NYU Dean Emeritus Richard 'Ricky' Revesz chats about the Supreme Court's stay of Obama administration Clean Power Plan

Jonathan Allen  Sidewire Community

Welcome, Professor Revesz. The court issued a stay on the administration's Clean Power Plan but didn't resolve the merits of the case at all. What does that do to implementation plans by states that want to move forward?

Richard Revesz  NYU School of Law

States that want to move forward can move forward. And EPA can help them by issuing Model Trading Rules. All the stay means is that the Clean Power Plans' requirements can't be enforced against states that don't want to move forward.
Can you talk a little bit about 111(d), the part of the Clean Air Act that EPA used to allow states to go "outside the fence" to reap emissions reductions? I know there was disagreement within EPA about that. Does the Act cover the rule?

Richard Revesz NYU School of Law

Yes. And past EPA rules, under administrations of both parties, have taken "beyond the fenceline" approaches. The Supreme Court upheld one such rule in 2014 in the EME Homer City case, involving interstate pollution.

Under the rule, as I understand it, states have until 2022 to comply with targets for emissions reductions, at which point EPA takes over to implement plans to hit those targets. Is the "coercive" nature of that murkier under recent precedents?

Richard Revesz NYU School of Law

States have to submit plans indicating how their sources will comply. Otherwise, EPA has to come up with federal plans. That's the way other key provisions work. There is nothing coercive because states are just given the option to prepare plans.

Laurence Tribe has argued that the rule muddies the separation of powers among the administration, Congress and the states. Can you respond to that charge?
Of the 3 constitutional arguments that Tribe made at last year's House hearing, the 2 separation of powers arguments are no longer even being pursued seriously in the litigation because they are so weak. ...

Richard Revesz  NYU School of Law
The federalism argument challenges the "bread and butter" approach of the Clean Air Act and would invalidate the Act's core provisions, which have been implemented successfully for 45 years and which are widely regarded to be noncontroversial.

Jonathan Allen  Sidewire Community
If I can get philosophical for a moment, how much weight does the court give to the congressional desire at the time of passage to allow the EPA to regulate the air? That is, does it matter that this complies with the basic concept of the Act?

Richard Revesz  NYU School of Law
It will matter a great deal to the Court that the Clean Air Act requires the regulation of "air pollutants" and that the Court decided in 2007 that greenhouse gases are "air pollutants."

Richard Revesz  NYU School of Law
Congress understood that over time we would discover new air pollutants and wanted to give the agency flexibility to regulate such pollutants without having to return to Congress.

Jonathan Allen  Sidewire Community
Secretary Clinton has said coal jobs are going to away. How much should the court weigh the potential for the elimination of an industry and the economic impact of that?
Richard Revesz NYU School of Law

That is a very serious issue but not part of what the Court can consider. The Court will focus instead on whether the Clean Power Plan complies with the Clean Air Act and the Constitution, which it does. ...

Richard Revesz NYU School of Law

Miners who lose their jobs, mostly as a result of cheap natural gas but in part because of environmental regulation, should get some form of compensation, as President Obama and Secretary Clinton have proposed. ...

Richard Revesz NYU School of Law

These efforts are being opposed by congressional Republicans as a way of generating opposition to the Clean Power Plan.

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↑ RE: RICHARD REVESZ

What will the stay to do the timing of implementation? Does the continued court battle mean states that aren't moving to implement will get more time to do so if the rule is ultimately deemed legal?

Richard Revesz NYU School of Law

States will get more time to prepare their plans. The 2016 and 2018 deadlines will be extended. It's not yet clear whether the 2022-2030 compliance deadlines will be extended. That will be decided when the stay is lifted.

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↑ RE: RICHARD REVESZ

Thank you for joining us. One last question on regulation: The process generally seems so onerous and so litigated. What would you change
about the rule-making process to make it work better?

Richard Revesz  NYU School of Law

It’s hard to think of what could realistically be done. Every major environmental regulation gets litigated and lots of resources are expended in the litigation. The solution to climate change would be far more streamlined if Congress acted.

Jonathan Allen  Sidewire Community

Sorry for the false stop. One more: You said today "EPA is free to continue work on implementation guidance and other matters that do not create enforceable obligations" Can you explain what that means in practical terms?

Richard Revesz  NYU School of Law

EPA can go ahead and finalize the Model Trading Rules and it can propose and then finalize the Clean Energy Incentive Program.

Jonathan Allen  Sidewire Community

Thank you very much.