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Via U.S. Mail and Submission to Regulations.gov

U.S. Environmental Protection Agency
EPA Docket Center
William J. Clinton West Building, Room 3334
1301 Constitution Avenue, NW
Washington, D.C. 20004

Attention: Docket ID No. EPA-HQ-OAR-2017-0355, Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units

Re: Comments on EPA Administrator Scott Pruitt's Improper Prejudgment of Outcome of Proposed Repeal of Clean Power Plan

On behalf of their organizations and members throughout the United States, Environmental Defense Fund; Appalachian Mountain Club; Center for Biological Diversity; Clean Air Council; Clean Air Task Force; Clean Wisconsin; Conservation Law Foundation; Earthjustice; Environmental Law and Policy Center; National Parks Conservation Association; Sierra Club; and the Union of Concerned Scientists hereby submit this initial comment on the Environmental Protection Agency's proposal to repeal the Clean Power Plan ("CPP"), 82 Fed. Reg. 48,035 (Oct. 16, 2017) ("Proposed Repeal Rule"). Our organizations intend to file detailed comments on the substance of the proposal, but submit these comments separately to notify the Agency that the administrative process for this rulemaking is irredeemably tainted by the involvement of Administrator E. Scott Pruitt.

As explained in more detail below, Administrator Pruitt has made public statements that he has already decided to repeal the CPP – even that he has already done so – when in fact he has only *proposed* a repeal, and (as of the time the statements were made) had not yet even received public comment. These statements cross a clear line and show that Administrator Pruitt has a fixed position on the repeal of the rule, making his participation inconsistent with the Due Process Clause, which protects the public from rulemakings that are empty formalities because they are presided over by officials with an “unalterably closed mind.” Administrator Pruitt's participation in these circumstances flouts the public rulemaking procedures set out in the Clean Air Act, 42 U.S.C. § 7607(d), and Administrative Procedure Act, 5 U.S.C. §§ 551-53, which require agency officials to adopt rules based on reasoned evaluation of the law, record evidence, and public comment. The rulemaking process fails to satisfy its statutorily required function when an official has already prejudged the matter before the public process is initiated and completed.¹

¹ Ex. 1: On January 9, 2018, a coalition of state and local governments submitted initial comments in this proceeding documenting in detail the actions and statements demonstrating that Administrator Scott Pruitt has improperly prejudged the Proposed Repeal Rule. States of California, Delaware, Hawaii, Illinois, Maine, Maryland, New Mexico, New York, Oregon, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, the County of Broward (Florida), and the Cities of Boulder (Colorado), Chicago (Illinois), New York

Differences on important matters of public policy are normal and to be expected in our democratic society, and successive presidential administrations should and do enjoy the ability to re-evaluate and change prior policies consistent with the Constitution, governing statutes and applicable case law. We also recognize that people who have been involved in, and taken positions on, legal and policy issues outside of federal service are not for that reason alone foreclosed from later work on those same issues as part of their federal service. Public officials deserve a strong presumption of good faith and regularity, and the great majority, whatever their backgrounds or general outlook, prove to merit such trust. However, as explained below, Administrator Pruitt does not – he has departed egregiously from constitutional and statutory norms meant to protect the public’s ability meaningfully to participate in rulemakings and has undermined the integrity of the administrative process.

Accordingly, the Proposed Repeal Rule that Administrator Pruitt signed must be withdrawn, and he must be recused from any further such proceeding.

A. Administrator Pruitt’s Participation in the Proposed Repeal Rulemaking Violates the Due Process Prohibition Against Rulemakings Administered by Officials with Unalterably Closed Minds

The public has a right to “fair and open” rulemaking proceedings, including the right to an “impartial decisionmaker.”² Due Process is violated if an agency decision-maker presiding over a rulemaking proceeding has “an unalterably closed mind on matters critical to the disposition of the [rulemaking].”³ The standard for showing improper prejudgment is properly a demanding one, requiring a “clear and convincing” demonstration that the decisionmaker’s mind is firmly closed.⁴ But Administrator Pruitt meets even this demanding test.

1. Administrator Pruitt’s Statements as Administrator Demonstrate Unlawful Prejudgment

On multiple occasions since becoming EPA Administrator, Scott Pruitt has made public statements that he has already decided to repeal the CPP – even that he has already done so – and has numerous statements demonstrating a fixed hostility to the CPP that is clearly inconsistent with overseeing a fair rulemaking process.

- On February 18, 2017, the day after being sworn in as EPA Administrator, Administrator Pruitt used his official EPA Facebook account to republish a *Wall Street Journal* interview given on the eve of his swearing in, in which he stated that the “past administration didn’t bother with statutes” and “disregarded the law” and explained that he expected to withdraw the CPP.⁵

(New York), Philadelphia (Pennsylvania), and South Miami (Florida), Comments on Administrator Scott Pruitt’s Improper Prejudgment of Outcome of Proposed Repeal of Clean Power Plan, EPA-HQ-OAR-2017-0355-7861 (Jan. 9, 2018) (hereinafter “State/Local Initial Comments”).

² *Ass’n of Nat’l Advertisers v. FTC*, 627 F.2d 1151, 1174 (D.C. Cir. 1979).

³ *Ass’n of Nat’l Advertisers*, 627 F.2d at 1170, 1174; *Lead Indus. Ass’n v. EPA*, 647 F.2d 1130, 1179-80 (D.C. Cir. 1980).

⁴ *Ass’n of Nat’l Advertisers*, 627 F.2d at 1170, 1174; *Miss. Comm’n on Env’tl. Quality v. EPA*, 790 F.3d 138, 183-84 (D.C. Cir. 2015); *C & W Fish Co. v. Fox*, 931 F.2d 1556, 1564 (D.C. Cir. 1991).

⁵ Ex. 2: Scott Pruitt, Facebook (Feb. 18, 2017),

<https://www.facebook.com/EPAScottPruitt/posts/1408365892541915> (linking to Ex. 3: Kimberley A. Strassel, *Scott*

- On February 25, 2017, at an appearance at the Conservative Political Action Conference, Scott Pruitt asserted that the CPP is not “within the framework that Congress has passed,” and promised that he would therefore “roll back” the rule.⁶
- In a March 26, 2017, interview on national television, Mr. Pruitt accused the Obama Administration of intentionally trying to “kill jobs throughout the country through the Clean Power Plan,” a statement EPA then highlighted in a press release.⁷
- In a March 29, 2017, interview, Mr. Pruitt described the Administration’s reconsideration of the CPP as “cleaning up the mess, you know, clearing the decks, if you will.”⁸
- At a Fox News interview on April 2, 2017, Pruitt claimed that his predecessors “made. . . up” and “simply re-imagine[d]” their legal authority to promulgate the CPP.⁹
- On May 11, 2017, from his official EPA Administrator Twitter account, Administrator Pruitt tweeted a link to an article on The Daily Caller website quoting his own explanation of why, as Attorney General of Oklahoma, he had repeatedly sued EPA over the CPP: “They deserved it and they deserved it because they exceeded their statutory authority, they exceeded their constitutional authority.”¹⁰

Pruitt’s Back-to-Basics Agenda for the EPA, WALL ST. J. (Feb. 17, 2017), <https://www.wsj.com/articles/scott-pruitts-back-to-basics-agenda-for-the-epa-1487375872>).

⁶ Scott Pruitt Speech at Conservative Political Action Conference (Feb. 25, 2017), <https://www.youtube.com/watch?v=QxHk4vM0qLY> (“We have to send a message across the country . . . that we’re going to provide certainty by living within the framework that Congress has passed. And so, we’re going to see regulations roll back that aren’t consistent with that. WOTUS, Clean Power Plan, the methane rule, there are several.”)

⁷ Ex. 4: Press Release, EPA, *EPA Administrator Pruitt Previews President Trump’s Executive Order on Energy Independence* (Mar. 26, 2017), <https://www.epa.gov/newsreleases/epa-administrator-pruitt-previews-president-trumps-executive-order-energy-independence> (quoting March 26, 2017 interview on ABC’s *This Week with George Stephanopolous*, <http://abcnews.go.com/Politics/week-transcript-26-17-sen-chuck-schumer-rep/story?id=46372022>; see also Ex. 5: Scott Pruitt (@EPAScottPruitt), Twitter (Mar. 26, 2017, 9:37 AM), <https://twitter.com/EPAScottPruitt/status/846008281260834816>; Ex. 6: Scott Pruitt, Facebook (Mar. 26, 2017), <https://www.facebook.com/EPAScottPruitt/posts/1444794498899054>).

⁸ Ex. 7: Hugh Hewitt Interview with Scott Pruitt, *EPA Administrator* [sic] *Scott Pruitt: “The Days Of ‘Sue And Settle’...Have Ended.”* (Mar. 29, 2017) (transcript available at: <http://www.hughhewitt.com/epa-administrator-scott-pruitt-days-sue-settle-ended/>) (audio available at: <http://www.hughhewitt.com/wp-content/uploads/03-29hhs-pruitt.mp3>).

⁹ Ex. 8: Chris Wallace Interview with Scott Pruitt, *Scott Pruitt on balancing environmental, economic priorities*, Fox News (Apr. 2, 2017), <http://www.foxnews.com/transcript/2017/04/02/scott-pruitt-on-balancing-environmental-economic-priorities-mitch-mcconnell-on-gorsuch-nomination-health-care-reform.html>.

¹⁰ See Ex. 9: Scott Pruitt (@EPAScottPruitt), Twitter (May 11, 2017, 2:05 PM), <https://twitter.com/EPAScottPruitt/status/862745467679121408> (linking to Ex. 10: Michael Bastasch, *Scott Pruitt Explains Why He Sued EPA So Many Times: ‘They Deserved It,’* THE DAILY CALLER (May 11, 2017), <http://dailycaller.com/2017/05/11/scott-pruitt-explains-why-he-sued-epa-so-many-times-they-deserved-it/>). EPA also issued a press release on the article: Ex. 11: Press Release, EPA, *EPA’s Weekly Round-Up* (May 12, 2017), <https://www.epa.gov/newsreleases/epas-weekly-round>. This statements and others Pruitt has made show a mind clearly already made up concerning the precise legal theories on which the proposed Clean Power Plan repeal itself is based. See Ex. 1: State/Local Initial Comments at 3-11.

