



# West Virginia v. EPA (D.C. Cir.)

Topics Covered: Environmental Protection

## Issue

The issue in this case is whether the Federal Environment Protection Agency (EPA) can enact regulations which restrict the total carbon dioxide emissions from all power plants within a state.

## AMA Interest

The AMA supports limitations on carbon dioxide emissions from power plants to protect public health.

## Case Summary

On October 23, 2015, the EPA promulgated regulations which would restrict carbon dioxide emissions from power plants. On the same day, 12 state governments, led by West Virginia, sued in the United States Court of Appeals for the District of Columbia Circuit to have the regulations declared invalid as exceeding the EPA's authority under the Clean Air Act ("CAA"). Subsequently, 37 additional appeals were consolidated into this case.

The plaintiffs maintain that the new EPA regulations would establish quotas for the total carbon dioxide emissions from power plants within a state. This would mean that if a state was at or near its carbon dioxide quota and a utility wished to add to its power generating capacity by the addition of a new plant, the utility would have to either (a) induce an existing power plant within the state to operate more efficiently, (b) induce an existing power plant within the state to shut down, or (c) build a low-polluting or non-polluting power plant by (i) employment of extraordinary anti-pollution technologies for a coal-fired plant or (ii) substituting low or zero-carbon energy generation, such as through the use of a natural gas plant or wind or solar energy sources. Thus, the regulations impose economic pressures to retire pre-existing power plants in favor of "green" energy (wind or solar), even if the pre-existing power plants may individually satisfy environmental standards.

The plaintiffs argue that the CAA gives the EPA broad authority to regulate emissions from new power plants, but it gives only limited authority to regulate existing power plants. Existing power plants are, to a greater extent, left to state regulation. The new EPA regulations are claimed to be invalid, because they sidestep this statutory limitation on the EPA's authority through a novel method of economic incentives, which, in practical effect, broadly regulate existing power plants.

The plaintiffs moved to have the regulations stayed pending resolution of the appeals. The Court of Appeals denied the stay motions on January 21, 2016. The plaintiffs appealed this denial to the Supreme Court.

On February 9, 2016, the Supreme Court, by a five to four vote, stayed enforcement of the EPA regulations until complete resolution of the case. The stay is to last until exhaustion of review by the Supreme Court, if such review should be sought.

Following the inauguration of President Trump, the EPA *sua sponte* undertook a review of the contested regulations. That review is ongoing, although the EPA has announced that it is likely to repeal or greatly modify the current regulations. The Court of Appeals, pursuant to a motion from the EPA, ordered the consolidated cases held in abeyance, pending the EPA review.

### **AMA Involvement**

The AMA, along with numerous other health care organizations, filed an *amicus* brief in the Court of Appeals supporting the EPA regulations as an important benefit to public health.

United States Court of Appeals for the District of Columbia Circuit brief