt says he won't prejudge the question. "There will be a rule-making process to withdraw those rules, and that will kick off a process," he says. "And part of that process is a very careful review of a fundamental question: Does EPA even possess the tools, under the Clean Air Act, to address this? It's a fair question to ask if we do, or whether there in fact needs to be a congressional response to the climate issue." Some might remember that even President Obama believed the executive branch needed express congressional authorization to regulate $CO_2$—that is, until Congress said "no" and Mr. Obama turbocharged the EPA.

Among Mr. Pruitt's top priorities is improving America's water infrastructure. "I'm going to be advancing this with the president, this idea that when we talk about investing in infrastructure, we need to look more broadly than bridges and roads," he says. "Look at what happened in Flint," the Michigan town where lead was found in the water supply. "Look at what is happening in California," where the Oroville Dam's failure endangers tens of thousands of homes.

Mr. Pruitt defies the stereotype of the fierce conservative who wants to destroy the agency he runs. Nonetheless, he is likely to encounter considerable hostility. The union that represents the EPA's 15,000-strong bureaucracy urged its members to besiege their senators with calls this week asking them to reject Mr. Pruitt's appointment. (The effort didn't have much effect: The vote was nearly along party lines, with only two Democrats and one Republican breaking ranks.) These bureaucrats have the ability to sabotage his leadership. That's what happened to Mrs. Gorsuch. She went to war with the bureaucracy, and the bureaucracy won.

Mr. Pruitt wants progress. "I am committed to the role of this agency," he says. "The administration is committed to the role of this agency. There is so much to accomplish. So its important that the career staff here at the EPA know this isn't a disregard for the agency, it's a restoration of its priorities."

He says EPA employees ought to be able to embrace his priorities: "Think about how tangible it would be to the citizens of Washington state to finally have the Hanford nuclear site cleaned up. Think about how tangible it would be to the citizens along the Hudson River, to fix that pollution. These are some of the most direct things we can do to benefit our environment. That ought to get people at the agency excited. It ought to get people in this country excited."

Mr. Pruitt has read those laws his agency is charged with enforcing, and they guide another major change: a rebalancing of power between Washington and the states. "Every statute makes clear this is supposed to be a cooperative relationship," he explains, "that Congress understood that a one-size-fits-all model doesn't work for environmental regulation, and that the state

departments of environmental quality have an enormous role to play."

He faults President Obama's EPA for its "attitude that the states are a vessel of federal will. They were aggressive about dictating to the states and displacing their authority and letting it be known they didn't trust the states." Mr. Pruitt has numbers to back up the claim: During the combined presidencies of George H.W. Bush, Bill Clinton and George W. Bush, the EPA imposed five federal air-quality implementation plans on states. Mr. Obama's EPA imposed 56.

States' rights were the motivating impulse behind Mr. Pruitt's lawsuits against the Obama administration, and he has plenty of examples of the benefits of letting states take the lead on pressing environmental problems. He mentions the progress that a state coalition has made on improving the habitat of the lesser prairie chicken, a threatened species. States have also clubbed together to tackle water pollution in the Chesapeake Bay.

"There is this attitude that has grown of late that Oklahomans and Texans and Coloradans really don't care about the air they breathe or the water they drink," he says. "That's just not the case." As a demonstration of his commitment to the devolution of power, he pledges to vigorously defend the portion of the EPA's annual $7 billion budget—roughly half—that goes to the states as funds and grants: "This is the front line of a lot of the work on air and water quality and infrastructure, and its very important that money continue."

Mr. Pruitt argues that his renewed focus on statutes and federalism will help produce regulatory certainty, which will be good for business: "The greatest threat we've had to economic growth has been that those in industry don't know what is expected of them. Rules come that are outside of statutes. Rules get changed midway. It creates vast uncertainty and paralysis, and re-establishing a vigorous commitment to rule of law is going to help a lot."

His focus on jobs and the economy sets him apart from some past EPA administrators. "I reject this paradigm that says we can't be both pro-environment and pro-energy," he says several times during the interview. "We are blessed with great national resources, and we should be good stewards of those. But we've been the best in the world at showing you do that while also growing jobs and the economy. Too many people put on a jersey in this fight. I want to send the message that we can and will do both."

Leading the EPA will be a role reversal for the former attorney general, in that it will place him on the receiving end of litigation. Lawsuits are proving to be the favorite weapon of the anti-Trump "resistance," and environmental groups have declared their intention to bury Mr. Pruitt in court filings if he attempts to "roll back" their agenda. Yet he's sanguine at the prospect. "Most lawsuits against the EPA historically have come either because of the agency's lack of regard for a statute, or because the EPA failed in an obligation or deadline," he says. "But we protect ourselves by hewing to the statutes. It will prove very difficult for environmental groups to sue on the grounds that they think one priority is more important than another—because that is something that really is at the discretion of agency."

Speaking of lawsuits, Mr. Pruitt says he plans to end the practice known as "sue and settle." That's when a federal agency invites a lawsuit from an ideologically sympathetic group, with the intent to immediately settle. The goal is to hand the litigators a policy victory through the courts—thereby avoiding the rule-making process, transparency and public criticism. The Obama administration used lawsuits over carbon emissions as its pretext to create climate regulations.

"There is a time and place to sometimes resolve litigation," Mr. Pruitt allows. "But don't use the judicial process to bypass accountability." Some conservatives have suggested the same tactic might be useful now that Republicans are in charge. "That's not going to happen," he insists. "Regulation through litigation is simply wrong." Instead, Mr. Pruitt says, the EPA will return to a rule-making by the book. "We need to end this practice of issuing guidance, to get around the rule-making procedure. Or rushing things through, playing games on the timing."

For similar reasons, Mr. Pruitt plans to overhaul the agency's procedure for producing scientific studies and cost-benefit analyses. "The citizens just don't trust that EPA is honest with these numbers," he says. "Let's get real, objective data, not just do modeling. Let's vigorously publish and peer-review science. Let's do honest cost-benefit work. We need to restore the trust."

*Ms. Strassel writes the Journal's Potomac Watch column.*

*Appeared in the February 18, 2017, print edition as 'A Back-to-Basics Agenda for the EPA.'*

# Exhibit C11

**WED, MAR 29, 2017 | BY HUGH HEWITT**

# EPA Adminstrator Scott Pruitt: "The Days Of 'Sue And Settle'...Have Ended."

EPA Administrator Scott Pruitt joined me this morning:

Audio:

03-29hhs-pruitt

Transcript:

HH: Aside from President Trump, the man who is doing the most on the domestic policy agenda in Washington, D.C. is the administrator of the Environmental Protection Agency, Scott Pruitt, formerly the attorney general of Oklahoma, and a longtime friend of mind. You heard me say over and over on this program how excited I was that he was nominate, how hopeful I am for what he does at the EPA. He joins me now for the first time in his position as administrator of EPA. I'm going to have to get used to calling you Administrator Pruitt as opposed to General Pruitt, General Pruitt. Welcome, good morning.

SP: (laughing) Well, good morning to you.

HH: You are making the New York Times' head explode, you and the President. And I want to, instead of focusing on the reaction, ask you first to state what has EPA done on two things – the Clean Power Plan and the Waters of the United States?

SP: Well, we have taken two very significant steps. We've started the rulemaking process to provide clarity and regulatory certainty with respect to WOTUS, Waters of the United States, and the Clean Power Plan. I mean Hugh, as you know, both with respect to the WOTUS and the Clean Power Plan, the courts have intervened, unprecedented. The U.S. Supreme Court issued a stay against the Clean Power Plan because of its likely unlawfulness. The previous administration reimagined its authority under the Clean Air Act to regulate CO2 with stationary sources in a way that just isn't consistent with the framework that Congress passed. And with WOTUS, the Waters of the United States, this agency went out and reimagined the definition of what a water of the United States equals so it included puddles and dry creek beds all over the country. It was a power issue. Really, both of these issues were about power. It's about displacing state authority, displacing the oversight that states have in industry as far as

providing clean air and clean water, and trying to make all decisions from here in Washington, D.C. So we have begun a progress on both fronts to undo, rescind, dial back those unlawful actions and to provide clarity to the marketplace.

HH: Now Administrator Pruitt, I want to remind people you were an attorney general. You are a sworn officer of the law. You know what you are doing. And what you are doing is via the rulemaking process, the Administrative Procedures Act. Will any regulatory move you make, will you commit that it will be done via notice and comment rulemaking appropriately under the APA and not in the cover of darkness, not a 30 second strike with a phone and a pen?

SP: Absolutely. In fact, one of the things we've done internally, Hugh, is send a memo out to our regions and also to headquarters to say that the days of sue and settle, the days of consent decrees governing this agency where the EPA gets sued by an NGO, a third party, and that third party sets the agenda, sets the timelines on how we do rulemaking, and bypassing rulemaking entirely have ended. And we've sent that out across the agency.

