

✘ As I [wrote](#) earlier today, there is nothing good to be said about the U.S. Supreme Court decision today that halted the implementation of the President's Clean Power Plan. The decision is a huge blow to the President's climate agenda, it's a setback for the Paris Agreement and it is a bad sign that the Court may ultimately strike the plan down. But I should also emphasize that the decision is way outside the bounds of normal Supreme Court practice and is, to put it bluntly, shocking. As the Solicitor General of the United States argued in his [brief](#) opposing the motion to "stay" the plan (again, "stay" means freezing the plan's implementation):

Applicants identify *no case* in which this Court has granted a stay of a generally-applicable regulation pending initial judicial review in the court of appeals.

In other words, the Court has never done what it did today: stop a regulation from going into effect before any court had determined its legality. Moreover, the Court did so even though the states and industry groups challenging the regulation did not have a strong case. Here's why. In order to get a regulation's implementation halted, opponents had to meet [several criteria](#). First, they had to show that they have a strong chance of winning on the merits of the case. Yet EPA issued the Clean Power Plan because it is [legally required](#) to regulate power plant emissions as the result of a decision issued by the United States Supreme Court! EPA, in other words, followed the Court's own order in issuing the CPP. Whether the way EPA chose to implement the Supreme Court ruling is what is at stake in this litigation. The case is a complicated one, involving issues of statutory interpretation that will require careful court consideration. But the Court's determination in issuing the stay that opponents of the CPP have a "strong" case is simply wrong.

Second, the rule's opponents also had to show that they would suffer "irreparable harm" if they had to comply with the regulation. The question of irreparable harm is an especially puzzling one. EPA went out of its way to issue a rule that would be implemented very slowly. Under [the rule](#), states have until September, 2016 to show how they will comply with it but can get 2 year extensions, to a date far beyond any expected ruling from the Court. But even more important, the electric power sector faces no emissions cuts until 2022! Any court decision, including appeals to the highest Court, will be resolved far earlier than 2022 — indeed the D.C. Circuit, which is the court that will first hear the Clean Power Plan, has expedited review and will hear oral arguments this June. So where is the

irreparable harm? At most states and the power sector have to begin considering how they will comply, with no concrete action due for years.

And finally, Clean Power Plant opponents had to show the Court that issuing a stay would neither hurt other parties or the public interest. Climate change is the most pressing environmental problem the world faces. More than 190 countries came together in Paris in December and agreed to individual country commitments to reduce global greenhouse gas emissions and to limit temperature increases to under 2 degrees C. The United States was a leader in these efforts and the [Paris Agreement](#) has been hailed as a remarkable accomplishment. Central to the U.S. commitment as part of the Paris Agreement is the Clean Power Plan. Yet five members of the U.S. Supreme Court decided that the public interest is not harmed by halting the implementation of the most significant component of the U.S. plan even when U.S. leadership is crucial to global progress in beginning to halt potentially catastrophic warming. The Court's determination that the public interest will not be harmed by a stay is just plain wrong. For all of these reasons, the D.C. Circuit refused to stay the plan, a sensible and predictable ruling.

The Supreme Court today stepped in to reverse the Court of Appeal and to issue an audacious ruling that is unprecedented and wrong. Today is a bad day for the fate of the Clean Power Plan but it is more than that. It is a bad and sad day for judicial integrity and restraint.