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EPA’s “Clean Power Plan” Violates Constitution – Separation of Powers, Executive Overreach, and Federalism at Stake

WASHINGTON, DC (Feb. 22, 2016): Southeastern Legal Foundation and nationally recognized attorney Steven Bradbury, a partner at Dechert LLP in Washington, DC, today filed a critical amicus in the U.S. Court of Appeals for the District of Columbia joining in the challenge against the Environmental Protection Agency’s so-called “Clean Power Plan.” *State of West Virginia, et al. v. EPA, et al.*, No. 15-1363. The Plan was stayed by the Supreme Court in early February.

As argued in the brief, the Clean Power Plan violates critical framework provisions of the U.S. Constitution – the separation of powers between the legislative and executive branches, and the federalism principles that protect the states from federal overreach. In this case, the Clean Power Plan mandates that states issue regulations in compliance with the announced federal standards, a power that the federal government does not have.

Following on the heels of the 2014 Supreme Court decision striking down the Administration’s so-called “climate change” rules purported to regulate greenhouse gas emissions, *SLF, et al. v. EPA, et al.* (2014), Bradbury and SLF Senior Counsel Kim Hermann argue that the Clean Power Plan leapfrogs over the 2014 decision and further embarks the Administration on a journey of constitutional executive overreach.

Highlights from the brief:

“The Clean Power Plan must be struck down unless Congress has granted the EPA clear and unambiguous authorization to embark upon this extraordinary and transformational regulatory program. Far from providing such express authorization, the provisions of the Clean Air Act squarely foreclose the regulatory overreach announced by the EPA. The rule should therefore be invalidated.”

“In doing so, the EPA’s regulatory regime would upend the constitutional balance of powers by arrogating to an executive agency the authority reserved to Congress to craft wholly new legislative solutions, as well as the awesome power to compel the States to enforce the agency’s unprecedented commands. This industry-transforming regulation cannot be sustained in the absence of a clear and unambiguous statutory authorization from Congress, which is nowhere to be found in the Clean Air Act.”

Bradbury, who was co-counsel with SLF in the 2014 Supreme Court case on greenhouse gas emissions, served as the head of the Office of Legal Counsel in the U.S. Justice Department, and was a law clerk for Supreme Court Justice Clarence Thomas.

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