HH: Now can we pause on that, because although some conservatives might want to rush forward, and I am actually attracted to sue and settle on some, because of the Endangered Species Act, the ridiculous abuse. But I can set it aside if we publicly set it aside and explain to people why the rule of law compels that. So take a swing at that, if you will, Administrator Pruitt.

SP: Well, I mean, look, the Congress has adopted the Administrative Procedures Act for a reason. When regulators make decisions in Washington, D.C. that impact citizens and industry across the country, we need to hear from them. We need to understand how it's going to apply in Texas and Oklahoma and Kansas, and all over the country. And so it's an opportunity. When you file a rule, it's a proposed rule, and you take comment for a period of time, and it's the obligation of the agency to respond to that comment, to deal with those issues that are raised by respective states and citizens and industry across the country And then you finalize the rule with that information in hand. When you use the courts, you know, when someone sues, a third party, and NGO, Sierra Club or otherwise, sues the EPA and then the EPA outside of the regulatory process enters into something called a judgment consent decree and then changes statute, changes timelines, changes obligations under a statute. That's regulation through litigation. That's an abuse of the process. And whether it's for conservative causes or liberal causes, that's still a breach of the process and should not be done.

HH: You see, that is originalism, and I want now to compliment whoever on your team, and if it was you, you, for coming up with the idea of EPA originalism, because the Clean Power, the Clean Air Act, the Clean Water Act, the Endangered Species Act, the National Environmental Policy Act, are all Republican-authored laws…

SP: Yes.

HH: …put forward by Richard Nixon and signed by Richard Nixon in order to advance the Teddy Roosevelt conservationist cause. But they've gone far beyond their boundaries, like the Waters of the United States rule on puddles contravening even the Rapanos decision issued by, you know, if you use Justice Kennedy's opinion, the narrowest view. It's out of control, and I don't think the country quite gets what EPA originalism means and how important it is.

SP: No, you, I really appreciate you saying that, because the core mission of the EPA is very important. There are air quality issues. There are water quality issues that cross state lines, and the importance of being that national agency that ensures that we are respecting those kinds and focused upon those kinds of that relief is very important and a key mission of the EPA. But what's happened in the last several years, as I indicated earlier, is a reimagining of authority, an assertion of authority and power that is just inconsistent with the framework. You mentioned, you know, process and how important that is. The rule of law is the other part that's very important, Hugh, because really what you're saying is that Congress has spoken and said EPA, you have this authority under the Clean Water Act. You have this authority under the Clean Air Act, and the TSCA and all these other types of environmental laws have been passed, but no more. And you should work with the states and partner with them to achieve those outcomes. What's happened over the last several years is just simply a disregard of that, and that's what we're trying to get back to.

HH: Congressman Henry Waxman was so adamant about trying to pass a global warming climate change bill, and his own caucus rebuked him and would not send it forward, and the Senate would not accept it, and it is not the law. And so President Obama put forward the Clean Power Plan, which I believe is deeply illegitimate because of the fact it followed the rejection of the effort to pass a law. But you, you know, the environmental reporter club really doesn't want to hear that, Administrator Pruitt. Are you able to get the message through that you're about the law, not about their policy agenda?

SP: Yes. I mean, Lord Acton talked about political atheism, and that's exactly what you're describing, is that results are all that matter to these groups. Process and rule of law should be disregarded. And that's something that we have to, you know, what happens when you take that approach? Well, what we've had in the last several years – uncertainty. You're not advancing the environment. You're not actually advancing clean air and clean water, because when you do those things, you have litigation. Litigation causes uncertainty in the marketplace. Those that are regulated don't know what's expected of them, so they can't invest and meet the obligations to achieve clean air and clean water. So it's a mess. And so really what happened yesterday with the Clean Power Plan is cleaning up the mess, you know, clearing the decks, if you will. We've begun that process to rescind that type of approach, and then set a new path forward. You know, you mentioned CO2, Hugh. I mean, there are two major points on the continuum. Massachusetts V. EPA, a Supreme Court case in 2007 that said what, that the EPA had to make a decision on whether to regulate CO2, not that it had to, but it had to make a decision whether it should. And then in 2009, there was an endangerment finding that

was issued by this agency. The Congress has never spoken on this issue. And so there's a very fair and fundamental question that needs to be asked. Are the tools in the toolbox to address the CO2 issue? This agency has tried twice to do so – the tailoring rule, which was struck down in the UR decision, and the Clean Power Plan, which the Supreme Court issued an unprecedented stay to stop its enforcement. So those questions have to be asked and answered. Those in Congress that believe that this is a priority issue perhaps need to reevaluate the authority under the Clean Air Act and see if it actually the tools are in the toolbox. But we're going to have a very humble view of our actions under the Clean Air Act. We're going to operate within the framework, respect state interest and partnership, and achieve very tangible outcomes on the environment for both air, water and land.

HH: You know, Administrator Pruitt, this is why the left does not like you very much, is you are very articulate in putting this forward and very persuasive in your defense of it. And therefore, they're going to come after you hammer and tong. And I know you know that, but they've been doing that for years. Tell me about your relationship with President Trump. You've been in the Oval a lot with him talking about this stuff. Is he fully committed to this regulatory reform agenda to get back to the rule of law?

SP: Yeah, every time the President sees me, he says you're cleaning out the arteries. So, and look, we can be pro-growth, pro-jobs and pro-environment, and that's what he and I have talked about. And only this past administration made us choose sides. And each administration prior recognized that America is wise enough, innovative enough, committed enough to the environment. Wealthy nations take care of the environment. So as we promote growth, as we promote wealth, as we become more wealthy as a country, we take better care of the environment. We can do both. You know that old saying you can't have your cake and eat it, too? Whoever says that doesn't know what you're supposed to do with cake. And that's what we're focused on, Hugh, is making sure we have a pro-growth, pro-jobs agenda, and a pro-environment agenda, and we can achieve both.

HH: And I would add a pro-rule of law agenda. This actually transcends EPA, but you are part of this. It's that we just have to have everyone realize the Congress writes the laws, not agencies, 45 seconds to you, Administrative Pruitt.

SP: Well, it's 5th grade civics. I mean, it really is 5th grade civics. The executive branch exists to enforce the laws as passed by whatever legislative body, whether it's at the state level or the federal level. And we don't have the authority to fill in the gap. We don't have the authority to pinch hit for Congress. We don't have the authority to reimagine our authority under the Clean Air Act or Clean Water Act. So getting back to the core mission of the agency, providing very tangible relief to those across the country, 1,300 Superfund sites across the country that need cleanup, some of which have been on a national priority list for 30-40 years, it doesn't sound like much of a priority list to me. So you know, the port of Portland and Butte, Montana, and Columbia Falls, Montana, I mean, some of the most pristine areas of our country, let's get

back to the business of providing real tangible environmental benefits at the same time respecting rule of law.

HH: Scott Pruitt, great to talk to you. Come back early and often, Administrator Scott Pruitt of the EPA.

End of interview.

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# Exhibit C12

United States Environmental Protection Agency

## News Releases from Headquarters

# IN CASE YOU MISSED IT …EPA is Putting American Workers First

05/02/2017

EPA Administrator Scott Pruitt
The Washington Times May 2, 2017
http://www.washingtontimes.com/news/2017/may/1/epa-is-putting-american-workers-first/

When President Trump came to EPA to sign an executive order ending the "war on coal," he was flanked by Pennsylvania coal miners. Hosting coal miners at EPA headquarters in Washington served as a stark contrast to the past administration, to be sure.

President Trump's action was a moment in which a promise became an economic reality. As EPA Administrator, I immediately ordered my Agency to comply with the March 28 executive order, and signed four new rules, which included a review of the Clean Power Plan. Relief — and prosperity — is on the way.

The "war on coal" stemmed from the previous administration's regulations aimed at removing coal from our nation's energy mix. This approach, sanctioned by EPA and other agencies, divided Americans and strengthened Washington's grip on our economy. Thankfully, President Trump has made clear: The regulatory assault on American workers is over. We should not have to choose between supporting jobs and supporting the environment.

Now, opponents of President Trump's new executive order claim that this action means that our federal government is turning its back on a clean environment and regulation altogether. This argument is wrong.

First, the Clean Power Plan was never implemented, and was unable to do a single thing for our environment. Twenty-seven states sued, recognizing the threat this regulation posed to their economies and the rule of law. The Supreme Court granted a stay to halt implementation of the Clean Power Plan.

Rather than take its lumps, the Obama administration still demanded compliance from the states, claiming that the stay was only temporary (a technique that was frequently used by the Agency to extract compliance during litigation). The result was lost jobs and an uncertain regulatory environment, without any environmental gain to show for it.

Second, the Clean Power Plan was expected to yield very little for what it cost the American taxpayer. For the price of American jobs, EPA had promised a reduction of sea level rise by the thickness of two sheets of paper and reduction of atmospheric CO2 concentrations by 0.2 percent by 2100, according to an analysis by the National Economic Research Associates. Emissions growth in China and India, of course, would continue unchecked. This plan put America last.