- On October 9, 2017, a day before his announcement of the Proposed Repeal Rule, speaking to a gathering of coal miners in Hazard, Kentucky, Administrator Pruitt proclaimed: “Here’s the president’s message: The war on coal is over.”¹¹ Administrator Pruitt has repeatedly referred to the CPP as part of a “war on coal,”¹² so his meaning here could not be clearer – to repeal the Clean Power Plan.
- EPA’s October 10, 2017, press release announcing the Proposed Repeal Rule included a statement from Administrator Pruitt claiming that the CPP would impose “devastating effects” on the public and describing the proposed repeal as “righting the wrongs of the Obama administration by cleaning the regulatory slate.”¹³
- On October 10, 2017, the day that he signed the Proposed Repeal Rule, Administrator Pruitt retweeted from his official EPA account a statement from the Senate Majority Leader, Mitch McConnell: “Thank you @POTUS and @EPAScottPruitt for *repealing Obama-era harmful anti-coal job regulations*.”¹⁴
- On October 11, 2017, he discussed future administrative actions regarding power plant emissions with radio host Hugh Hewitt, noting that “we had to provide clarity first and foremost *about the deficiency of this particular rule*.”¹⁵
- In an October 29, 2017, interview, Mr. Pruitt described the CPP administrative process as “[t]he Clean Power Plan rollback that we’re engaged in.”¹⁶
- On November 9, 2017, in his welcome video for the Heartland Institute Energy Conference, made just after the release of EPA’s proposal to repeal the Clean Power Plan, Administrator Pruitt stated: “Just to update you a little bit on what we’ve been doing. We’ve been providing clarity – regulatory reform in areas that matter. *We’ve*

¹¹ Ex. 12: *EPA chief to sign rule on Clean Power Plan exit on Tuesday*, REUTERS (Oct. 9, 2017), <http://www.reuters.com/article/us-climatechange-usa-epa/epa-chief-to-sign-rule-on-clean-power-plan-exit-on-tuesday-idUSKBN1CE1RV>.

¹² John Catsimatidis Interview with Scott Pruitt, *EPA Administrator Scott Pruitt – Saving billions for U.S. business*, The Cats Roundtable (Oct. 29, 2017), <http://www.catsimatidis.com/epa-administrator-scott-pruitt-savings-billions-u-s-business/>; Ex. 13: Rob Bluey Interview with Scott Pruitt, *Trump’s EPA Chief Charts a New Course: An Interview With Scott Pruitt*, The Daily Signal (Oct. 20, 2017), <http://dailysignal.com/2017/10/20/trumps-epa-chief-charts-new-course-interview-scott-pruitt/> (“Where is it in the Clean Air Act that the EPA has the authority to declare war on any sector of our economy?”)

¹³ Ex. 14: Press Release, EPA, *EPA Takes Another Step To Advance President Trump’s America First Strategy, Proposes Repeal Of “Clean Power Plan”* (Oct. 10, 2017), <https://www.epa.gov/newsreleases/epa-takes-another-step-advance-president-trumps-america-first-strategy-proposes-repeal>; Ex. 15: Scott Pruitt, Facebook (Oct. 10, 2017), <https://www.facebook.com/EPAScottPruitt/posts/1649983501713485>.

¹⁴ Ex. 16: Scott Pruitt (@EPAScottPruitt), Twitter (Oct. 10, 2017), <https://twitter.com/SenateMajLdr/status/917813566484381698> (Retweet of Mitch McConnell (@SenateMajLdr), “Thank you @POTUS and @EPAScottPruitt for repealing Obama-era harmful anti-coal job regulations <http://bit.ly/2yekzRQ>”) (emphasis added).

¹⁵ Ex. 17: Hugh Hewitt Interview with Scott Pruitt, *EPA Administrator Scott Pruitt On Clean Power Plan Rulemaking* (Oct. 11, 2017) (transcript available at: <http://www.hughhewitt.com/epa-administrator-scott-pruitt-clean-power-plan-rulemaking/>) (emphasis added) (audio available at: <http://www.hughhewitt.com/wp-content/uploads/10-11hhs-pruitt.mp3>); see also Ex. 1: State/Local Initial Comments at 19-20.

¹⁶ John Catsimatidis Interview with Scott Pruitt, *EPA Administrator Scott Pruitt – Saving billions for U.S. business*, The Cats Roundtable (Oct. 29, 2017), <http://www.catsimatidis.com/epa-administrator-scott-pruitt-savings-billions-u-s-business/>.

withdrawn the Clean Power Plan. And we’re providing, you know, certainty and clarity there.”¹⁷

These are not the words of an Administrator positioned to give fair consideration to public comment on *whether* to repeal the rule. Administrator Pruitt has continued to demonstrate a “single-minded commitment to a particular position that makes [him] totally incapable of giving fair consideration to the issues that are presented for decision.”¹⁸ He has proceeded repeatedly to describe the Proposed Repeal Rule in terms that reflect a disregard for the public comment process – and even as something that has already been accomplished.

Administrator Pruitt’s statements overwhelmingly show that the administrative proceedings are heading toward a predetermined result, and that the rulemaking process that Congress intended to be the basis of important Clean Air Act policies is being treated as nothing more than a cynical, *pro forma* ritual to make sure that required boxes are checked.¹⁹

2. Administrator Pruitt’s Conduct and Statements as Oklahoma Attorney General Provide Relevant Background to His Prejudging Statements as Administrator

Scott Pruitt’s conduct and statements concerning the Clean Power Plan while he was Oklahoma Attorney General provide important background for his recent conduct as EPA Administrator, further demonstrating that statements revealing a single-minded intent to repeal the rule are no casual misstatements. As Attorney General of Oklahoma, Mr. Pruitt was a leading proponent of legal challenges to the Clean Power Plan, initiating improper, premature lawsuits even before the CPP was finalized, and acted as an outspoken advocate, both in court and in public, during the litigation challenging the final rule.²⁰ Attorney General Pruitt characterized himself as a leader of the opposition to the CPP, launching an aggressive multi-year series of court filings, press releases, and social media posts.²¹

For example, after the D.C. Circuit unanimously dismissed a lawsuit brought by Mr. Pruitt and others seeking to challenge the *proposed* Clean Power Plan, *In re Murray Energy Corp.*, 788 F.3d 330 (D.C. Cir. 2015), Attorney General Pruitt filed a new pre-promulgation lawsuit, without support from any other state, in federal district court in Oklahoma. The Court summarily dismissed the lawsuit. His filings described the proposed CPP as “ultra vires,” based on “bogus authority,” “blatantly unlawful,” “simply incompatible with the requirements of Section 111(d)” and in excess of “EPA’s authority under the Clean Air Act and . . . the Constitution.”²² Mr. Pruitt argued that the proposed CPP was “unlawful because it relies on

¹⁷ Scott Pruitt Welcome Video, Heartland Institute Energy Conference, (Nov. 9, 2017), <https://www.youtube.com/watch?v=OpGYQ3W9tF4> (at 1:04-1:08) (emphasis added).

¹⁸ *Lead Industries Ass’n v. EPA*, 647 F.2d 1130, 1179 (D.C. Cir. 1980).

¹⁹ Administrator Pruitt’s characterizations of the repeal of the Clean Power Plan as a *fait accompli* reinforce similar public statements by President Trump: Shortly before the proposal was signed, the President claimed that the Clean Power Plan was already repealed: “Did you see what I did to that? Boom, gone.” Ex. 18: Lisa Friedman, *Trump Wants to Repeal Obama’s Climate Plan. The Next Fight: Its Replacement*, N.Y. TIMES. (Sept. 28, 2017), https://www.nytimes.com/2017/09/28/climate/clean-power-plan.html?_r=0.

²⁰ Ex. 1: State/Local Initial Comments at 3-11.

²¹ See, e.g., Ex.1: State/Local Initial Comments at 4-5 nn. 7, 10, 12-13.

²² Complaint (ECF #2) at ¶¶ 1, 67, 69, *Oklahoma v. McCarthy*, No. 4:15-cv-00369 (N.D. Okla. July 1, 2015); Br. in Support of P.’s Mot. for Preliminary Injunction (ECF #6) at 1, 17, *Oklahoma v. McCarthy*, No. 4:15-cv-00369 (N.D. Okla. July 1, 2015). That suit too was promptly dismissed, Opinion and Order (ECF # 28), *Oklahoma v. McCarthy*, No. 4:15-cv-00369 (N.D. Okla. July 17, 2015), and a unanimous panel of the Tenth Circuit declined Pruitt’s motion

‘beyond-the-fenceline’ measures that do not concern the emissions performance of individual sources and are therefore outside the regulatory scope of Section 111(d),” urging that “EPA lacks authority under the CAA to regulate beyond-the-fenceline,” and that “consistent with plain meaning, ‘best system of emission reduction’ must be limited to on-site measures.”²³

In the D.C. Circuit litigation, Mr. Pruitt filed a stay motion on behalf of the State of Oklahoma arguing that the CPP “clash[es] with the statutory text” and “impose[s] unconstitutional burdens.”²⁴ At each step Mr. Pruitt voiced adamant opposition to the CPP and its legality, declaring that the CPP “will. . . not survive [Obama’s] presidency.”²⁵ As noted above, even as Administrator, Pruitt has continued to praise his own litigation campaign against the CPP.²⁶

Shortly after the November presidential election, Mr. Pruitt went on Facebook and Twitter to declare that he had “done [his] part, fighting tirelessly against” the CPP and other Obama Administration policies.²⁷ When Donald Trump announced Mr. Pruitt as his nominee for EPA Administrator, Trump’s transition team described Mr. Pruitt as a “national leader against EPA’s job-killing war on coal.”²⁸

As state attorney general, Mr. Pruitt was free to litigate and campaign against the Clean Power Plan. But he is now Administrator of the Environmental Protection Agency, responsible for administering the Clean Air Act on behalf of the entire United States and all of its residents. The Clean Power Plan is the law, and (absent Act of Congress or a vacatur by a court) may only be changed according to the rulemaking procedures set out in the Clean Air Act. Those procedures contemplate an important role for the public, including the opportunity to comment and submit information before a decision is made. Far from acknowledging his new role and showing respect for the public comment process, as shown above, as Administrator of EPA, Scott Pruitt has demonstrated that his mind is firmly closed with respect to the Clean Power Plan repeal rulemaking.

for a preliminary injunction blocking the proposed rule, Order (ECF #01019480173), *Oklahoma v. McCarthy*, No. 15-5066 (10th Cir. Aug. 24, 2015).

