

EPA has just issued a cluster of new rules designed to limit carbon emissions from power generators. Once upon a time, the presumption would have been that the rules would quietly go into effect, until someday a court rules on their validity. These days, we can expect a lot of action to be begin almost right away.

First, we are likely to lawsuits filed before opponents have even had a chance to read the new rules. Opponents see the new rules as vulnerable because the Supreme Court struck down Obama's earlier rules in [West Virginia v. EPA](#). (Here's a [brief explanation](#) of that decision.) EPA believes — and [I agree](#) — that it has avoided the fatal flaw the Court saw in the Obama rule. But opponents are not convinced. And they will raise other arguments — primarily, that the technologies that EPA is relying on to reduce emissions aren't ready for prime time.

Fortunately for EPA, challenges can't just run to their favorite forum, Judge Matthew Kacsmaryk's courtroom in Amarillo, Texas, where they would be guaranteed a victory.

Under the Clean Air Act, nationwide EPA air pollution rules can only be challenged in the D.C. Circuit, where EPA will get a much fairer hearing.

Once they've filed in court, the challengers next step will be to demand a temporary injunction against EPA. The D.C. Circuit views regulations as presumptively valid because they come from a coequal branch of government, so it is stingy about granting preliminary injunctions. But they will want to think hard about this, because the Supreme Court broke with precedent and enjoined Obama's power plant regulation, the Clean Power Plan, after the D.C. Circuit refused to do so.

Whether or not there's a stay, it will probably be months before the cases are fully briefed and argued, and months more before the court issues a decision. At that point, of course, everyone will race to request Supreme Court review.

This is assuming that Biden wins in November — otherwise, Trump will request that all the proceedings be held in abeyance the moment he takes office. He'll then get EPA to retract the regulations, which will probably take at least a couple of years. At that point, there will be more lawsuits.

In the meantime, there will also be action in Congress. The Congressional Review Act allows Congress to overturn new regulations, and there will be certainly a move to use that power here. However, that would largely be a symbolic move because Biden would use his veto power to protect the regulations. All of this will be accompanied by a media frenzy, with Fox News denouncing the regulations as socialism.

The key question will be whether the Supreme Court decides to shortcircuit the process with an injunction. That will give us our first clear glimpse of the Court's thinking. Stay or no stay, it seems overwhelmingly likely that the Court will get involved at some point when all is said and done.