Third, congressional testimony by my predecessor, former Administrator Gina McCarthy, made it clear that the goal of the Clean Power Plan was far less about achieving a measurable result than it was about providing leadership in the world. The federal government sought to kneecap American workers, while countries like India and China were not held to the same rules.

Americans who want a healthy and clean environment expect lawful, effective and economically sound regulation — the Clean Power Plan failed on all three counts. EPA can and should now focus on getting real results in the fight for clean air,

land and water.

President Trump made it clear that we should put America first. We are not going to allow EPA to pick winners and losers through regulation. EPA should work within the framework that Congress has established. And we should provide regulatory certainty and write rules that make sense for the states and the businesses they affect.

The “war on coal” is over. Now EPA can focus on its mission and deliver real results.

R068

LAST UPDATED ON MAY 2, 2017

# Exhibit C13

THE DAILY CALLER

**Scott Pruitt Explains Why He Sued EPA So Many Times: 'They Deserved It'**

Posted By Michael Bastasch On 1:13 PM 05/11/2017 In | No Comments

Environmental Protection Agency Administrator Scott Pruitt said he sued the agency he heads so many times while Oklahoma attorney general because "they exceeded their statutory authority."

"They deserved it and they deserved it because they exceeded their statutory authority, they exceeded their constitutional authority," Pruitt told WDAY's Rob Port Wednesday.

Pruitt was hammed by Democrats and environmental activists during the confirmation process for suing the EPA at least a dozen times while representing Oklahoma. Pruitt's recused himself from litigation he brought against the Obama administration.

"When they got outside their lane, they got sued and they got stopped," Pruitt said during the WDAY interview, not backing down from his record of suing EPA.

Pruitt sued EPA about a dozen times while Oklahoma AG, including filing suits on regulations he's now reviewing, including the Clean Power Plan (CPP), the "waters of the U.S." rule (WOTUS) and the Mercury and Air Toxics Standards (MATS).

Trump ordered EPA in March to review regulations that "potentially burden the development or use of domestically produced energy resources," including the CPP. EPA later disclosed in a court filing they were also reviewing MATS.

The president ordered EPA and the U.S. Army Corps of Engineers to rewrite the WOTUS rule in a "manner consistent with the opinion of Justice Antonin Scalia in Rapanos v. United States."

But Pruitt wasn't the only attorney general to sue the Obama EPA. Dozens of states sued EPA over the CPP, WOTUS and MATS. Pruitt was part of a 27-state coalition suing the CPP and a 28-state coalition suing over WOTUS.

Twenty states sued EPA to have the MATS rule overturned. Pruitt's been consistent in saying he filed these suits because he saw these rules as federal overreach.

"They used the power of Washington, D.C. to coerce, to walk all over the states," Pruitt told WDAY.

Pruitt wants states to play a larger role in environmental regulation. Pruitt recently approved North Dakota's plan to create and administer its own implement and enforce its own carbon sequestration program.

"North Dakota is going to be the primary regulator of that," Pruitt said, adding the state had been trying to create its own program for four years.

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# Exhibit C14

CLIMATEWIRE

POLICY. SCIENCE. BUSINESS.

EPA

# A specialist in Greek drama is killing the climate rule

**Robin Bravender, E&E News reporter**

*Published: Monday, September 11, 2017*

EPA Administrator Scott Pruitt, pictured here, is relying largely on Justin Schwab, a political appointee, to undo the Clean Power Plan.
Mitchell Resnick/White House/Flickr

The lawyer playing a lead role in the Trump administration's rollback of the Clean Power Plan is a former industry attorney who's versed in Greek literature and donated to a Democrat last year.

As U.S. EPA boss Scott Pruitt and his team work to unravel the Obama administration's signature climate change rule, Pruitt is relying on relatively unknown political appointees, along with career staff who helped write the rule in the first place.


Spearheading the legal efforts to torpedo that rule is EPA Deputy General Counsel Justin Schwab, according to several sources tracking the regulation.

"Justin Schwab is the chief legal figure on the Clean Power Plan at EPA," said an administration official.

One industry attorney involved with the Clean Power Plan litigation called Schwab a central figure in the repeal and said Schwab is thought to have been the primary author of the Clean Power Plan overhaul notice that was sent to the White House in June.

The Trump EPA has said it will issue a formal plan this fall. It could be released even before President Trump's newly announced nominees to head EPA's air and general counsel's offices get Senate clearance.

EPA spokeswoman Liz Bowman said Schwab is part of a group of people doing that work. He is "a member of a team of career and political staff, across multiple agencies who have been working on the review of the Clean Power Plan," she said in an email.

Schwab joined EPA in January as a member of Trump's "beachhead" team, the first round of political appointees to set up shop under the new president. He was announced as deputy general counsel in March.

EPA has historically divided major areas of law among its deputy general counsels. Given his background in Clean Air Act

issues, Schwab was assigned to be lead deputy for most of the agency's work in that area, including the Clean Power Plan, said Kevin Minoli, EPA's acting general counsel and a longtime career employee.

"It is not as though he was brought here for that one assignment," Minoli said.

Before joining the administration, Schwab was an attorney at Baker & Hostetler LLP, where his clients included the utility giant Southern Co., according to his financial disclosure form (***Greenwire***, May 8).

Schwab's other industry clients included construction equipment manufacturer Caterpillar Inc.; Scotts Co. LLC, which makes lawn care products; metal producer Mississippi Silicon LLC; and steelmaker Big River Steel LLC.

Liberal watchdogs have previously questioned whether Schwab had properly recused himself from matters involving his past clients, which stand to be affected by EPA regulations.

Due to his work at Baker & Hostetler, Schwab has recused himself from court litigation involving the Clean Power Plan. But agency officials have determined that it's ethically appropriate for him to participate in regulatory actions around the rule.

Minoli said, "Justin has properly recused himself from the relevant specific party matters and is assiduous about adhering to that, but he is fully able to participate in the new regulatory actions that might be on the same subject as the regulation that the litigation is based on."

Minoli added, "It's not dissimilar from the situation with Administrator Pruitt, who recused himself from specific cases but who the ethics rules authorize to participate in generally applicable regulatory actions."

Justin Schwab. U.S. EPA

Schwab worked at Baker & Hostetler from 2013 to 2017, according to his LinkedIn profile. One of his former colleagues, attorney David Rivkin, is a litigator who represented Pruitt in a case against the climate rule. Pruitt initiated that case as Oklahoma's attorney general.

Earlier, Schwab was a law clerk on the 2nd U.S. Circuit Court of Appeals to Judge Richard Wesley, a George W. Bush appointee, whose chambers are in Geneseo, N.Y. Schwab also clerked for Justice Christine Durham on the Utah Supreme Court, who was appointed by former Democratic Gov. Scott Matheson.

Schwab's academic background isn't what you'd expect for an EPA rule writer.

He has a law degree from Yale University as well as a Ph.D. in classics from the University of California, Berkeley. He also has a bachelor's degree in classics from Cornell University, according to LinkedIn.

His 2011 **dissertation** at Berkeley was titled, "The Birth of the Mob: Representations of Crowds in Archaic and Classical Greek Literature." The 170-page document surveys the representation of crowds in Homer, the Attic tragedians and Aristophanes.

He attended Berkeley with the help of a fellowship, the *Cornell Chronicle* **reported** in 2001. Schwab said then, "I don't have much of a focus within classics yet, but I suppose Greek literature interests me more than Latin at the moment — specifically drama, most especially comedy."

Last year, Schwab donated $350 to Sean Barney, a Democrat running for Delaware's lone House seat, according to federal campaign finance records. Barney, a former Marine and an Iraq War veteran, lost to another Democrat, Lisa Blunt Rochester. Barney received his law degree in 2011 from Yale, a year after Schwab.

Schwab was born in Michigan and grew up in Ithaca, N.Y. He lives in Washington, D.C., with his wife and three children.

### Trump's plan coming soon

The final product by Schwab and his colleagues could soon be released to the public after months of White House deliberations over the climate rule.

Government lawyers told a federal appeals court last week that Pruitt plans to sign a proposed rule reconsidering the Obama-era measure this fall, although they didn't offer specific details about timing (***E&E News PM***, Sept. 7).

The U.S. Court of Appeals for the District of Columbia Circuit has put litigation for the rule on hold after EPA asked for more time to plan its next moves. The Supreme Court last year put a stay on the rule, blocking it from being implemented while the lawsuit plays out.

Tom Lorenzen, an attorney at Crowell & Moring who represents energy cooperatives fighting the Obama rule in court, said, "EPA is obviously concerned that the D.C. Circuit continues to hold the Clean Power Plan case in abeyance on a time-limited basis, and they therefore understand the urgency of moving forward because of the existence of the Supreme Court stay."

He said he expects that EPA is "going to act with some alacrity to indicate to the public and to send a message to the court about how it will proceed."

EPA and White House officials have been meeting with outside groups — including industry groups and environmental organizations — to gather input about what the policy should look like.