²³ Br. in Support of P.’s Mot. for Preliminary Injunction (ECF #6) at 13, *Oklahoma v. McCarthy*, No. 4:15-cv-00369 (N.D. Okla. July 1, 2015). *Id.* at 19, 24.

²⁴ See Pet. Okla.’s Mot. for Stay of EPA’s Existing Source Performance Standards for Electric Generating Units (ECF #1580577) at 7, *Oklahoma v. EPA*, No. 15-1364 (D.C. Cir. Oct. 28, 2015).

²⁵ Ex. 19: Paul Monies, *ICYMI: U.S. Supreme Court grants stay on implementing Clean Power Plan*, THE OKLAHOMAN (Feb. 10, 2016), https://www.ok.gov/triton/modules/newsroom/newsroom_article.php?id=258&article_id=18424.

²⁶ See *supra* n. 10.

²⁷ Ex. 20: Scott Pruitt, Facebook (Nov. 17, 2016), <https://www.facebook.com/ScottPruitt/posts/10153988260521643>; see also Ex. 21: Scott Pruitt (@ScottPruittOK), Twitter (Nov. 17, 2016, 10:51 AM), <https://twitter.com/ScottPruittOK/status/799293948611203072> (“I’ve fought for 6 yrs against . . . the Clean Power Plan.”)

²⁸ Ex. 22: Press Release, Donald J. Trump, *President-Elect Donald J. Trump Intends to Nominate Oklahoma Attorney General Scott Pruitt to Serve as the Administrator of the Environmental Protection Agency* (Dec. 8, 2016), <http://www.presidency.ucsb.edu/ws/index.php?pid=119781>.

3. *Administrator Pruitt's Recusal from the CPP Litigation Does Not Cure the Illegality of His Participation in the Administrative Proceeding Concerning the Proposed Repeal*

Administrator Pruitt is recused from participating in the ongoing Clean Power Plan litigation, *West Virginia v. EPA*, No. 15-1363 (D.C. Cir.).²⁹ But his recusal from the *litigation* does not erase his obligations to the public in the conduct of the *rulemaking* concerning the proposed repeal of the CPP. On the contrary, Administrator Pruitt's background as a leading litigant and public campaigner against the CPP made it incumbent upon him to assure the public that he at least would maintain ordinary standards of fairness in superintending rulemaking relating to the CPP. Unfortunately, as explained above, he has done the opposite.

B. Administrator Pruitt's Prejudgment of the Clean Power Plan Repeal Proposal Flouts the Clean Air Act's Rulemaking Process

The facts recounted above also demonstrate that Administrator Pruitt has violated the Clean Air Act's rulemaking requirements.

The rulemaking process set forth in the Clean Air Act guarantees that decisions affecting regulated parties and the public health and welfare will be made based upon a careful consideration of law, evidence, and comments from the public.³⁰ It "ensur[es] that agency regulations will be tested by exposure to diverse public comment," and provides "notice and the opportunity to be heard . . . an essential component of 'fairness to affected parties.'"³¹ It also "enhances the quality of judicial review" by "giving affected parties an opportunity to develop evidence in the record to support their objections to a rule."³²

The Clean Air Act's rulemaking process – an expansion of the preexisting Administrative Procedure Act framework – gives the public robust rights to participate in, comment on, and submit information and legal arguments concerning, proposed EPA rules (including rules that repeal existing rules). 42 U.S.C. §§ 7607(d)(3)-(7). The entire premise of the public comment process is that the agency will carefully consider public comments before it reaches a final decision, and will respond to public comments as part of the final decision.³³ The process is subverted if the agency decision-maker has committed to a decision before consideration of public comment submissions. Indeed, pronouncements by the agency head prejudging the

²⁹ See Ex. 23: Kevin Bogardus and Amanda Reilly, *Pruitt Recuses Himself from Clean Power Plan, WOTUS Suits*, E&E NEWS (May 5, 2017), <https://www.eenews.net/stories/1060054153>.

³⁰ 42 U.S.C. § 7607(d).

³¹ *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983) (quoting *Nat'l Ass'n of Home Health Agencies v. Schweiker*, 690 F.2d 932, 949 (D.C. Cir. 1982) (other citations and internal quotation marks omitted)). See *Env'tl. Integrity Project v. EPA*, 425 F.3d 992, 996 (D.C. Cir. 2005) (citation omitted). See also *Batterton v. Marshall*, 648 F.2d 694, 703-04 (D.C. Cir. 1980); *N.C. Growers' Ass'n v. United Farm Workers*, 702 F.3d 755, 763 (4th Cir. 2012) ("The important purposes of this notice and comment procedure cannot be overstated," as public comment both affords the public an opportunity to participate in important governmental decisions and helps to ensure more informed public policy.).

³² *Small Refiner Lead Phase-Down Task Force*, 705 F.2d at 547.

³³ See *N.J. Dep't of Env'tl. Prot. v. EPA*, 626 F.2d 1038, 1049-50 (D.C. Cir. 1980) (explaining why allowing public comment after a decision has already been made is not consistent with the Administrative Procedure Act or Clean Air Act) (citing, among other cases, *U.S. Steel Corp. v. EPA*, 595 F.2d 207, 214 (5th Cir. 1979)).

outcome of the rulemaking – or even asserting that the rulemaking is already done – inevitably suppress the public’s interest and engagement in the public process.

Under the Clean Air Act and the Administrative Procedure Act, the public’s right to comment must be “meaningful.”³⁴ When a decisionmaker has prejudged a given matter, the public comment process does not perform its congressionally intended function – that “meaningful” due process opportunity becomes a meaningless exercise. The agency officials might still review the comments, but the public’s contributions can have no real bearing on the decision. And the agency’s response to comments is not a sincere interchange, but a cynical exercise in rationalization of a decision made without public input. Pronouncements by the agency head, before comments are even received or considered, that the rule in question is not lawful, is being rolled back or has already been withdrawn inevitably suppress public interest and engagement. Such administrative prejudgment flouts the fundamental precepts of rulemaking under federal statutes including the Clean Air Act.³⁵

CONCLUSION

The Clean Air Act’s rulemaking process depends upon robust public participation concerning legal, factual, and policy issues. The agency’s commitment to full participation from all stakeholders affected by Clean Air Act rules has contributed to the Act’s remarkable success over almost 50 years of saving lives, protecting the nation’s natural resources, and contributing to a robust economy.³⁶ Public confidence that the agency will take public comments and evidentiary submissions seriously have surely contributed to the public’s strong and consistent support for the Act. Administrator Pruitt’s conduct, as described above, departs abruptly from these norms and threatens that legitimacy and public support.

Conduct and statements like those described above and in the State/Local Initial Comments break with the long tradition of EPA Administrators who, despite implementing shifts in policy, have demonstrated respect for the public rulemaking process and the ability to maintain an open mind on contested regulatory issues. If EPA is to fulfill its Clean Air Act obligations and to preserve its legacy, it must reaffirm its commitment to the statute’s public processes.

³⁴ *Ethyl Corp. v. EPA*, 541 F.2d 1, 85 (D.C. Cir. 1976); see also *Prometheus Radio Project v. FCC*, 652 F.3d 431, 450 (3d Cir. 2011); *N.C. Growers Ass’n, Inc.*, 702 F.3d at 770.

³⁵ As the State/Local Initial Comments demonstrate, Administrator Pruitt’s statements also demonstrate a lack of even the appearance of impartiality, in contravention of federal ethics regulations. See Ex. 1: State/Local Initial Comments at 23-26.

³⁶ See, e.g., EPA, “Highlights from the Clean Air Act 40th Anniversary,” available at <https://www.epa.gov/clean-air-act-overview/highlights-clean-air-act-40th-anniversary> (collecting materials describing the benefits achieved under the first 40 years of the Clean Air Act’s implementation); see also EPA, “The Benefits and Costs of the Clean Air Act, 1970 to 1990,” available at <https://www.epa.gov/sites/production/files/2015-06/documents/contsetc.pdf> (reporting on the first 20 years of Clean Air Act implementation).

For the reasons stated above, Administrator Pruitt's involvement in the CPP repeal rulemaking is unlawful. The Proposed Repeal Rule must be withdrawn, and Administrator Pruitt must be recused from any further rulemaking on this matter.

Respectfully submitted,

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Exhibit 1

**States of California, Delaware, Hawaii, Illinois, Maine, Maryland, New Mexico,
New York, Oregon, Vermont, and Washington, the Commonwealth of
Massachusetts, the District of Columbia, the County of Broward (Florida), and
the Cities of Boulder (Colorado), Chicago (Illinois), New York (New York),
Philadelphia (Pennsylvania), and South Miami (Florida)**

January 9, 2018

Via express mail and submission to Regulations.gov

U.S. Environmental Protection Agency
EPA Docket Center
WJC West Building, Room 3334
1301 Constitution Avenue, NW
Washington, DC 20004

**Attention: Docket ID No. EPA-HQ-OAR-2017-0355
Repeal of Carbon Pollution Emission Guidelines for Existing Stationary
Sources: Electric Utility Generating Units**

**RE: Comments on EPA Administrator Scott Pruitt's Improper Prejudgment of
Outcome of Proposed Repeal of Clean Power Plan**

The states of California, Delaware, Hawaii, Illinois, Maine, Maryland, New Mexico, New York, Oregon, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, the County of Broward (Florida), and the Cities of Boulder (Colorado), Chicago (Illinois), New York (New York), Philadelphia (Pennsylvania), and South Miami (Florida) ("States and Local Governments") respectfully submit these initial comments on the Environmental Protection Agency's ("EPA") proposed repeal of the Clean Power Plan ("CPP").¹ This letter specifically focuses on the lack of due process and fairness resulting from Administrator Scott Pruitt's prejudgment of the outcome of this rulemaking and the procedural failure of EPA to disqualify Administrator Pruitt from all aspects of this rulemaking given his closed mind.² A new presidential administration may seek to implement different policy preferences through changes in existing regulations. But to maintain the integrity of the rulemaking process, any such changes must be made while adhering to standards intended to ensure that rulemaking processes are fair and rational. Because EPA's CPP repeal rulemaking process violates these standards, EPA must withdraw the proposed repeal.

