

✘ Famed constitutional law professor Lawrence Tribe is serving red meat to opponents of climate change regulation. Not only is he [representing Peabody Coal](#) in a pending court challenge to the Environmental Protection Agency's Clean Power Plan, but this week he [testified](#) before the House Energy and Commerce Committee that EPA, in adopting the plan, is "burning the Constitution." In the process, Tribe is, in my view, destroying his reputation as one of the most important and thoughtful constitutional scholars in the country.

Tribe's arguments against the Clean Power Plan are so outlandish and unsupportable that two of his own colleagues at Harvard Law School, Jody Freeman and Richard Lazarus, [penned a response](#) today calling Tribe's arguments "ridiculous," "wholly without merit," "preposterously extreme," and "radical." And Professor Richard Revesz of NYU Law School, at the same House hearing Tribe appeared at, gave incredibly powerful [testimony](#) about why the Clean Power Plan is legal. He then proceeded to destroy Tribe's arguments that [EPA is relying on a "ghost law"](#) in regulating carbon emissions from power plants, that [the Tenth Amendment prohibits the regulations](#) and that EPA is violating the non-delegation doctrine. In my favorite [excerpt](#) from Revesz's testimony, he reminded the committee that Tribe had lost a non-delegation argument 9-0 in a famous Supreme Court case that also involved the Clean Air Act (and in which Tribe also represented industry), [Whitman v. American Trucking](#). Justice Scalia wrote the opinion rejecting Tribe's argument.

Freeman, Lazarus and Revesz have shredded Tribe's arguments and, in my view, his credibility, and I won't rehash the complex back and forth about the various legal issues. One example, though, demonstrates just how crazy Tribe's position is. In his Congressional testimony, he argues that the Clean Power Plan, in regulating greenhouse gas emissions from existing power plants, raises serious constitutional concerns as a potential taking under the 5th Amendment. This is simply ridiculous. Freeman and Lazarus decimate his argument:

The clear implication of Tribe's novel view of the [Fifth Amendment to the] Constitution is that the coal industry, and the power plants that burn their coal, possess an absolute constitutional property right to continue to emit greenhouse gases in perpetuity. No Supreme Court opinion has ever announced such a preposterously extreme proposition of constitutional law. Nor has even one single Justice in more than two centuries of cases endorsed such a reading of the Fifth Amendment.

Tribe is obviously being paid huge sums of money by his coal industry client to make arguments that seem so plainly wrong. But he's also made clear (including in his testimony) that the views he is espousing are his own, independent of his representation. It's hard not to conclude that all that money has addled his judgment.