EPA's formal plans are expected to be different from the draft that was sent in June by Schwab and his colleagues to the White House for review, said an industry source tracking the case.

The first draft sent to the White House is thought to have been a simple repeal of the rule. The version that emerges after White House input is expected to signal the administration's intention to replace that rule, with an eye toward steeling the plan against future litigation.

EPA has kept its proposal closely guarded, but many observers expect the agency to develop a narrow replacement rule to target emissions reductions at the power plant level rather than set limits for carbon emissions across the power sector (***Climatewire***, Aug. 24).

Bowman of EPA declined to comment on the contents of the proposal, noting that EPA doesn't discuss regulations that are under interagency review.

Trump earlier this month nominated two EPA officials who could play major roles in the Clean Power Plan rollback: Matt Leopold for general counsel and Bill Wehrum for air chief.

Leopold has been critical of the Clean Power Plan in public speeches (***Climatewire***, July 26). Wehrum, a former EPA official under George W. Bush, has said he doesn't think the agency should be regulating greenhouse gases at all (***Climatewire***, Sept. 8).

Leopold will be tasked with making sure that whatever EPA puts out is "legally defensible," Lorenzen said, while Wehrum will be dealing with the issue "from the programmatic perspective, although he's also very knowledgeable about the law."

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# Exhibit C15

WED, OCT 11, 2017 | BY HUGH HEWITT

# EPA Administrator Scott Pruitt On Clean Power Plan Rulemaking

EPA Administrator Scot Pruitt joined me this morning to discuss the new rulemaking on the Obama Era "Clean Power Plan," which was enjoined by federal courts:

Audio:

10-11hhs-pruitt

Transcript:

HH: In the swirl of breaking news, including the awful smoke hanging over Northern California, where the destruction of 2,000 homes, the death of 17 Americans, the missing of 240 other Americans, is obscured a lot of important news. One of those, the announcement yesterday by U.S. Environmental Protection Agency Administrator Scott Pruitt, of the rulemaking to reverse the Clean Power Plan rule, which was originally promulgated on October 23rd, 2015 by the EPA. Administrator Pruitt joins me now. I always say when he does come on he is my friend. My son works at EPA. That's called self-regulation, so people don't suggest that I am keeping other than transparent disclosure from you. Administrator Pruitt, welcome back.

SP: Good morning, Hugh.

HH: I have to begin with the Congressional Research Service assessment of the Clean Power Plan. It says on October 23rd, 2015, the U.S. Environmental Protection Agency published its final Clean Power Plan rule to regulate emissions of greenhouse gasses, specifically carbon dioxide. The Clean Power Plan would require states to submit plans to achieve state levels specific CO2 goals, reflecting emission performance rate, and that the Clean Power Plan has been one of the more singularly controversial environmental regulations ever promulgated by the EPA. The Congressional Research Service goes on to discuss how it has been enjoined by the courts. So what did you do yesterday against that backdrop?

SP: Well, breathtaking in light of what the previous administration did, Hugh, because for the first time ever, the EPA took its authority and said we can dictate, really coerce states and utility companies across the country and tell them how to generate electricity. You know, when you look at how we generate electricity in this country, we obviously use multiple energy sources. Fuel diversity is very key and important to keep costs down, but also stability and resiliency of the grid. That's coal, oil, natural gas, hydro, renewables, an entire mix of energy sources. What the last administration did is no, we're going to dictate to you. We're going to use our authority to say fossil fuels should not be used. We're going to shift to renewables across the country, and really is was a power grab over the power grid, Hugh. And so it had never been done in history. And so it's so unprecedented, that the U.S. Supreme Court, you mentioned October of 2015. In February of 2016, the U.S. Supreme Court entered an historic and unprecedented stay against the rule going into effect, because it was so breathtaking as to how the previous administration interpreted their authority. So what we did yesterday is begin the process, propose a rule to withdraw that very deficient rule, and provide clarity to folks across the country with respect to how we generate electricity, and really, respect mostly, Hugh, the statutory framework that Congress has given us to regulate.

HH: Now Administrator Pruitt, when you roll back something called the Clean Power Plan, or put it in peril of roll back, which is what you did as you began the rulemaking to change the Clean Power Plan, immediately, the kneejerk reaction is oh, my gosh, Team Trump is rolling back clean air in America. That is not what happened yesterday. Would you explain to people what the rulemaking process is, and why in fact this rule has never gone into effect in the first place?

SP: Yeah, there's been no effect whatsoever. No impact other than negative impact and uncertainty across the country. It's never truly been used or even complied with. So the supposed benefits of the rule, we have not obviously received those. And

there was a great amount of questions, Hugh, to begin with about the cost benefit analysis about the cost, extraordinary cost this was going to cost consumers, utility consumers across the country. In some states, it was going to increase utility rates upwards of 40-50%. So this was a tremendously costly rule with very little benefit to the environment. In fact, right now, Hugh, this is what's lost in this whole discussion. We're at pre-1994 levels with respect to our CO2 footprint. And we have done that largely through technology and innovation, not government mandate. You know, when we talk about the results we have as a country, we ought to celebrate the progresses we've made. Those pollutants, as an example, that we regulate under the Ambient Air Quality Program have been reduced over 65% since 1980. So we are making tremendous progress, because industry and states and citizens and innovation and technology are truly being utilized today than ever before. And we need to always keep in mind as we generate electricity, it serves the manufacturing base, the jobs base in this country, an economy that needs robust growth. And we need reliability in the power grid to achieve that. And the past administration just simply ignored all aspects of the statute, all aspects of how we've done regulation historically, and then tried to impose their will upon this country in a way that was entirely deficient under the law. So the U.S. Supreme Court intervened, stopped that from happening, and what we are now doing is responding from a regulatory perspective to hopefully, as we go forward, do it the right way, as opposed to the overreach that we saw in the past administration.

HH: Because I know you know from your time as Attorney General of Oklahoma that the Agency is obliged to take seriously the comments it receives during this process, you will not prejudge the conclusion. But I am curious about the debate in the media and what you think of it. There are some critics who say you ought to have proposed a new rule, and you ought to have withdrawn the so-called Endangerment Finding at the same time. I replied to them, no, there's an A-B-C order here. The first thing is you have to revoke a deficient rule if indeed it is found by the notice and comment process to be deficient. Is that in fact correct, Scott Pruitt? Is that the order you're following?

SP: Yes. Yes, yes, Hugh, I think that as we look at the sequencing of this, I mean, you've got a rule that's been stayed by the U.S. Supreme Court. But you don't know how long that stay is going to, you know, remain in place. And as such, those folks that are regulated across the country, they don't want the uncertainty, because what did the rule require? It actually required them to displace certain investments that they had made in coal generation facilities. I mean, let's make no mistake about it. The last administration declared a war on coal. Now that is amazing in and of itself. You know, for a president and for an EPA, a federal body, a federal agency to declare war on any sector of our economy is absolutely astounding. But they did it unapologetically, and they made tremendous progress in reducing and contracting mining jobs in this country. That's wrong. A regulatory body ought never engage in a war on any sector of our economy. We're to make things regular for those across the country so that they know what's expected of them as they invest money, allocate resources, and try to achieve good outcomes on behalf of the environment. So this is a situation, Hugh, that we had to provide clarity first and foremost about the deficiency of this particular rule. But we have also been doing our work to prepare for, you know, what does the statute allow us to do? I actually introduced something in June of 2015, Hugh, called the Oklahoma Plan. I went through a Section 111 of the Clean Air Act and evaluated what authority existed to regulate CO2 under Section 111, which deals with power generation facilities. I was at the National Press Club that very month about five or so days before the Clean Power Plan came out, and was debating someone from the NRDC, and shared this entire plan with them. There are steps that we can take with respect to this issue. But they are modest. They are humble, because frankly, when you look at the Clean Air Act and the tools that Congress has given us, it is, they're not robust in dealing with this issue. And the reason that is, is because the Clean Air Act hasn't been amended since 1990. It's been 27 years ago, and the folks that were involved in amending the Clean Air Act in 1990 were very, very clear that they saw the Clean Air Act as focused on regional and local air pollutants, to reduce those air pollutants, and not this global phenomena called GHG, or CO2 reductions. And so we only have the tools that Congress give us, Hugh. You know that. That's 5th grade civics. We can't reimagine authority.

HH: I also know, I also know the power of the market is much more extraordinary than the power of regulation, and that natural gas is displacing other sources of energy on its own in accord with the market forces driving it, but that interventions by the government in the acceleration in some areas can be counterproductive, in fact. Administrator Pruitt, the regulatory reform agenda overall, I've told people that you're going through it with Waters of the United States, the WOTUS rule. I believe the market is up, because it's pricing regulatory reform into it. Other people think it's because it's pricing the tax cut in. But these rule reforms do have enormous impacts on the GDP of the United States.