Administrator Pruitt decided years ago that the CPP is unlawful and must be eliminated. As Oklahoma Attorney General, he attacked the CPP with detailed legal and factual criticisms. He ceaselessly worked through courts, legislatures, and the media to stop EPA from promulgating and implementing that rule, and he made himself into a prominent leader of the

¹ Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 82 Fed. Reg. 48,035 (Oct. 16, 2017).

² The States and Local Governments will separately submit comments on the other infirmities of the proposed CPP repeal.

effort to overturn it. Even after 5:40 p.m. on February 17, 2017, the moment when he was sworn in as Administrator and transformed from EPA's rival to its leader, Administrator Pruitt's legal and media campaign against the CPP continued unabated. EPA's proposed CPP repeal would achieve through rulemaking what he failed to achieve through litigation. And it would adopt the specific interpretation of the Clean Air Act, previously rejected by EPA, that Administrator Pruitt has long advanced to restrict EPA's ability to control power plant emissions. On both this interpretation and the legality of the CPP in general, Administrator Pruitt's mind is closed.

The public's constitutional and statutory rights to due process and fairness in an administrative rulemaking proceeding are violated when an agency decision maker acts with an unalterably closed mind and prejudices the outcome of what is supposed to be an unbiased process. Under such circumstances, that agency decision maker must be disqualified from participating in the rulemaking, or else any resulting administrative action will be invalid. Administrator Pruitt has a closed mind on the questions of whether the CPP should be repealed, whether the CPP is unlawful, and whether Clean Air Act section 111(d) (42 U.S.C. § 7411(d)) guidelines must be based only on controls imposed directly at the regulated sources (here, power plants). His predetermination of the answers to these questions renders him unable to fairly evaluate the existing EPA scientific and legal record and the comments being submitted by the public, all of which are essential components of a fair rulemaking process evaluating the merits of the CPP. His involvement in this rulemaking has irreparably tainted the current administrative process, and as a result, EPA must withdraw the proposed CPP repeal.

The substantive merits of Administrator Pruitt's firmly held views on the illegality of the CPP are not relevant to whether he may participate in a rulemaking that eliminates the CPP. Rather, it is the fact that he has prejudged the legality of the CPP that makes him ineligible to participate. EPA's failure to disqualify him means that any resulting rule will be invalid as a failure of due process, fairness, and the rule of law and as an arbitrary and capricious agency action. It is true that a violation of due process and fairness does not occur whenever a new agency decision maker, after an election, prefers a different outcome based on his alternative political philosophy, understanding of scientific principles, or favored constituency. But Administrator Pruitt's planned repeal of the CPP is the paradigm of the type of prejudging prohibited in the administrative rulemaking system. A private citizen (or even a state attorney general) has the luxury of making up his mind and never changing course. The decision maker in an administrative proceeding, however, does not.

Furthermore, EPA officials, including Administrator Pruitt himself, have abused their discretion in failing to recognize that he lacks the appearance of impartiality federal ethics regulations require of an agency decision maker and in failing to ensure that he is disqualified from participating in the CPP repeal.

I. ADMINISTRATOR PRUITT MUST BE DISQUALIFIED FROM THE CLEAN POWER PLAN REPEAL ADMINISTRATIVE PROCEEDING BECAUSE HE HAS PREJUDGED ITS OUTCOME

A. Legal standard for impermissible prejudgment in administrative rulemaking

Those interested in a rulemaking “have a right to a fair and open proceeding; that right includes access to an impartial decisionmaker.” *Ass’n of Nat’l Advertisers, Inc. v. FTC*, 627 F.2d 1151, 1174 (D.C. Cir. 1979). A government decision maker has impermissibly prejudged the factual or legal issues in an administrative process if he has an unalterably closed mind on issues central to the proceeding. *Lead Indus. Ass’n v. EPA*, 647 F.2d 1130, 1180 (D.C. Cir. 1980); *C & W Fish Co. v. Fox, Jr.*, 931 F.2d 1556, 1564 (D.C. Cir. 1991). A rulemaking with a predetermined outcome makes a farce out of statutorily mandated notice-and-comment procedures, whose purpose is “to give interested parties the opportunity to participate in rulemaking and to ensure that the agency has before it all relevant information.” *Natural Res. Def. Council v. EPA*, 643 F.3d 311, 321 (D.C. Cir. 2011).

Unless the decision maker with the closed mind is recused from participating, the agency violates due process by conducting the rulemaking. *See Ass’n of Nat’l Advertisers, Inc. v. FTC*, 627 F.2d at 1170, 1174. A final agency action resulting from an unfair proceeding or undertaken in violation of due process is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and “contrary to constitutional right, power, privilege, or immunity,” and thus is invalid under both the Clean Air Act, 42 U.S.C. § 7607(d)(9)(A), (B), and the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B). *See Nehemiah Corp. of Am. v. Jackson*, 546 F. Supp. 2d 830, 847 (E.D. Cal. 2008) (disqualifying cabinet secretary from a rulemaking where he reportedly said that he “would approve the new rule even in the face of critical comments”); *Int’l Snowmobile Mfrs. Ass’n v. Norton*, 340 F. Supp. 2d 1249, 1261 (D. Wyo. 2004) (finding agency prejudged outcome to ban snowmobile access to national parks where agency memorandum showed “sweeping condemnation” of such access and where official stated at press conference that “there will be, no future” for such vehicles in national parks); *cf. Lead Industries Ass’n*, 647 at 1179 (rejecting claim that EPA assistant administrator prejudged setting of emission standards but stating “a different question may be presented if it can be shown that an agency decision maker has exhibited the type of single-minded commitment to a particular position that makes him or her totally incapable of giving fair consideration to the issues that are presented for decision”).

B. Evidence of Administrator Pruitt’s impermissible prejudging of the CPP repeal

1. Administrator Pruitt has a closed mind on whether the CPP is legal

Administrator Pruitt is attempting to use the rulemaking process to fulfill a public promise—elimination of the CPP—that he has made continuously, for years, and that forms the foundation on which he constructed his public persona. While serving as Oklahoma Attorney General, Mr. Pruitt consistently told the courts, Congress, his constituents, his donors, and the media that the CPP was “wholly unlawful,” “blatantly unlawful,” “bogus,” “ultra vires,” “a

political power grab,” “invalid,” an improper “intrusion into state sovereignty,” and “antithetical to the Constitution.” It is not possible for him to reverse course now and impartially evaluate the CPP, nor has he shown any inclination to try to do so. As the mountain of self-promoting public proclamations, social media posts, interviews, and speeches cited herein demonstrates, Mr. Pruitt was not merely an attorney who represented the interests of his client in a prior job; instead, he is an individual who holds, and has unabashedly broadcast, a deep and unwavering conviction that the CPP is unlawful and must be eliminated.

When EPA proposed the CPP in the summer of 2014, Mr. Pruitt joined a petition for review asking the D.C. Circuit Court to stop the public comment period and prevent the agency from finalizing the rule.³ He explained that he would continue to sue EPA whenever it “takes actions that undermine our system and the rule of law.”⁴ Three weeks later he demanded that EPA withdraw the proposed CPP, claiming that it could not even be re-proposed because it was “wholly unlawful.”⁵ The comment letter he signed on behalf of other state attorneys general criticizing the proposed rule included a laundry list of grounds on which they asserted it was illegal, describing it as unauthorized by the Clean Air Act and “antithetical to the Constitution.”⁶ In the following days, he used social media to direct the public to articles portraying the CPP as illegal and himself as the one “leading opposition” to it.⁷ He penned an article on *The Hill* website stating that the CPP would “raise the cost of energy dramatically,” would most hurt “the poor, the single mothers, the elderly and minorities,” and would be “a direct violation of states’ traditional role in making their individual energy policies.” Because “the EPA does not have legal authority granted under the Clean Air Act” to implement the CPP, he argued that the “proposed rule should be withdrawn, or at least stayed, until the courts have a chance to weigh in on legal challenges against these regulations.”⁸

While EPA was evaluating public comments on the proposed CPP, Mr. Pruitt was lobbying the Oklahoma legislature to pass a bill that would give him the authority to prevent Oklahoma from submitting a state implementation plan to meet the rule’s guidelines. As passed by the legislature, Oklahoma Senate Bill 676 (2015-2016) required the Oklahoma Department of Environmental Quality first to submit any state implementation plan to the Attorney General and

³ Exhibit A15 (enclosed) (“Ex. A15”): Petition for Review, *West Virginia v. EPA*, No. 14-1146 (D.C. Cir. Aug. 1, 2014).

⁴ Ex. A16: Scott Pruitt, Facebook (Aug. 7, 2014), <https://www.facebook.com/ScottPruitt/posts/10152240553116643>.

⁵ Ex. A17: Letter from state attorneys general to Gina McCarthy, EPA Administrator, re: Request for Withdrawal (Aug. 25, 2014), at 3, <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0602-14062&attachmentNumber=1&contentType=pdf>.

⁶ Ex. A19: Letter from Scott Pruitt, Oklahoma Attorney General, to EPA Docket (Nov. 24, 2014), <https://www.regulations.gov/document?D=EPA-HQ-OAR-2013-0602-25433>.

⁷ Ex. A18: Scott Pruitt, Facebook (Nov. 26, 2014), <https://www.facebook.com/ScottPruitt/posts/10152458863591643>;

Ex. A20: Scott Pruitt, Facebook (Dec. 1, 2014), <https://www.facebook.com/ScottPruitt/posts/10152467765126643>;

Ex. A21: Scott Pruitt, Facebook (Dec. 2, 2014), <https://www.facebook.com/ScottPruitt/posts/10152469582211643>;

Ex. A23: Scott Pruitt, Facebook (Dec. 20, 2014), <https://www.facebook.com/ScottPruitt/posts/10152504896201643>.

