The Fight Over Trump's New Climate Moves

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POLITICS

The Fight Over Trump's New Climate Moves

With Richard Revesz and Jonathan Allen

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Jonathan Allen
Sidewire Community

Good morning, Ricky!

Richard Revesz
NYU School of Law

Good morning! I'm delighted to join you.

Jonathan Allen
Sidewire Community

There are a lot of pieces to what President Trump is doing with this executive order. How do you rank them in terms of the most immediate and sweeping to the least?

Richard Revesz
NYU School of Law

The Clean Power Plan, the abandonment of the current approach to determining the benefits of carbon dioxide reductions, and the return to coal leases on federal lands are the most significant.
Jonathan Allen
Sidewire Community

Does this mean that the federal government will simply give up in the suit by the states to block implementation of the power plant rules?

Richard Revesz
NYU School of Law

My guess is that the federal government will want to change sides on the Clean Power Plan litigation, but that is unlikely to make any difference because the briefing is complete, and the case was argued six months ago.

And, the opinions have probably been drafted and are likely to be circulating among the judges.

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Jonathan Allen
Sidewire Community

Does that happen often in court cases? And, if I recall, this was at the Circuit Court level. Who takes up the defense of the federal position if it moves up the chain?

Richard Revesz
NYU School of Law

This case is essentially over, so the federal government's change in position is unlikely to matter. But, in any event, seventeen states, clean energy companies, and environmental organizations are defending the Clean Power Plan and will continue.

New administrations sometimes change their positions, but that's likely to make more of a difference when cases are at earlier stages.

Jonathan Allen
Sidewire Community

You told Rebecca Leber of Mother Jones that you thought the president's remarks on climate science could come back to haunt him if and when there are lawsuits to fight this order. Can you explain why his scientific understanding matters?
Those statements could come back to haunt him in the challenge to regulations implementing this order. They might show that the administration was relying on factors that were not cognizable under the respective statutes.

Jonathan Allen
Sidewire Community

Right, the series of regulations that he’s directing agencies to unwind. You mentioned coal leases on federal lands. Is that something that folks other than the federal government would have standing to sue?

Richard Revesz
NYU School of Law

Yes; any individuals or organizations adversely affected by coal leases on federal lands could sue.

Jonathan Allen
Sidewire Community

Can that be done pre-emptively or does someone have to show actual harm first?

Richard Revesz
NYU School of Law

One can definitely argue that opening up leases would cause harm. There is no need to wait until the coal extraction has started.

Jonathan Allen
Sidewire Community

For those who liked the Obama administration's direction on climate issues, do you see this practically as more of a freeze on where he was headed or a more long-lasting reversal?

Richard Revesz
NYU School of Law

It depends on how much survives judicial challenges. The Executive Order has virtually no legal effect. The hurdles that agencies will face in the courts as they attempt to carry out its
Jonathan Allen
Sidewire Community

President Obama did a lot of his work in the regulatory area—not just environmental regulation but the ACA, as well, and in other areas. What will we learn about that approach vs. legislative requirements as the effects of this order unfold?

Richard Revesz
NYU School of Law

Legislation always puts policies on stronger footing. But the current gridlock in Congress makes that difficult. So, I expect that we'll continue to see regulatory approaches for years to come.

Also, we are seeing the end of a bipartisan consensus on environmental matters that had lasted for decades.

Jonathan Allen
Sidewire Community

Going back to the Nixon era. That's a great point to end on. Thank you very much, Ricky.

Richard Revesz
NYU School of Law

Thanks you! I enjoyed the conversation.