SP: Look, I mean, if you ask folks over the last several years what has been the greatest impediment to economic growth, they would tell you regulatory uncertainty. And that's not just in the energy and environmental space. That's in the finance area, that's in health care. It was across the full spectrum of the past administration, because we all know this. The previous

administration ruled by executive order. And when you rule by executive order, when you actually legislate in the executive branch, you tell your administrative agencies, executive branch agencies that you govern to say go out and make the law, that that created tremendous uncertainty, because those that are regulated look at a statute passed by Congress, and it says one thing. And then an executive branch agency is passing regulation that says exactly the opposite. So what do you do if you're in the finance, health care, energy area? You don't invest money. You don't put money at risk, because if you put money at risk, that means you may lose it because of the arbitrary type of response of the executive branch agencies. So what we're trying to get back to today, Hugh, is sending a message across the country that we are going to do what the statute requires. And when we do what the statute requires, that provides certainty to those that are regulated, and here's the real important thing. It benefits the environment, because it allows people to then invest and deploy resources to achieve outcomes and not face the prospects of displacement of capital, uncertainty, and litigation. When you think about the WOTUS rule, CPP, these plans we're talking about, every one of them was subject to litigation and a stay of a federal court. And they never went into effect, because the past administration simply made it up. And that's just, that's not our authority to do that, and we're not going to do that.

HH: Scott Pruitt, it is always good to talk to you, Administrator. Press on. I am sure the process will be long and arduous, but legal in the end and upheld by the courts because it's being administered by a former state Attorney General.

End of interview.

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# Exhibit C16

THE DAILY SIGNAL

# Trump’s EPA Chief Charts a New Course: An Interview With Scott Pruitt

Rob Bluey / October 20, 2017

*Environmental Protection Agency Administrator Scott Pruitt spoke to me earlier this week at The Heritage Foundation’s annual President’s Club meeting in Washington. We discussed his leadership of the EPA, the agency’s top priorities, and what Pruitt considers true environmentalism. An edited transcript of our interview, along with the full video, is below.*

**Bluey: You’ve had a busy week. On Monday, you took a decisive action and ended the sue and settle process that has been plaguing the EPA and our government for a number of years. Can you explain to this audience why that is so significant and what it actually means?**

Pruitt: Yes, well, it’s good to be with you. In fact, I see [former Attorney] General [Edwin] Meese here in the front and it’s always good to see General Meese. He has served as a great inspiration to me over the years.

With respect to this particular question on sue and settle, it is actually something General Meese talked about back in the 1980s. We’ve seen agencies at the federal level for many years engage in rulemaking through the litigation process, where a third party will sue an agency and, in the course of that lawsuit, an agency will agree to certain obligations. Maybe take a discretionary duty under statute and make it nondiscretionary or there will be a timeline in a statute and they’ll change the timeline.

But suffice it to say, they engage in what we would call substantive rulemaking, and then the court blesses it without much inquiry. The agency will take that consent decree and go to the states and citizens all over the country and say, ‘Thou shalt,’ and sometimes that mandate is totally untethered to the statute—the obligations that Congress has passed for that agency to engage in.

It is fifth-grade civics. I don’t know if they teach civics in fifth grade anymore, but at least they used to. I hang out at the executive branch; we’re an executive branch agency. My job is to enforce the laws as passed by whom? Congress. They give me my authority. That’s the jurisdictional responsibilities that I have, and when litigation is used to regulate … that’s abusive. That’s wrong. We took the first step under the Trump administration [Monday] to end the sue and settle process entirely at the EPA.

It is not just an attitude shift, not just a commitment to not engage in sue and settle and regulation for litigation. We actually put directives in the memoranda, safeguards if you will.

For instance, if there is settlement that we are engaged in, settlement discussions with a third party that sued the agency, we will post that settlement for all the world to see, for at least 30 days, for people to comment on it across the country so that there is transparency with respect to those discussions.

> *A Conversation With Scott Pruitt*
>
> *U.S. Environmental Protection Agency Administrator Scott Pruitt joins us LIVE to discuss how he's rolling back Obama-era energy regulations and more.*
>
> *Posted by The Heritage Foundation on Tuesday, October 17, 2017*

If a state seeks to intervene in litigation with respect to issues that impact them, we’re going to have a very generous and accommodating attitude to our states participating in those settlement discussions. But here’s one of the more important ones: in the past the sue and settle process has been affected by third parties. They would go to the EPA and they would say, ‘Let’s work out a deal,’ and, as I indicated, go to the court, put it within a consent decree without any type of transparency.

But then here’s the kicker: They would pay attorneys fees to the group that sued them. So the group is effectively engaging in rulemaking and they get attorneys fees to get paid to do it.

In my directive to the agency, I said this: We’re not going to pay attorneys fees anymore in that regard. If we have a settlement and there’s no prevailing party, there shouldn’t be attorneys fees. We’ve directed no attorneys fees as part of the end of this sue and settle practice. It’s been a busy week already but every week is that way.

**Bluey: The left, over the past generation, has defined environmentalism in a way that is counter to freedom, conservation, even science. I want to ask, what do you consider true environmentalism?**

Pruitt: That’s a great question, and it’s one our society needs to ask and answer. The past administration told everyone in this room at some point, told the American citizens across the country, that we have to choose between jobs and growth and environmental stewardship.

We’ve never done that as a country. To give you an example, since 1980, there are certain pollutants that we regulate under the Clean Air Act, criteria pollutants, they are called. … We’ve reduced those pollutants over 65 percent since 1980, but we’ve also grown our [gross domestic product] substantially.

We, as a country, have always used innovative technology to advance environmental stewardship, reduction of those pollutants, but also grown our economy at the same time. It was the past administration that told everyone that you had to choose between the two. That just simply is a false narrative. It’s a false choice, so we need to ask ourselves, what is true environmentalism?

True environmentalism from my perspective is using natural resources that God has blessed us with to feed the world, to power the world with the sensitivity that future generations cultivate, to harvest, to be respectful

good stewards, good managers of our natural resources, to bequeath those natural resources for the next generation.

It would be like having this beautiful apple orchard that can feed the world and the environmental folks of the past would say, 'Build a fence. Don't touch the apple orchard, though it can feed people.' That's not the proper approach. They would say it's so pristine and we shouldn't touch it. That's not what we should do. We should harvest that apple orchard. We should use it to benefit our fellow mankind, but with environmental stewardship in mind for future generations. We can do both. That's what we need to do with the EPA going forward and we are doing that.

**Bluey: I'm glad you brought up [former President Barack] Obama and his administration because the media often portrays him as an environmental hero and you're portrayed as the villain. What are you most frustrated about with the media's coverage of you personally and the EPA in general under President Trump?**

Pruitt: Well, I don't like the hero-villain thing that you put me through there, but when you look at the past administration and what they actually achieved as far as environmental outcomes, they did not achieve very much.

In fact, look at those criteria for what we do regulate. One-hundred-twenty-million people in this country live in areas that don't meet air quality standards. That's what the previous administration left us with. They had Flint, Michigan, and Gold King, Colorado, with respect to water. With respect to those areas that we regulate that have land waste, we have more sites than when President Obama came into office.

They tried to regulate carbon dioxide twice and struck out twice. So really when you look at that agenda, what did they actually achieve other than uncertainty and adversarial relationships with those across the country?

When you look at farmers and ranchers, for example, they are our first environmentalists. They are our first conservationists. When you look at the greatest asset that they have it is their land. They care about the water that they drink. They care about the air that they breathe. We should see them as partners, not adversaries. We should see them as states in the same vain. They have expertise and resources that we don't have. We have resources that they don't have. It should be a partnership and collaboration.

I've been on a 25-state tour over the last two to three months with respect to the Waters of the United States rule. We're withdrawing that rule. We're getting that right. As we've gone through that process, I was in Utah with Gov. [Gary] Herbert talking about issues there, the second driest state in the country. The very next day, I was in Minnesota; [there are] different issues in Minnesota with respect to waters than in Utah.

As we do our work in D.C., we should do our work in collaboration and in partnership, in cohesion with states so that we can work on environmental issues from Superfund to air quality to water quality across the full spectrum in things that we do in partnership with those folks. That's the failure of the past administration. They saw them as adversaries and not partners.

Kayakers find themselves surrounded by the toxic mine waste that flowed into Colorado’s Animas River from the Gold King Mine in 2015. (Photo: Jerry McBride/Durango Herald/Polaris/Newscom)

Moreover, they acted outside the scope of their authority, which created tremendous uncertainty. President Trump, who is doing a fabulous job, is leading with great courage and conviction. He’s in the White House today because of two primary things: the American people want courage and they want action, and he embodies both of those in his leadership.

But as we look to these issues in areas that we regulate with respect to air land and water, these are issues that we ought to be working together to achieve and setting clear objectives. Where should we be in air quality in two to four years? Where should we be in investment of air and water infrastructure? How do we improve remediate those sites with respective to the Superfund?

Let me give you an example. There’s a site just outside of St. Louis, Missouri. It’s a site that has 8,000 tons of uranium from the Manhattan Project commingled with the 38,000 thousand tons of solid waste dispersed over this large geographic area outside of St. Louis.