⁸ Ex. C3: Press Release, Oklahoma Attorney General, The Hill: EPA’S clean power plan is wrong for states (Dec. 16, 2014), https://www.ok.gov/triton/modules/newsroom/newsroom_article.php?id=258&article_id=15058 (republishing Scott Pruitt & Jonathan Small, *EPA’S clean power plan is wrong for states*, The Hill, Dec. 16, 2014, <http://thehill.com/blogs/congress-blog/energy-environment/227176-epas-clean-power-plan-is-wrong-for-states>);

Ex. A22: Oklahoma Attorney General E. Scott Pruitt, Facebook (Dec. 16, 2014), <https://wayback.archive-it.org/2083/20150514181339/https://www.facebook.com/AttorneyGeneralPruitt?fref=nf>.

obtain his approval before submitting the plan to EPA.⁹ If the Attorney General determined that the state's plan did not comply with the Clean Air Act—which Mr. Pruitt had already said would be the case because the CPP itself was illegal—then Oklahoma would be unable to submit a CPP state implementation plan at all, regardless of the judgment of the Oklahoma Department of Environmental Quality. While the bill was being considered in the legislature, Mr. Pruitt told the public through the press and social media that EPA lacked authority for the “unlawful” CPP and that SB 676 was “a bulwark against the overreach of the EPA” and was necessary to defend Oklahoma “against the unlawful actions of the EPA” in the form of the CPP.¹⁰ When SB 676—giving Mr. Pruitt himself power to prevent Oklahoma from implementing the CPP—passed both houses in April 2015, he issued a press release praising it as “sending a clear signal that we will not comply with the EPA’s unlawful Clean Power Plan.”¹¹ Although Mr. Pruitt said he was disappointed that the Governor subsequently vetoed the bill,¹² he announced that he was headed to Washington, D.C., that day to further attack the CPP.¹³

Mr. Pruitt previewed his May 5, 2015, U.S. Senate testimony on “Legal Implications of the Clean Power Plan” as an update on his efforts to “fight this egregious example of overreach” and as a “direct rebuttal” of EPA’s claims about the CPP.¹⁴ He issued multiple reminders to draw attention to his appearance, both before and after the event.¹⁵ He testified to the Senate committee that “Quite simply . . . , the EPA does not possess the authority under the Clean Air

⁹ Ex. A34: S.B. 676, § 2.C., 2015-2016 Sess., (Okla. Apr. 24, 2015) (enrolled), http://webserver1.lsb.state.ok.us/2015-16bills/SB/SB676_ENR_RTF.

¹⁰ Ex. A25: Scott Pruitt, Facebook (Apr. 1, 2015), <https://www.facebook.com/ScottPruitt/posts/10152727510976643>; Ex. C5: Jim Inhofe & Scott Pruitt, *Senate Bill 676 protects Oklahoma businesses, families from EPA’s overreach*, Tulsa World, April 1, 2015, http://www.tulsaworld.com/opinion/readersforum/u-s-sen-jim-inohe-and-oklahoma-attorney-general-scott/article_3ab87bba-6f7e-579f-aa41-624caa84b63b.html; Ex. A26: Scott Pruitt, Facebook (Apr. 2, 2015), <https://www.facebook.com/ScottPruitt/posts/10152730124186643> (linking to Ex. C4: Opinions & Editorials, Senator James M. Inhofe (Apr. 2, 2015), <https://www.inohe.senate.gov/newsroom/oped/tulsa-world-us-sen-jim-inohe-and-oklahoma-attorney-general-scott-pruitt-senate-bill-676-protects-oklahoma-businesses-families-from-epas-overreach>); Ex. A27: Scott Pruitt (@ScottPruittOK), Twitter, (Apr 9, 2015, 12:55 PM), <https://twitter.com/ScottPruittOK/status/586256082022051840>; Ex. A30: Scott Pruitt, Facebook (Apr. 22, 2015), <https://www.facebook.com/ScottPruitt/posts/10152773679326643>; Ex. A31: Press Release, Oklahoma Attorney General, AG Pruitt Comments on House Passage of Bill to Protect State from EPA Overreach (Apr. 23, 2015), https://www.ok.gov/triton/modules/newsroom/newsroom_article.php?id=258&article_id=15757; Ex. A32: Scott Pruitt, Facebook (Apr. 24, 2015), <https://www.facebook.com/ScottPruitt/posts/10152777810186643>.

¹¹ Ex. A33: Press Release, Oklahoma Attorney General, AG Pruitt Commends Oklahoma Senate for Final Passage of Bill Protecting State from EPA (Apr. 28, 2015), https://www.ok.gov/triton/modules/newsroom/newsroom_article.php?id=258&article_id=15769.

¹² Ex. A36: Scott Pruitt, Facebook (May 4, 2015), <https://www.facebook.com/ScottPruitt/posts/10152798834511643>.

¹³ Ex. A35: Scott Pruitt, Facebook (Apr. 30, 2015), <https://www.facebook.com/ScottPruitt/posts/10152799441126643>; Ex. A37: Scott Pruitt, Facebook (May 4, 2015), <https://www.facebook.com/ScottPruitt/posts/10152799432116643>.

¹⁴ Ex. A39: From the Desk of Scott Pruitt (Oklahoma Attorney General’s Office), May 4, 2015, <http://www.digitalprairie.ok.gov/cdm/compoundobject/collection/stgovpub/id/468015/rec/14>.

¹⁵ Ex. A41: Scott Pruitt (@ScottPruittOK), Twitter (May 5, 2015, 6:45 AM), <https://twitter.com/ScottPruittOK/status/595584985609981953>; Ex. A40: Scott Pruitt, Facebook (May 5, 2015), <https://www.facebook.com/ScottPruitt/posts/10152799433896643>; Ex. A42: Scott Pruitt (@ScottPruittOK), Twitter (May 5, 2015, 7:18 AM), <https://twitter.com/ScottPruittOK/status/595593451766292480>; Ex. A44: Oklahoma Attorney General E. Scott Pruitt, Facebook (May 5, 2015), <https://wayback.archive-it.org/2083/20150514182234/https://www.facebook.com/AttorneyGeneralPruitt/photos/a.205545152798766.52828.194730097213605/995800250439915/?type=1>; Ex. A45: Scott Pruitt (@ScottPruittOK), Twitter (May 5, 2015, 11:49 AM), <https://twitter.com/ScottPruittOK/status/595661651321425921>.

Act to do what it is seeking to accomplish in the so-called Clean Power Plan,” and that Oklahoma was opposed to the CPP “because it is outside the authority granted to the EPA by the law.”¹⁶ Afterward, he continued to promote his testimony, explaining in his email newsletter that Oklahoma “continues to lead the charge against EPA overreach” and vowing to “continue to challenge the EPA’s unlawful rule that threatens energy affordability and reliability for consumers and industry.”¹⁷

In June 2015, the D.C. Circuit Court dismissed the lawsuits brought by Mr. Pruitt and others seeking to block EPA from even finalizing the CPP. *In re: Murray Energy Corp. v. EPA*, 788 F.3d 330 (D.C. Cir. 2015). Less than two months later, despite the unanimous ruling from the D.C. Circuit that the lawsuits challenging the CPP proposal were premature, Mr. Pruitt filed a similar lawsuit—this one in federal district court in Oklahoma—to again try to stop EPA from finalizing the rule. In the complaint and motion for preliminary injunction—both of which he signed himself and filed without any co-plaintiffs—Mr. Pruitt described the proposed CPP as “ultra vires,” based on “bogus authority,” “blatantly unlawful,” and “simply incompatible with the requirements of Section 111(d).” He told the court that the proposed CPP “plainly exceeds EPA’s authority under the Clean Air Act and . . . Constitution in at least five separate respects,” which he then detailed, and that “[t]he absurdity of EPA’s novel interpretation should not be overlooked.”¹⁸ He issued a press release announcing his lawsuit, describing the CPP as “an unlawful attempt to expand federal bureaucrats’ authority over states’ energy economies in order to shutter coal-fired power plants and eventually other sources of fossil-fuel generated electricity.”¹⁹ Days later he stated, “We must continue to push back against an agency that thinks they are above the law,” directing the public to an editorial praising his lawsuit.²⁰ When the district court quickly rejected his lawsuit, he filed an appeal, explaining in his newsletter that “I remain firm in believing the proposed plan” would “threaten the reliability and affordability of power in the state.”²¹

When EPA Administrator Gina McCarthy signed the final CPP on August 3, 2015, Mr. Pruitt immediately issued statements attacking the rule as unlawful, lacking in legal authority, and unconstitutional, again pledging that “My office will continue to challenge the EPA as long

¹⁶ Ex. A43: *Legal Implications of the Clean Power Plan: Hearing Before the S. Comm. on Environment & Public Works, Subcomm. on Clean Air & Nuclear Safety*, 114th Cong. (May 5, 2015) (written statement of E. Scott Pruitt, Attorney General, State of Oklahoma), https://www.epw.senate.gov/public/_cache/files/6/0/60e46f76-2eb8-4761-bd88-b89b31f7d0ad/01AFD79733D77F24A71FEF9DAFCCB056.agscottpruitt.pdf.

¹⁷ Ex. A46: Scott Pruitt (@ScottPruittOK), Twitter (May 6, 2015, 10:10 AM), <https://twitter.com/ScottPruittOK/status/595998972231208960>; Ex. A47: Scott Pruitt, Facebook (May 8, 2015), <https://www.facebook.com/ScottPruitt/posts/10152800692651643>; Ex. A48: From the Desk of Scott Pruitt (Oklahoma Attorney General’s Office), May 11, 2015, <http://www.digitalprairie.ok.gov/cdm/compoundobject/collection/stgovpub/id/468032/rec/15>.

¹⁸ Ex. A50: Complaint (ECF #2) at ¶¶ 1, 67, 69, *Oklahoma v. McCarthy*, No. 4:15-cv-00369 (N.D. Okla. July 1, 2015); Ex. A51: Brief in Support of Plaintiff’s Motion for Preliminary Injunction (ECF #6) at 1, 17, *Oklahoma v. McCarthy*, No. 4:15-cv-00369 (N.D. Okla. July 1, 2015).

¹⁹ Ex. A49: Press Release, Oklahoma Attorney General, AG Pruitt Sues EPA for Unlawful Clean Power Plan Rule (Jul. 1, 2015), https://www.ok.gov/triton/modules/newsroom/newsroom_article.php?id=258&article_id=16092.

²⁰ Ex. A52: Scott Pruitt, Facebook (July 7, 2015), <https://www.facebook.com/ScottPruitt/posts/10152938237326643>.

