



The U.S. Supreme Court, in a 5-4 half-page [order](#), dealt the Obama Administration a big blow today by preventing its [Clean Power Plan](#) from going into effect until the case can be heard on its merits. We know from the order that the Court split in the usual way, with the four more liberal members of the Court voting to allow the CPP to go into effect and the 5 conservatives — importantly including Justice Kennedy — “staying” the plan (the legal term for preventing the CPP from going into effect).

Here are some initial thoughts about the significance of the ruling:

First, the CPP will almost certainly not go into effect, even if upheld, until after we elect a new President. The case will be argued in the D.C. Circuit Court of Appeals in June, on an expedited schedule. The D.C. Circuit could issue an opinion several months after the argument but this is an extraordinarily complex case so it seems hard to imagine that they’ll issue an opinion much before the November election. Even if the court of appeals upholds the Clean Power Plan, the Supreme Court may leave the stay order in effect given that five justices think the parties asking for a stay (a coalition of states and industry groups) have a “strong” likelihood of prevailing on the merits (see point #2 below). If a Republican is elected President, the CPP, then, will almost certainly never go into effect since [every Republican candidate](#) has either denied climate change altogether, denied that humans are causing climate change or denounced the CPP. If Hilary Clinton or Bernie Sanders is elected, either one will almost certainly continue to defend the CPP in the Supreme Court, where it is almost certain to end up.

Second, the fact that the Supreme Court stayed the case is a bad sign for the case on the merits. Here is [the legal standard](#) for whether a court will prevent a regulation from going into effect:

- (1) Has the petitioner made a strong showing that it is likely to prevail on the merits of its appeal? Without such a substantial indication of probable success, there would be no justification for the court’s intrusion into the ordinary processes of administration and judicial review.
- (2) Has the petitioner shown that

without such relief, it will be irreparably injured? . . . (3) Would the issuance of a stay substantially harm other parties interested in the proceedings? . . . (4) Where lies the public interest?

In other words, five Justices decided that the states and industry groups challenging the case on the merits have made a strong showing that they are likely to prevail on the merits. There's no way to view the stay as anything other than bad news for EPA and the Obama Administration.

Third, the stay of the CPP deals a serious blow to the United States' commitment in Paris -now part of the Paris Agreement reached in December, 2015 — to cut its emissions 26-28% by 2025. The CPP is a centerpiece of that commitment and represents a significant percentage of the U.S. reductions. Whether the Court's stay will affect the commitments of other countries remains to be seen.

Fourth — and this may be an outlier position — I don't believe that the delay caused by the stay will ultimately matter much to overall U.S. emissions reductions IF the Clean Power Plan is eventually upheld (which assumes the election of a Democrat as President, see point #1 above, and assumes the Court upholds it, see point #2 above). Why? First, the plan itself has a very long lead time for implementation. States do not need to submit plans describing how they will implement emissions reductions until September of 2016 and can be granted two year extensions. Actual implementation of emissions reductions [don't begin](#) until 2022. Second, the D.C. Circuit is expediting its hearing of the case, setting oral arguments in June of this year. That means that — again assuming the U.S. continues to defend the CPP, which is dependent on electing a Democrat as President — we should get a decision on the merits from the Supreme Court some time in 2017. If the Court upholds the CPP — and that is an enormous IF, made even more doubtful by today's decision — then we will have a decision on the merits before the state plans are even due and far in advance of the time emissions cuts will actually begin. The point here is that the delay in and of itself isn't the problem. The problem is what the stay order signals about the fate of the Clean Power Plan.

And fourth, EPA should consider using Section 115 of the Clean Air Act to regulate emissions. The section offers far cleaner authority to regulate emissions than Section 111d, the basis for the Clean Power Plan. Here is [our recent report](#) outlining how and why Section 115 works.