It was discovered in 1970. In 1990, the EPA listed that site on the national priority list. Twenty-seven years later, as we’re in this auditorium together, the agency still has not made a decision on how to remediate that site, excavate, or cap the site. Twenty-seven years … to not even make a decision? That’s totally unacceptable. In fact, that’s one of the things that as I came into this position, I was so stuck by.

As I was engaged in meetings at the office, there just appeared to be a lack of urgency, a lack of focus, a lack of energy to do what’s right to serve the American people—the fundamental way to provide real, tangible environmental outcomes in water, air, and Superfund.

We're getting back to the basics and we're operating under the rule of law. We're respecting process and we're also engaging in federalism principles to ensure that we're partnering together. It sounds like a pretty good agenda to me and I think in this country, we ought to be adopting that, not vilifying it to your question.

**Bluey: I want to ask specifically about the Waters of the United States rule you raised. At Heritage, it's an issue that we've done a lot of work on. It's something we recognize that has a tremendous impact across this country. You've made a decision that you were going to conduct a reevaluation. What are your goals as you go through that process and coming out of it?**

Pruitt: Clarity. I mean, that's what's so crazy about the past administration. … Let me give you a little background. The last time we defined that was 1986 as far as Waters of the United States. We provided guidance in 2008; that's about as far as the definition of a water of the United States is. So the past administration said we need to provide clarity across the country when federal jurisdiction begins and ends. If that was their objective, they failed miserably. Because people all over the country have no idea today where federal jurisdiction begins and ends under that 2015 rule.

I mentioned Utah. I was in Salt Lake City with Gov. Herbert with an Army Corps of Engineers representative about two months ago. We were standing outside of this subdivision and this Army Corps of Engineers representative pointed to this thermal drainage ditch and said, "Scott, that is a water of the United States," and I said, "It's not going to be anymore." That's really the challenge here—that you had so much confusion and uncertainty about what waters were in [and] what waters were out.

So what does that mean? That means land use across this country is held hostage because folks aren't going to deploy capital. They aren't going to allocate resources They aren't going to put capital at risk and then face a fine five or 10 years from now saying you should've had a permit because this is covered under Waters of the United States.

The No. 1 objective is to get the definition right and to provide clarity across the country on when federal jurisdiction ends and we're going to do that in 2018. We're going to withdraw the rule that's in place right now and that will be finished by the end of the year. Then we've got a substitute definition, and this is where the environmental left misses it. They call this deregulation. This is regulatory reform, this is regulatory clarity. We're getting rid of the deficient rule and then we're going to provide a new definition that provides bright line criteria by which to define where jurisdiction begins and ends. That's so key and that's what we are going to accomplish in 2018, and it's not going to be the federal drainage ditch.

**Bluey: The Clean Power Plan is another major action you've taken recently. In the same context, what are the implications of doing away with that? And where do you see it going next?**

Pruitt: For the first time in history, the Supreme Court entered a pending litigation and issued a stay of enforcement against the Clean Power Plan. That case is being litigated in the D.C. Circuit. The Supreme Court intervened and said stop the enforcement of the rule because it's going to impact the marketplace in ways that we don't think meet the statutory criteria or authority of the agency.

So again, uncertainty. We had uncertainty in the utility sector, so let me say this to you: generally, from a regulatory perspective this is going to be a very profound statement, regulations should make things regular.

That's our job to take a statute and administer the statute and make things regular across the full spectrum of people subject to the statute or subject to the regulation. It's not to pick winners and losers.

It's not the job of the EPA to say to the utility company in any state of the country, you should choose renewables over natural gas or coal. We need fuel diversity in the general electricity. We need more choices, not less. No agency at the federal level should use their coerce power to force business utility companies to take those fuel sources away. They should be making it on cost, stability, and I would say resiliency of the grid.

The president talks a lot about economic growth. We're already at 3-plus percent and this tax cut package is going to provide tremendous growth. When you grow your economy at 3 to 4 percent as opposed to 1 percent, the power grid, the resiliency of the power grid takes more significance, so when you reduce fuel sources that takes on more vulnerabilities.


President Donald Trump and EPA Administrator Scott Pruitt announced in June the United States would withdraw from the Paris climate accord. (Photo: Ron Sachs/Newscom)

We need solid hydrocarbons like coal to be stored onsite to address peak demand. We need natural gas, we need renewables, we need all that. Chancellor [Angela] Merkel, in this Paris accord situation, I know you didn't ask about this, but I have to get this in, when we talk about this Paris accord issue, if Germany is so concerned about this reduction of CO2, why is Chancellor Merkel getting rid of all nuclear in Germany? Its hypocritical and, by the way, we're at pre-1994 levels in this country and from 2000-2014 after we exited Kyoto, we reduced our CO2 footprint by 18 percent, almost 20 percent, and that's in the same timeframe.

This country has alway led with action, not words and labels like Paris. The president made a tremendously courageous decision by saying we're going to get out of the Paris accord, put America first, and make sure that we lead with action and not words.

**Bluey: What is your strategy for rolling back cumbersome regulations that hurt small businesses?**

Pruitt: There has been a threefold strategy that has been introduced to the agencies since Day One. In fact, as I addressed the agency on the first day, I talked about three primary things.

One, respect for rule of law. The only authority we have is the one Congress gives us in the statutes, which enhances regulatory certainty when we act congruent to statutory guidelines.

Secondly, we are going to respect process, which means that as we go through rulemaking, we're actually going to do what Congress says. We're going to propose a rule. We're going to take comment and it's our responsibility to respond to that comment. Then, we're going to finalize that rule by being informed of how it's going to impact folks all over the country. That's good. That's how consensus is built.

Thirdly, we're going to respect federalism. Congress is prescribed into the Clean Air Act, into the Clean Water Act certain responsibilities placed upon states. They imagined and really believed that we can work together.

Those are the three primary principles by which we are doing our work. I think as we do that, it's going to create better outcomes for air, land, and water, as far as environmental outcomes.

But as far as when you look at the disrespective process—that's the reason the sue and settle aspect makes the remedy there is so important. I think if we get back to the basics there and focus on those three cornerstone principles, we're going to see better outcomes as far as air attainment, water infrastructure, sites being remediated on the Superfund list, and it's going to be very encouraging.

And for small business, we've also done something else. President Bush introduced something, and it actually dates back to the Clinton administration. It was called the Common Sense Initiative. President Bush built on that and called it the sector strategy, where we bring in sectors of our economy—farming and ranching, chemical companies, energy, oil and gas, and others.

We've updated that because it went by the wayside under the Obama administration. We've revived that and we've created something called the smart sector strategy. Those businesses are now dialoguing with us on how we can work together going into the future to achieve better outcomes in the environment.

**Bluey: What's an issue that you are engaged in that isn't getting the attention it deserves—that you think this audience should know about?**

Pruitt: Well, I think one that isn't talked about a lot is last year Congress adopted some amendments to the Toxics Substances Control Act, TSCA, and created new responsibilities for our agency. For instance, chemicals that enter the flow of commerce, we have to approve those chemical before they enter the stream of commerce.

When I came into this position, we had a backlog of over 700 of those chemicals. We cleared those out by July of this year. We focused resources and we provided certainty to folks across the marketplace on whether those chemicals could be used in an effective way. We're implementing those changes to TSCA that I think provides certainty to those that are regulated.

The other area I want to talk about is the Superfund arena. I mentioned the one site in West Lake, Missouri. I'd love to tell you that is an isolated example—that that is just one of many of the 1,336 sites that we regulate. We have many, unfortunately, sites that have languished on that list since inception of the program in the 1980s—sites that been there for decades with respect to no decision and very little action.

The American people deserve, in my view, answers and leadership in how to remediate those sites. That's the most tangible benefit that we can provide to folks environmentally.

Just recently, San Jacinto, a site in Houston that is off of I-10 in a harbor there, where there is a bunch of barge traffic. There was a site listed around 2009-2010, and it has dioxin on the site. When the hurricane came through there was much concern about the dioxin being released into the barge traffic and it impacting folks' health. The remedy that has been in place for the past 10 years was literally putting rocks on top of the site to prevent release. It sounds crazy but that's exactly the case.


A tanker arrives in the Houston Ship Channel near a spot where the road dead ends into water at the San Jacinto battlefield.
(Photo: Rick Wilking/Reuters/Newscom)

When I was there after the storm, I said that is not acceptable. We're going to make a decision for the betterment of the community to fix that site and provide permanence. Just last week I signed that record

decision giving direction on how we are going to provide that relief to prevent the release of dioxin into the water supply in Houston, Texas.

We've got to take concrete steps to prevent those environmental issues. We're doing such good work that no one, I really shouldn't say no one … folks see it in the communities. There's great optimism across the country, except in Washington, D.C., so that means things are going really well.

**Bluey: Can you describe the shortcomings of the scientific evidence for climate change and the type of data that would be needed to convince you that climate change is happening?**

Pruitt: Well, a couple things. Let me address something a little bit big picture and then I'll get into the specific question.