²¹ Ex. A55: From the Desk of Scott Pruitt (Oklahoma Attorney General’s Office), July 27, 2015, <http://www.digitalprairie.ok.gov/cdm/compoundobject/collection/stgovpub/id/468070/rec/25>; see also

Ex. A54: Scott Pruitt, Facebook (July 25, 2015), <https://www.facebook.com/ScottPruitt/posts/10152978582101643>.

as the administration continues to pursue this unlawful rule.”²² Two days later Oklahoma joined other states in an administrative petition to EPA to stay the CPP, again arguing for its illegality on various grounds,²³ and within two weeks these states had filed another premature challenge to the CPP in the D.C. Circuit.²⁴ Mr. Pruitt accompanied these actions by making personal appearances attacking the CPP and using his ongoing fight against EPA to advertise his reelection campaign website, ScottPruitt.com.²⁵

Challenges to the CPP finally became ripe when it was published in the Federal Register on October 23, 2015, and a group of state attorneys general and states filed a joint petition for review and a motion for emergency stay in the D.C. Circuit Court. But Mr. Pruitt was not among them. Instead, Oklahoma filed its own separate petition for review that same day and its own separate motion for a stay five days later.²⁶ His press release entitled “AG Pruitt Continues Fight against Unlawful Clean Power Plan” boasted that “Oklahoma was at the U.S. Court of Appeals D.C. Circuit as soon as the courthouse opened Friday morning to file its challenge to the unlawful rule.” Mr. Pruitt explained that “EPA has no authority under the Clean Air Act to achieve what it proposes in the 111(d) rule” and that he was “pursuing all available legal options to roll back this financially disastrous and unlawful EPA rule.”²⁷ Oklahoma’s stay motion argued that the Clean Air Act and the Constitution specifically deny EPA the authority it claimed in the CPP and that EPA’s actions under section 111(d) “fundamentally not only clash with the statutory text, but also impose unconstitutional burdens.”²⁸ Mr. Pruitt publicized his separate D.C. Circuit challenge—“As the EPA continues to push their unlawful rule, I continue to challenge it”—and urged supporters to “stand up against” the CPP just as he was.²⁹

²² Ex. A57: Press Release, Oklahoma Attorney General, AG Pruitt Says Final Clean Power Plan Still Unlawful (Aug. 3, 2015), https://www.ok.gov/triton/modules/newsroom/newsroom_article.php?id=258&article_id=16492;

Ex. A56: Scott Pruitt, Facebook (Aug. 3, 2015), <https://www.facebook.com/ScottPruitt/posts/10152998451841643>;

Ex. A58: Scott Pruitt, Facebook (Aug. 5, 2015), <https://www.facebook.com/ScottPruitt/posts/10153002012326643>.

²³ Ex. A59: Application for Administrative Stay by the State of West Virginia and 15 Other States (Aug. 8, 2015), <https://www.regulations.gov/document?D=EPA-HQ-OAR-2013-0602-37226>.

²⁴ Emergency Petition for Extraordinary Writ, *In re: West Virginia*, No. 15-1277 (D.C. Cir. Aug. 13, 2015). The court denied the petition four weeks later.

²⁵ Ex. A60: Scott Pruitt, Facebook (Aug. 7, 2015), <https://www.facebook.com/ScottPruitt/posts/10153012748781643>;

Ex. A61: Scott Pruitt, Facebook (Aug. 7, 2015),

<https://www.facebook.com/ScottPruitt/photos/a.411319536642.197181.365679946642/10153003542416643/?type=3>;

Ex. A62: Scott Pruitt, Facebook (Aug. 13, 2015),

<https://www.facebook.com/ScottPruitt/photos/a.411319536642.197181.365679946642/10153012005771643/?type=3>;

Ex. A64: Scott Pruitt (@ScottPruittOK), Twitter (Aug 27, 2015, 12:23 PM),

<https://twitter.com/ScottPruittOK/status/636982284982353920>; Ex. A65: Scott Pruitt, Facebook (Sept. 22, 2015),

<https://www.facebook.com/ScottPruitt/photos/a.10151911192121643.1073741826.365679946642/10153115310701643/?type=3>.

²⁶ Petition for Review, *Oklahoma v. EPA*, No. 15-1364 (D.C. Cir. Oct. 23, 2015).

²⁷ Ex. A68: Press Release, Oklahoma Attorney General, AG Pruitt Continues Fight against Unlawful Clean Power Plan (Oct. 23, 2015), https://www.ok.gov/triton/modules/newsroom/newsroom_article.php?id=258&article_id=16869.

²⁸ Ex. A70: Petitioner Oklahoma’s Motion for Stay of EPA’s Existing Source Performance Standards for Electric Generating Units (ECF #1580577) at 7, *Oklahoma v. EPA*, No. 15-1364 (D.C. Cir. Oct. 28, 2015).

²⁹ Ex. A69: From the Desk of Scott Pruitt (Oklahoma Attorney General’s Office), Oct. 26, 2015,

<http://www.digitalprairie.ok.gov/cdm/compoundobject/collection/stgovpub/id/484558/rec/36>; Ex. A66: Scott Pruitt,

Facebook (Oct. 23, 2015), <https://www.facebook.com/ScottPruitt/posts/10153159627646643>; Ex. A67: Scott Pruitt

(@ScottPruittOK), Twitter (Oct. 23, 2015, 3:08 PM), <https://twitter.com/ScottPruittOK/status/657679984476209152>;

Ex. A71: Scott Pruitt, Facebook (Nov. 3, 2015), <https://www.facebook.com/ScottPruitt/posts/10153176015861643>.

After the D.C. Circuit Court denied Oklahoma's and the other petitioners' motions to stay the CPP on January 21, 2016, they appealed to the U.S. Supreme Court. Mr. Pruitt took that opportunity to publicly denounce the rule as "unlawful" and accuse EPA of intimidating the states to comply with the CPP "before this president leaves office."³⁰ When a divided Supreme Court stayed the CPP by a 5-4 vote pending the outcome of litigation in the D.C. Circuit, it said nothing about the merits of the case. Mr. Pruitt nevertheless trumpeted the decision as a victory for "freedom and the rule of law" and the Constitution and as a "major win against Obama's federal overreach."³¹ His office promoted a news story crediting his role, reminding the public that "Pruitt has fought the Clean Power Plan at every stage, including in the draft stage before the rule was finalized last year."³² Mr. Pruitt is quoted as explaining that EPA did not have authority for the CPP and "can't simply make it up." Although the stay was only temporary, Mr. Pruitt declared victory: "Our involvement in each of those of three signature issues of the president [immigration, water rule, and CPP] stops them dead in their tracks." "Each of those rules will be dormant and not survive his presidency."³³

Following the merits briefing on the CPP in the D.C. Circuit,³⁴ to which Oklahoma was a party, in the spring of 2016 Mr. Pruitt continued his crusade against the CPP, renewing his vow to "continue to fight against the . . . Clean Power Plan."³⁵ He campaigned explicitly on his success in keeping the CPP at bay: "To take a stand for my campaign is to take a stand for . . . Blocking the President's Clean Power Plan [and his immigration and water rules]."³⁶ Nevertheless, he predicted that the CPP was likely to survive his pending court challenge, though only by virtue of President Obama allegedly "pack[ing] the D.C. Circuit . . . because of these

³⁰ Ex. A72: Scott Pruitt, Facebook (Feb. 3, 2016), <https://www.facebook.com/ScottPruitt/posts/10153327223561643>; Ex. C7: News Stories, Oklahoma Attorney General, (Feb. 3, 2016) (republishing Timothy Cama, *State AGs bullish about challenge to 'unlawful' Obama climate rule*, The Hill, Feb. 3, 2016), https://www.ok.gov/triton/modules/newsroom/newsroom_article.php?id=258&article_id=18340.

³¹ Ex. A75: Scott Pruitt (@ScottPruittOK), Twitter (Feb 9, 2016, 3:58 PM), <https://twitter.com/ScottPruittOK/status/697207977128759296>; Ex. A74: Scott Pruitt, Facebook (Feb. 9, 2016), <https://www.facebook.com/ScottPruitt/posts/10153338067331643>; Ex. A77: Scott Pruitt (@ScottPruittOK), Twitter (Feb 9, 2016, 4:13 PM), <https://twitter.com/ScottPruittOK/status/697211672600023040>; Ex. A76: Scott Pruitt, Facebook (Feb. 9, 2016), <https://www.facebook.com/ScottPruitt/posts/10153338232306643>; Ex. A78: Scott Pruitt, Facebook (Feb. 10, 2016), <https://www.facebook.com/ScottPruitt/photos/a.411319536642.197181.365679946642/10153339403301643/?type=3>; Ex. A79: Scott Pruitt, Facebook (Feb. 12, 2016), <https://www.facebook.com/ScottPruitt/posts/10153342967351643>.

³² Ex. C8: News Stories, Oklahoma Attorney General (Feb. 10, 2016) (republishing Paul Monies, *U.S. Supreme Court grants stay on implementing Clean Power Plan*, The Oklahoman, Feb. 10, 2016), https://www.ok.gov/triton/modules/newsroom/newsroom_article.php?id=258&article_id=18424.

³³ *Id.*

³⁴ Along with EPA (represented by the U.S. Department of Justice), in 2016 the undersigned States and Local Governments explicitly rejected Oklahoma's interpretation of section 111(d) in briefs they submitted to the D.C. Circuit Court in *West Virginia v. EPA*, No. 15-1363, which had been consolidated with *Oklahoma v. EPA*, No. 15-1364. *See, e.g.*, Respondent EPA's Initial Brief (ECF #1605911) (D.C. Cir. Mar. 28, 2016); State Intervenor's Brief (ECF #1606037) (D.C. Cir. Mar. 29, 2016).

³⁵ Ex. A83: Scott Pruitt, Facebook (Apr. 5, 2016), <https://www.facebook.com/ScottPruitt/posts/10153465943531643>; Ex. A81: Scott Pruitt (@ScottPruittOK), Twitter (Mar. 16, 2016, 7:05 AM), <https://twitter.com/ScottPruittOK/status/710104587261202432>; Ex. A80: Scott Pruitt, Facebook (Mar. 16, 2016), <https://www.facebook.com/ScottPruitt/posts/10153408612316643>.

