Trump has included state climate policies on his enemies list. He's going to find that they've got a lot more legal protection than many of his other targets. The Supreme Court, if anything, seems to lean a bit toward increasing current protections for states. And Congress has given state environmental and energy policies powerful defenses from federal overreach.

There's no question that Trump despises states that have the temerity to pursue their own climate and energy policies. In an executive order, he claimed that "many States have enacted, or are in the process of enacting, burdensome and ideologically motivated 'climate change' or energy policies that threaten American energy dominance and our economic and national security." He added that "these State laws and policies weaken our national security and devastate Americans by driving up energy costs for families coast-to-coast." And worst of all, these states were thwarting Trump's will: "These State laws and policies are fundamentally irreconcilable with my Administration's objective to unleash American energy. They should not stand." Yet, lacking any direct power to overrule these policies, all Trump could do was tell the Justice Department to file lawsuits.

Those lawsuits will have tough sledding. Let me begin with Congress's efforts to safeguard state regulatory power in two key statutes. The Clean Air Act makes it clear that the state can adopt more rigorous regulations than the federal government. Section 116 of the Clean Air Act provides that nothing in that law:

[S]hall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that . . . such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under [the Clean Air Act or an EPA-approved State Implementation Plan].

There's an exception for regulation of vehicle emissions that involves other legal complications, but the statute clearly allows states to go beyond the federal government in regulating emissions from factories, power plants, refineries, data centers, and so forth.

The Federal Power Act also protects the ability of states to regulate power generators. Section 201(b) deprives federal regulators of jurisdiction "over facilities used for the generation of electric energy or over facilities used in local distribution." Those are exclusively subject to state regulation.

As with anything in law, there are complications, qualifications, and exceptions. But the fact remains that Congress has signaled its general intent to shield state regulations in these critical areas.

But what about the Supreme Court? Aren't they likely to leap to the defense of federal power over states? The first thing to realize is that this isn't an agenda item for the current Court. Every year has brought pathbreaking decisions about the separation of powers between the branches of the national government. But there's been very little action in the area of federalism — unlike guns, religion, and presidential power, federalism doesn't seem to be a priority for the conservatives. There've been only a couple of noteworthy cases, and even they weren't exactly blockbusters. Moreover, they both came out in favor of state regulation despite plausible arguments on the other side.

In the *Pork Producers* case, the Court upheld a law prohibiting sale of pork in California if the producers failed to follow rules for humane treatment. The actual outcome is less important than the majority's lack of enthusiasm for policing regulations that allegedly burdened interstate commerce. Even the dissenters argued only that the pork producers should have been allowed to present evidence about the burden. And all the Justices rejected a rule that lower courts had applied that invalidated state laws that reached beyond the state's borders — something that was very much true in the *Pork Producers* case, since virtually all the pork sold in California comes from hogs raised and slaughtered elsewhere.

In another case, the Court rejected a claim that the Atomic Energy Act prevented Virginia from banning all uranium mining in the state. The Act has been interpreted to provide sweeping preemption relating to nuclear energy and related radiation hazards. But the majority drew a line between regulations of "upstream" activities and "downstream" activities such as nuclear reactors and waste disposal.

The Court also gave states a weapon in the *Sackett* case, a generally dismal opinion upending federal regulation of wetlands. What is relevant for our purposes is not the outcome but the Court's endorsement of state regulatory prerogatives. The Court emphasized that it "require[s] Congress to enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power …"

The upshot is that it will be very challenging for the Feds to overturn state emissions regulations of power plants and other facilities. The statutory and doctrinal landscape are favorable for states playing defense, and the Supreme

Court seems if anything more favorable to the states than the national government. Of course, these general observations leave plenty of room for litigation over the fine points, and the Feds could win some cases. But the states start the contest with an advantage.

Or, in simpler words, Trump may huff and puff, but he’ll have a lot of trouble blowing this house down.