I have advisory boards at my agency. The CASAC, the science advisory board that advises me on air quality issues. I have BOSC and I have the Science Advisory Board.

The scientists who make up these bodies, and there are dozens and dozens of these folks, over the years those individuals as they've served those capacities, guess what has also happened? They've received moneys through grants and sometimes substantial moneys through grants.

I think what's most important at the agencies is to have scientific advisers who are objective, independent minded, providing transparent recommendations to me as the administrator and to our office on the decisions that we're making on the efficacy of rules that we're passing to address environmental issues.

If we have individuals that are on those boards that are receiving money from the agency, sometimes going back years and years to the tune of literally tens of millions of dollars, over time, that to me causes questions on the independence and the veracity of the transparency of the recommendations that are coming our way.

Next week, I want you to know something, and I'm not trying to get ahead of myself too much, but next week we are going to fix that. Next week, I am going to issue a directive that addresses just that, that's much like the sue and settle, to ensure the independence, transparency, and objectivity with respect to the scientific advice that we are getting at the agency.

Now, on this issue with respect to climate change, it's not a question about whether climate change occurs. It does. It's not a matter of whether man contributes to it. We do. The question is how much do we contribute to it and how do we measure that with precision? It's a little bit more difficult questions like when we have individuals telling us in 2017 that they know what the ideal global average surface temperature should be in the year 2100, I think there should be a debate around that. I think there ought to be discussion around that very issue.

There are some, perhaps in this very room that believe that it poses an existential threat. If it poses an existential threat, I want to know. If it's more important than ISIS and North Korea, I think we better know about it. So let's have a real, meaningful discussion about it.

The American people deserve, in my view, an objective, transparent, honest discussion about what we know and what we don't know, with respect to CO2. It's never taken place. That's the reason I've been proposing a red team, blue team exercise where we bring red team scientists in and blue team scientists in and they would engage in a multi-month process asking of each other these very difficult questions to help inform the American public on these issues to help build consensus toward this very important issue.

Here's the last thing I will say about it. That is a very important exercise and it's something that Steve Koonin actually published in the Wall Street Journal about three or four months ago. I think it was a well-written piece and you ought to go read it. There's actually another piece that Bret Stephens wrote in the New York Times about this very issue where politicians have taken information that we know and stretched it so far on this issue that it strains credibility.

We need to have a very honest and open discussion about this as a citizenry and as a country with respect to what we do. But here's the other thing, what are the tools in the toolbox? That matters. Remember what I said earlier: the only authority I have is the one Congress gives me.

We have to ask and answer the question, What does the Clean Air Act say to this issue as far as regulation of CO2? The last time the Clean Air Act was amended—anyone want to guess when that was? I know you study this every day—1990. Twenty-seven years ago. If you go back and read post the amendments, the Clean Air Act from 1990, Congressman [John] Dingell is not the most conservative member to ever have served in Congress. Congressman Dingell said to regulate greenhouse gas emissions under the Clean Air Act of 1990 would be a glorious mess. The Clean Air Act was set up to address local and regional air pollutants, not the global phenomena of GHG and CO2.

We have to ask the question, one, What do we know? And let's inform ourselves about it. But we also have to ask ourselves, What can we do about it and what tools are in the toolbox? I can't make that up. That's what the last administration did. When they made it up, they got sued and they got stays of enforcement like the Clean Power Plan, which does not achieve any environmental outcomes and creates uncertainty in the marketplace. It was part of their war on coal, their war on fossil fuels.

I have to ask you a question rhetorically. Where is it in the Clean Air Act that the EPA has the authority to declare war on any sector of our economy? I don't see it. And that's what the last administration did. It ended under President Trump.

Administrator Scott Pruitt speaks to EPA employees in February. (Photo: Joshua Roberts/Reuters/Newscom)

**Bluey: I have a couple of questions about what it's like to work at EPA headquarters. Specifically, are you running into any internal or political challenges with a staff that might not be willing to carry out the mission you articulated earlier?**

Pruitt: Let me say a couple of things. One, having led a business, having been in that space and whatnot, I didn't start from the premise that folks weren't willing to be partners. In fact, the very first day I was there, I talked about rule of law and process and federalism, as I indicated to you. But also said to the folks there that I was going to listen and I was going to learn from them, but that we were going to lead, we were going to make decisions.

And so I've tried to exercise good will in working with folks. I don't want people presuming certain things about me that are not based in fact and I shouldn't presume certain things about others. I've tried to lead that way at the agency. That being said, I do think that there is a lack of urgency in some of these areas with respect to Superfund and otherwise, and we're revitalizing those areas actually. And we're actually getting the things done that matter and holding folks accountable.

There's a gentlemen I brought into leadership. He worked for Gov. [Doug] Ducey in Arizona, and I was with Governor Ducey a couple of weeks ago and I thanked him for his contribution. But this individual came to me—he led the [Department of Environmental Quality] there in Arizona, and then he went into the Cabinet under Governor Ducey—and when he came into leadership at the DEQ in Arizona he said, Scott we had over 700 people that we employed and I started focusing on metrics and performance and everyday asking and answering what progress are we making? Are we actually remediating sites? And measuring that every single day. And there were some people in the agency, he said to me, that weren't into that. They weren't into

accountability. And those folks just kind of left. And at the end of that process, it went from an agency of around 700 to an agency of around 350.

He said Scott, what's amazing to me is that when that happened we were actually producing better results with the 350, measuring outcomes, than we had with 700. Now, that person is now at the EPA, and I've given him a charge. We have a dashboard that we've created, a dashboard of measuring results every single day. His name is Henry Darwin, by the way. I call this the 'Darwin Effect,' And I say, 'Henry, how are we progressing today? How are we doing in air quality?'

Let me ask you something, What's Republican and Democrat about improving air quality? Where's the political issue around that? Where's the political issue around avoiding Flint, Michigan, and Gold King, Colorado? Where's the Republican/Democrat approach to remediating Superfund sites and actually making sure they're actually reused and communities can enjoy those areas once again?


LeeAnne Walters of Flint, Michigan, shows water samples from her home amid growing health concerns in 2015. (Photo: Ryan Garza/ZUMA Press/Newscom)

Their shouldn't be any political margin on any of those issues. These are not controversial things. We ought to focus on the good work of the agency, respectful of law, engage in partnership. And you know what's going to happen? Good things. We ought to celebrate that as a country. So the Darwin Effect is in full force and we are going to make sure that we achieve accountability.

Just one other thing—permitting. Permitting has been a big issue with respect to infrastructure. Permitting, sometimes, at our agency, has not been, 'Is there an issue and how do we fix it?' It's been obstructionism. It's

taken a decade, or 12 years or 15 years—and I'm not making this up—where it takes that long to make a decision on a permit. That's not a decision. That's simply no, just cloaked in no decision, right?

When I met with Henry, I said, 'Henry we've got to have an outside time where all permits are processed. Let's establish a timeline that all permits are going to be processed within X number of years or whatever.' This was one of our first meetings and I decided two years or something; let's find the right time. He said, Scott, 'I was thinking more like six months.' I said, 'I love you Henry.' So by the end of 2018, every permit that we issue, up or down, you're going to know within six months.

**Bluey: What has it been like working with President Trump? What can you tell us about it?**

Pruitt: It's been wonderful. As I shared with you earlier, the president is full of courage and he's full of action. He wants results. That's what the American people want.

They don't like all the blather, they don't like all the labels, they don't like all the bumper stickers. Let's actually achieve things. That's what he's done his whole life.

I seek every day, and I mean this sincerely, to bless him. I want to bless him and the decisions he's making. I want to carry out my responsibilities at our agency in a way that is respectful of the things I've talked about today. There's so much optimism across our country—with respect to all the various states and stakeholders that there's a different trajectory.

You know, several years ago there was a book that I picked up called "The Culture Code." It's a book written by a French sociologist, and I don't normally pick up those books, but this was an interesting book where his business, his career is that he engages in surveys and focus groups. Coca-Cola or IBM will hire him and say, 'OK, you go out and find the code, the one word that describes my company.' He did that, that's his whole career.

He wrote this book and he talks about these various areas, but he spent one entire chapter on America. He surveyed all these people across the country, focus groups, asking questions. He boiled the code word for America down to one word—one word. Anybody want to guess what it is? Dream.

And I'll tell you as a country, we've lost that a little bit. We're a little bit more risk averse than we used to be. We don't dream and aspire like we used to be. This president is reinvigorating that. This administration is reinvigorating that.

We have nothing to be apologetic about as a country. We're the best in the world. We feed the world, we power the world. And oh, by the way, when it comes to environmental stewardship, we're better than anybody else. And that's the Gospel truth.

Let's not be apologetic. Let's lead with action. And that's what the president is doing. I love serving with him. I love serving him. And there's much optimism, much hope ahead.