³⁶ Ex. A82: Scott Pruitt, Facebook (Mar. 30, 2016), <https://www.facebook.com/ScottPruitt/posts/10153451633661643>.

kinds of cases.”³⁷ He explained to supporters that for this reason³⁸ it was important for the next President to fill the vacancy on the Supreme Court with a Justice who would, after taking the bench in 2017, overrule any unfavorable CPP ruling from the D.C. Circuit Court.³⁹ He again testified in Congress that the CPP was an “audacious assertion of authority” by EPA and “violates the Constitution.” As support, he cited the recent Supreme Court stay, “entered because five members of that court thought it likely that the Plan was unlawful. And those five members of the Court were correct.”⁴⁰ Mr. Pruitt attached to his written testimony a biography that claimed “he led a 29-state coalition who obtained an unprecedented injunction from the U.S. Supreme Court barring the EPA’s ‘Clean Power Plan’ from going into effect.” Among other things, the biography claimed that “Oklahoma AG Scott Pruitt deserves particular credit for developing the federalist arguments and exposing how the Clean Power Plan commandeers states.”⁴¹ His campaign website similarly promoted him as the leader of the litigation against the CPP and promised that “his work continues in the remaining months of the Obama

³⁷ American Conservative Union, *Conservative Political Action Conference* (Mar. 3, 2016), <https://www.c-span.org/video/?405859-16/energy-sufficiency> (18:08-19:46):

But with respect to the lawsuit, it was a very very tragic thing that happened in this country when Justice Scalia passed. . . . And one - the very last thing that he did was to vote for this stay to prevent the EPA from forcing this unlawful rule upon this country. But now we have a situation where the D.C. court, the jurisdiction of this case is the D.C. court. And you may not remember, but this President packed the D.C. Circuit with his - with his justices just a few years ago because of these kinds of cases. And so, we are not terribly optimistic that at the D.C. Circuit, that we’re going to win as a collection of states. And if this case goes up to the Supreme Court with a four-to-four Court, it’s very possible that if the D.C. Circuit rules in the administration’s favor that it will be adverse to the states at the Supreme Court level. The good news is is that the Chief Justice and the Court can retain jurisdiction. They don’t have to actually give the D.C. Circuit deference. They can say, “Look, we argued the case, it’s four to four, we’re going to keep this case, and when we get the fifth Justice appointed, we’ll rehear the case.” I want you to hear this. This election in November is consequential for many reasons. But the most consequential reason, from my estimation, is the control of the U.S. Supreme Court going forward. We must have another Justice Scalia on the U.S. Supreme Court. We must have someone that recognizes the Constitution for what it is, the text and the originalism of it, to control the outer reach federal government. So, that’s what needs to occur in November, and then we’ll have a fifth Justice, and this case can be argued, and hopefully we’ll be protected as we head into 2017.

³⁸ At the time he made those statements, among the eighteen active and senior-status judges who could have been assigned to the three-judge panel for the CPP oral argument then scheduled for June 2, 2016, only four had been appointed by President Obama. The ten-judge *en banc* panel that ultimately heard oral argument on September 27, 2016, included those four judges. (Chief Judge Merrick Garland, whose nomination to fill the vacancy on the Supreme Court was still pending at that time, did not participate in the *en banc* argument.)

³⁹ American Conservative Union, *Conservative Political Action Conference* (Mar. 3, 2016), <https://www.c-span.org/video/?405859-16/energy-sufficiency> (18:08-19:46).

⁴⁰ *Ex. A84: Impact of the EPA’s Clean Power Plan on States: Hearing Before H. Comm. on Science, Space & Technology, Subcomm. on Environment*, 114th Cong. (May 26, 2016) (written statement of E. Scott Pruitt, Attorney General, State of Oklahoma), <https://science.house.gov/sites/republicans.science.house.gov/files/documents/HHRG-114-SY18-WState-SPruitt-20160526.pdf>; *id.* (video: Scott Pruitt testimony at 44:28-49:56), <https://science.house.gov/legislation/hearings/environment-subcommittee-hearing-impact-epa-s-clean-power-plan-states>.

⁴¹ *Id.*

presidency.”⁴² He discussed his latest trip to Congress in his newsletter, explaining that he testified that, with the CPP, “we didn’t get democracy, we got regulatory cramdown.”⁴³

Mr. Pruitt traveled to Washington, D.C., again in late September 2016 to watch the CPP oral argument before the D.C. Circuit Court. On the eve of the argument he reminded his constituents that, “As I have said many times, this is an effort I believe to be extraordinary in cost, extraordinary in scope and extraordinary as it relates to the intrusion into the sovereignty of the states.”⁴⁴ After the argument, he issued a statement from outside the courthouse, accusing EPA of “abusing and disrespecting the vertical separation of powers defined by our Constitution.”⁴⁵

Days after the November 2016 election, Mr. Pruitt again used his opposition to the CPP to direct the public to his “Oklahoma Strong” political action committee website. “Over the last 6 years, I have done my part, fighting tirelessly against the Affordable Care Act, WOTUS, Immigration, and the Clean Power Plan. Which one of these should President-elect Trump tackle first?”⁴⁶ Within a month, President-elect Trump announced that Mr. Pruitt was his nominee to be EPA Administrator, apparently in large part because of his history of challenging EPA’s legal authority. The Trump transition explained that “Mr. Pruitt has been a national leader against the EPA’s job-killing war on coal.”⁴⁷

During his Senate confirmation hearing the next month, while he was still in the midst of suing EPA to undo the CPP, Mr. Pruitt continued to demonstrate that his long-held view that the CPP was illegal would not change. He testified that “the Clean Power Plan did not reflect the authority of Congress given to the EPA to regulate CO₂,” and explained why he maintains that position.⁴⁸ In response to written questions from Senators, Mr. Pruitt provided further evidence that his mind was already made up regarding the legality of the CPP, which he would soon be responsible for implementing:

⁴² Ex. C9: Meet Scott, <http://scottpruitt.com/meet-scott/> (Sept. 26, 2016)

[<https://web.archive.org/web/20170130031627/http://scottpruitt.com/meet-scott/>].

⁴³ Ex. A85: From the Desk of Scott Pruitt (Oklahoma Attorney General’s Office), May 27, 2016,

<http://www.digitalprairie.ok.gov/cdm/compoundobject/collection/stgovpub/id/491984/rec/54>.

⁴⁴ Ex. A87: From the Desk of Scott Pruitt (Oklahoma Attorney General’s Office), Sept. 26, 2016,

<http://www.digitalprairie.ok.gov/cdm/compoundobject/collection/stgovpub/id/493308/rec/62>.

⁴⁵ Ex. A88: Press Release, Oklahoma Attorney General, AG Pruitt Continues Fight to Protect Rule of Law Following Clean Power Plan Arguments (Sept. 27, 2016),

https://www.ok.gov/triton/modules/newsroom/newsroom_article.php?id=258&article_id=25889.

⁴⁶ Ex. A89: Scott Pruitt, Facebook (Nov. 17, 2016), <https://www.facebook.com/ScottPruitt/posts/10153988260521643>;

see also Ex. A90: Scott Pruitt (@ScottPruittOK), Twitter (Nov. 17, 2016, 8:51 AM),

<https://twitter.com/ScottPruittOK/status/799293948611203072>.

⁴⁷ Ex. A91: Press Release, Donald J. Trump, President-Elect Donald J. Trump Intends to Nominate Oklahoma Attorney General Scott Pruitt to Serve as the Administrator of the Environmental Protection Agency (Dec. 8, 2016),

<http://www.presidency.ucsb.edu/ws/index.php?pid=119781>.

⁴⁸ Ex. A92: Nomination of Attorney General Scott Pruitt to Be Administrator of the U.S. Environmental Protection Agency: Hearing Before S. Comm. on Environment & Public Works, 114th Cong., at 114-115 (Jan. 18, 2017) (transcript), https://www.epw.senate.gov/public/?a=Files.Serve&File_id=1291A5E0-B3AA-403D-8CE3-64CB2EF86851.

I, along with the Supreme Court, which issued a stay against the Clean Power Plan in February 2016, believe the EPA exceeded the bounds of authority established by Congress in the Clean Air Act. In particular, the Rule attempted to supplant decisions traditionally preserved for the states, including the establishment of intrastate energy policies, for agency mandated alternatives that would have increased the price of electricity for local citizens and reduced reliability.⁴⁹

After he took the oath of office on February 17, 2017, and became Administrator Pruitt, he resigned as Oklahoma Attorney General.⁵⁰

2. Administrator Pruitt has specifically prejudged the question of whether section 111(d) standards can be based on actions outside of a power plant's "fenceline"

Administrator Pruitt's prejudgment that the CPP is illegal goes far deeper than just his conception of federalism or "the rule of law." His proposed repeal of the CPP is explicitly based on the specific legal interpretation of section 111 he promoted for years as Oklahoma Attorney General. Although EPA already expressly considered and rejected his legal interpretation in promulgating the CPP, Administrator Pruitt is now attempting to swap EPA's current legal interpretation for the one for which he has long argued.

For years Administrator Pruitt argued that EPA must adopt a view of its authority under section 111(d) that would limit consideration of the "best system of emission reduction" ("BSER") to those control measures that could be applied at the site of the power plant only. This interpretation both ignores the characteristics of the pollutant at issue (carbon dioxide) and the interconnected nature of the nation's electricity grid in determining the BSER for fossil-fueled power plants. He developed and promoted his own alternative section 111(d) regulatory scheme for power plants based on his particular interpretation of section 111. He testified in Congress in support of his position, and he filed numerous legal briefs attempting to convince a court of it. In October 2017 Administrator Pruitt proposed that this exact legal interpretation replace EPA's existing interpretation, with his preexisting interpretation serving as the explicit justification for repealing the CPP. Given his long record of promoting his particular legal interpretation of BSER under section 111, up through and including his CPP repeal proposal, it is

⁴⁹ Ex. A93: [Excerpts of] Questions for the Record for the Honorable E. Scott Pruitt, Senate Environment and Public Works Committee, Hearing Entitled, "Nomination of Attorney General Scott Pruitt to be Administrator of the U.S. Environmental Protection Agency," at 199 (Jan. 18, 2017) (hereafter "Questions for the Record"), full document available at https://www.epw.senate.gov/public/_cache/files/6d95005c-bd1a-4779-af7e-be831db6866a/scott-pruitt-qfr-responses-01.18.2017.pdf.