# Exhibit C17

**WED, OCT 11, 2017 | BY HUGH HEWITT**

# EPA Administrator Scott Pruitt On Clean Power Plan Rulemaking

EPA Administrator Scot Pruitt joined me this morning to discuss the new rulemaking on the Obama Era "Clean Power Plan," which was enjoined by federal courts:

Audio:

10-11hhs-pruitt

Transcript:

HH: In the swirl of breaking news, including the awful smoke hanging over Northern California, where the destruction of 2,000 homes, the death of 17 Americans, the missing of 240 other Americans, is obscured a lot of important news. One of those, the announcement yesterday by U.S. Environmental Protection Agency Administrator Scott Pruitt, of the rulemaking to reverse the Clean Power Plan rule, which was originally promulgated on October 23rd, 2015 by the EPA. Administrator Pruitt joins me now. I always say when he does come on he is my friend. My son works at EPA. That's called self-regulation, so people don't suggest that I am keeping other than transparent disclosure from you. Administrator Pruitt, welcome back.

SP: Good morning, Hugh.

HH: I have to begin with the Congressional Research Service assessment of the Clean Power Plan. It says on October 23rd, 2015, the U.S. Environmental Protection Agency published its final Clean Power Plan rule to regulate emissions of greenhouse gasses, specifically carbon dioxide. The Clean Power Plan would require states to submit plans to achieve state levels specific CO2 goals, reflecting emission performance rate, and that the Clean Power Plan has been one of the more singularly controversial environmental regulations ever promulgated by the EPA. The Congressional Research Service goes on to discuss how it has been enjoined by the courts. So what did you do yesterday against that backdrop?

SP: Well, breathtaking in light of what the previous administration did, Hugh, because for the first time ever, the EPA took its authority and said we can dictate, really coerce states and utility companies across the country and tell them how to generate electricity. You know, when you look at how we generate electricity in this country, we obviously use multiple energy sources. Fuel diversity is very key and important to keep costs down, but also stability and resiliency of the grid. That's coal,

oil, natural gas, hydro, renewables, an entire mix of energy sources. What the last administration did is no, we're going to dictate to you. We're going to use our authority to say fossil fuels should not be used. We're going to shift to renewables across the country, and really is was a power grab over the power grid, Hugh. And so it had never been done in history. And so it's so unprecedented, that the U.S. Supreme Court, you mentioned October of 2015. In February of 2016, the U.S. Supreme Court entered an historic and unprecedented stay against the rule going into effect, because it was so breathtaking as to how the previous administration interpreted their authority. So what we did yesterday is begin the process, propose a rule to withdraw that very deficient rule, and provide clarity to folks across the country with respect to how we generate electricity, and really, respect mostly, Hugh, the statutory framework that Congress has given us to regulate.

HH: Now Administrator Pruitt, when you roll back something called the Clean Power Plan, or put it in peril of roll back, which is what you did as you began the rulemaking to change the Clean Power Plan, immediately, the kneejerk reaction is oh, my gosh, Team Trump is rolling back clean air in America. That is not what happened yesterday. Would you explain to people what the rulemaking process is, and why in fact this rule has never gone into effect in the first place?

SP: Yeah, there's been no effect whatsoever. No impact other than negative impact and uncertainty across the country. It's never truly been used or even complied with. So the supposed benefits of the rule, we have not obviously received those. And there was a great amount of questions, Hugh, to begin with about the cost benefit analysis about the cost, extraordinary cost this was going to cost consumers, utility consumers across the country. In some states, it was going to increase utility rates upwards of 40-50%. So this was a tremendously costly rule with very little benefit to the environment. In fact, right now, Hugh, this is what's lost in this whole discussion. We're at pre-1994 levels with respect to our CO2 footprint. And we have done that largely through technology and innovation, not government mandate. You know, when we talk about the results we have as a country, we ought to celebrate the progresses we've made. Those pollutants, as an example, that we regulate under the Ambient Air Quality Program have been reduced over 65% since 1980. So we are making tremendous progress, because industry and states and citizens and innovation and technology are truly being utilized today than ever before. And we need to always keep in mind as we generate electricity, it serves the manufacturing base, the jobs base in this country, an economy that needs robust growth. And we need reliability in the power grid to achieve that. And the past administration just simply ignored all aspects of the statute, all aspects of how we've done regulation historically, and then tried to impose their will upon this country in a way that was entirely deficient under the law. So the U.S. Supreme Court intervened, stopped that from happening, and what we are now doing is responding from a regulatory perspective to hopefully, as we go forward, do it the right way, as opposed to the overreach that we saw in the past administration.

HH: Because I know you know from your time as Attorney General of Oklahoma that the Agency is obliged to take seriously the comments it receives during this process, you will not prejudge the conclusion. But I am curious about the debate in the media and what you think of it. There are some critics who say you ought to have proposed a new rule, and you ought to have withdrawn the so-called Endangerment Finding at the same time. I replied to them, no, there's an A-B-C order here.

The first thing is you have to revoke a deficient rule if indeed it is found by the notice and comment process to be deficient. Is that in fact correct, Scott Pruitt? Is that the order you're following?

SP: Yes. Yes, yes, Hugh, I think that as we look at the sequencing of this, I mean, you've got a rule that's been stayed by the U.S. Supreme Court. But you don't know how long that stay is going to, you know, remain in place. And as such, those folks that are regulated across the country, they don't want the uncertainty, because what did the rule require? It actually required them to displace certain investments that they had made in coal generation facilities. I mean, let's make no mistake about it. The last administration declared a war on coal. Now that is amazing in and of itself. You know, for a president and for an EPA, a federal body, a federal agency to declare war on any sector of our economy is absolutely astounding. But they did it unapologetically, and they made tremendous progress in reducing and contracting mining jobs in this country. That's wrong. A regulatory body ought never engage in a war on any sector of our economy. We're to make things regular for those across the country so that they know what's expected of them as they invest money, allocate resources, and try to achieve good outcomes on behalf of the environment. So this is a situation, Hugh, that we had to provide clarity first and foremost about the deficiency of this particular rule. But we have also been doing our work to prepare for, you know, what does the statute allow us to do? I actually introduced something in June of 2015, Hugh, called the Oklahoma Plan. I went through a Section 111 of the Clean Air Act and evaluated what authority existed to regulate CO2 under Section 111, which deals with power generation facilities. I was at the National Press Club that very month about five or so days before the Clean Power Plan came out, and was debating someone from the NRDC, and shared this entire plan with them. There are steps that we can take with respect to this issue. But they are modest. They are humble, because frankly, when you look at the Clean Air Act and the tools that Congress has given us, it is, they're not robust in dealing with this issue. And the reason that is, is because the Clean Air Act hasn't been amended since 1990. It's been 27 years ago, and the folks that were involved in amending the Clean Air Act in 1990 were very, very clear that they saw the Clean Air Act as focused on regional and local air pollutants, to reduce those air pollutants, and not this global phenomena called GHG, or CO2 reductions. And so we only have the tools that Congress give us, Hugh. You know that. That's 5th grade civics. We can't reimagine authority.

HH: I also know, I also know the power of the market is much more extraordinary than the power of regulation, and that natural gas is displacing other sources of energy on its own in accord with the market forces driving it, but that interventions by the government in the acceleration in some areas can be counterproductive, in fact. Administrator Pruitt, the regulatory reform agenda overall, I've told people that you're going through it with Waters of the United States, the WOTUS rule. I believe the market is up, because it's pricing regulatory reform into it. Other people think it's because it's pricing the tax cut in. But these rule reforms do have enormous impacts on the GDP of the United States.

SP: Look, I mean, if you ask folks over the last several years what has been the greatest impediment to economic growth, they would tell you regulatory uncertainty. And that's not just in the energy and environmental space. That's in the finance area, that's in health care. It was across the full spectrum of the past administration, because we all know this. The previous administration ruled by executive

order. And when you rule by executive order, when you actually legislate in the executive branch, you tell your administrative agencies, executive branch agencies that you govern to say go out and make the law, that that created tremendous uncertainty, because those that are regulated look at a statute passed by Congress, and it says one thing. And then an executive branch agency is passing regulation that says exactly the opposite. So what do you do if you're in the finance, health care, energy area? You don't invest money. You don't put money at risk, because if you put money at risk, that means you may lose it because of the arbitrary type of response of the executive branch agencies. So what we're trying to get back to today, Hugh, is sending a message across the country that we are going to do what the statute requires. And when we do what the statute requires, that provides certainty to those that are regulated, and here's the real important thing. It benefits the environment, because it allows people to then invest and deploy resources to achieve outcomes and not face the prospects of displacement of capital, uncertainty, and litigation. When you think about the WOTUS rule, CPP, these plans we're talking about, every one of them was subject to litigation and a stay of a federal court. And they never went into effect, because the past administration simply made it up. And that's just, that's not our authority to do that, and we're not going to do that.

HH: Scott Pruitt, it is always good to talk to you, Administrator. Press on. I am sure the process will be long and arduous, but legal in the end and upheld by the courts because it's being administered by a former state Attorney General.

End of interview.