⁵⁰ Ex. A96: Letter from E. Scott Pruitt, Oklahoma Attorney General, to Mary Fallin, Governor, State of Oklahoma, (Feb. 17, 2017), <https://www.ok.gov/governor/documents/2-17-17%20%20Pruitt%20Resignation%20Letter.pdf>; Ex. A97: Press Release, U.S. Environmental Protection Agency, Scott Pruitt Confirmed and Sworn in as EPA Administrator (Feb 17, 2017), <https://www.epa.gov/newsreleases/scott-pruitt-confirmed-and-sworn-epa-administrator>; Ex. A99: Scott Pruitt (@ScottPruittOK), Twitter (Feb. 17, 2017, 8:59 PM), <https://twitter.com/ScottPruittOK/status/832816771207925760>; Ex. A98: Scott Pruitt, Facebook (Feb. 17, 2017), <https://www.facebook.com/ScottPruitt/posts/10154244467001643>.

clear that—regardless of the merits of his argument—he has impermissibly prejudged this rulemaking decision.

Even before EPA first proposed a rule to limit carbon dioxide emissions from existing power plants under section 111(d), Mr. Pruitt publicly attacked the suggestion that the Clean Air Act allowed EPA to consider any emission reductions other than those achieved by controls applied at the power plant itself. He testified before Congress in November 2013 to promote that view. With his written testimony, he submitted to Congress a white paper he wrote along with other state attorneys general, entitled “Perspective of 18 States on Greenhouse Gas Emission Performance Standards for Existing Sources under § 111(d) of the Clean Air Act.”⁵¹ In it, he argued that there is no adequately demonstrated control technology to remove carbon dioxide from a power plant’s smokestack, and therefore the only things EPA can consider under section 111(d) are “standards based on cost-effective efficiency improvements at electric generating units, because more efficient units will produce lower CO₂ emissions per unit of heat input or electricity output.” Emission guidelines based on measures such as generation shifting or demand reduction, he argued, “do not conform to the limitations Congress has placed on EPA in the Clean Air Act, nor do they properly preserve the primary role of States in the development of standards of performance for existing sources.”⁵²

Mr. Pruitt further promoted his interpretation of section 111(d) on May 20, 2014, just two weeks before EPA proposed the CPP, when he published *The Oklahoma Attorney General’s Plan: The Clean Air Act Section 111(d) Framework that Preserves States’ Rights*. His press release announced that Mr. Pruitt “unveiled his proposal to give states flexibility to address carbon dioxide emissions standards from existing power plants.”⁵³ Distinguishing his *Plan* from EPA’s anticipated proposal, his press release reported:

Attorney General Pruitt said the Oklahoma Attorney General’s Plan is a better approach to addressing emissions standards. The plan allows each state to set emissions standards for existing units by evaluating each unit’s ability to improve efficiency and reduce carbon dioxide emissions in a cost effective way. The

⁵¹ Ex. A6: EPA’s Proposed GHG Standards for New Power Plants and H.R. ___, *Whitfield-Manchin Legislation: Hearing Before H. Comm. on Energy & Commerce, Subcomm. on Energy & Power*, 113th Cong. (Nov. 14, 2013) (written statement of E. Scott Pruitt, Attorney General, State of Oklahoma),

<http://docs.house.gov/meetings/IF/IF03/20131114/101482/HHRG-113-IF03-Wstate-PruittE-20131114-U1.pdf>.

⁵² *Id.* In EPA’s 2014 “Legal Memorandum for Proposed Carbon Pollution Emission Guidelines for Existing Electric Utility Generating Units,” the agency explicitly cited to this white paper Mr. Pruitt submitted to Congress as an example of an alternative legal interpretation. EPA explained that some stakeholders contended, “as a legal matter, the BSER is limited to measures that may be undertaken at the affected electric generating units (EGUs), including on-site controls, activities, or work practices, and cannot include measures that are beyond the affected units.” Legal Memorandum for Proposed Carbon Pollution Emission Guidelines for Existing Electric Utility Generating Units, 76-77 & n.61, <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0602-0419&contentType=pdf>. The CPP, of course, did not adopt Mr. Pruitt’s legal interpretation. He now proposes explicitly to “rescind” that Legal Memorandum because it is inconsistent with his interpretation. See 82 Fed. Reg. at 48,042/3-48,043/1.

⁵³ Ex. A9: Press Release, Oklahoma Attorney General, “Oklahoma Attorney General’s Plan” Offers State-Focused Framework for Power Plant Emissions Standard (May 20, 2014), https://www.ok.gov/triton/modules/newsroom/newsroom_article.php?id=258&article_id=14211.

Oklahoma Attorney General's Plan institutes a unit-by-unit, 'inside the fence' approach to determining state emissions standards.⁵⁴

The text of the *Plan* (which refers to itself as "OKAG Plan") is simultaneously a detailed rejection of the legal interpretation of section 111(d) and BSER that EPA makes in the CPP and also a preview of Administrator Pruitt's October 2017 justification for repealing the CPP:

- "The OKAG Plan institutes a unit-by-unit, 'inside the fence' approach to determining State emission standards."
- "With the OKAG Plan, the resource planning function is not usurped by an allocation system or CO₂ budget and instead remains where it belongs – 'inside the fence' in the hands of state regulators."
- "Furthermore, the 'inside the fence' model ensures that emissions reductions are limited to the engineering limits of each facility."⁵⁵
- "The only way to achieve cost-effective emission reductions for a coal generator would be to improve the efficiency of the unit As a result, CO₂ performance standards must be based on unit-by-unit evaluations of available cost-effective efficiency."⁵⁶

Mr. Pruitt then proceeded to publicly promote his *Plan* and its "inside the fence," "unit-by-unit" legal interpretation of section 111(d) as a better alternative to the upcoming EPA proposal. The day he released his *Plan* he appeared at an event at the National Press Club in Washington, D.C., to debate its merits, which he said he hoped would persuade EPA that his "unit-by-unit, inside-the-fence strategy" would prevail.⁵⁷ He advertised that appearance on social media, highlighting his role "fighting the EPA,"⁵⁸ and linked to a news story that compared his *Plan*'s "unit-by-unit" approach to the supposedly impermissible plan he anticipated from EPA.⁵⁹

⁵⁴ *Id.*; see also Ex. A11: Oklahoma Attorney General E. Scott Pruitt, Facebook, (May 21, 2014),

<https://wayback.archive-it.org/2083/20150514181339/https://www.facebook.com/AttorneyGeneralPruitt?fref=nf>.

⁵⁵ Ex. A10: E. Scott Pruitt, The Oklahoma Attorney General's Plan: The Clean Air Act Section 111(d) Framework that Preserves States' Rights 2 (Apr. 2014), http://documents.nam.org/ERP/OK_AG_Pruitt_Plan_05.20.14.pdf [<https://web.archive.org/web/20170709131349/https://www.ok.gov/oag/documents/Oklahoma%20Attorney%20General%27s%20Plan.pdf>].

⁵⁶ *Id.* at 7-8.

⁵⁷ Ex. C1: The Oklahoma Attorney General's Plan: The Clean Air Act §111(d) Framework That Preserves States' Rights, 44 *Env'tl. L. Rep. News & Analysis* 11045 (May 20, 2014) (transcript available at https://www.eli.org/sites/default/files/elr/featuredarticles/article_2014_11_44.11045.pdf) (video available at <https://fedsoc.org/commentary/videos/the-oklahoma-attorney-general-s-plan-the-clean-air-act-section-111-d-framework-that-preserves-states-rights-event-audio-video>).

⁵⁸ Ex. A12: Scott Pruitt, Facebook (May 22, 2014), <https://www.facebook.com/ScottPruitt/posts/10152089044466643>; Ex. A13: Scott Pruitt (@ScottPruittOK), Twitter (May 22, 2014, 5:03 PM), <https://twitter.com/ScottPruittOK/status/469629555599081473>.

⁵⁹ Ex. A14: Scott Pruitt, Facebook (May 29, 2014), <https://www.facebook.com/ScottPruitt/posts/10152103676451643> (linking to Ex. C2: Michael Bastasch, *AG: EPA's 'Cap-And-Trade Scheme' Would Violate The Clean Air Act*, The Daily Caller, May 29, 2014, <http://dailycaller.com/2014/05/29/ag-epas-cap-and-trade-scheme-would-violate-the-clean-air-act/>).

While EPA was considering comments on the proposed CPP, Mr. Pruitt continued to push for his *Plan*'s "inside-the-fence" legal interpretation of BSER and to make himself the face of that position. He was the principal commenter in a letter to EPA attacking the proposed CPP. He wrote that EPA's consideration of emission reductions beyond "source-level, inside-the-fenceline measures" "violates Section 111(d)'s plain-text requirement that the performance standards established for existing sources by the states must be limited to measures that apply at existing power plants themselves."⁶⁰ He provided a detailed legal argument for his position that "Section 111(d) unambiguously mandates that . . . states must establish standards of performance applicable to *individual sources* of pollutants."⁶¹ He argued that the term BSER only allows application of controls "*to the individual sources*" and that "whatever the 'best system' is, it must be a system that reduces emissions from *a particular source*."⁶² He argued this same view to the Senate in May 2015, testifying that section 111(d) standards are only those that can be met "by existing industrial sources through source-level, 'inside-the-fence-line' measures," and that the CPP "violates Section 111(d)'s plain-text requirement that the performance standards established for existing sources by the States must be limited to measures that apply at existing power plants themselves."⁶³

Mr. Pruitt's July 2015 Oklahoma-only, premature district court lawsuit to stop EPA from finalizing the CPP echoed his legal interpretation of BSER as promoted in his *Plan*. In the preliminary injunction motion he signed, Mr. Pruitt told the court that the proposed CPP "is also unlawful because it relies on 'beyond-the-fenceline' measures that do not concern the emissions performance of individual sources and are therefore outside the regulatory scope of Section 111(d)."⁶⁴ He told the court that "EPA lacks authority under the CAA to regulate beyond-the-fenceline," and that "consistent with plain meaning, 'best system of emission reduction' must be limited to on-site measures to avoid constitutional infirmity."⁶⁵ Mr. Pruitt also wrote that:

[W]hile the first "building block"—reducing emissions by improving sources' efficiency—may be lawful to the extent that it is "achievable," measures that involve reducing the utilization of coal-fired power plants in favor of other generation sources or reducing energy consumption are not permissible components of the "best system of emission reduction" that underlies a Section 111 standard.⁶⁶

⁶⁰ Ex. A19: Letter from Scott Pruitt, Oklahoma Attorney General, to EPA Docket (Nov. 24, 2014), <https://www.regulations.gov/document?D=EPA-HQ-OAR-2013-0602-25433>.

⁶¹ *Id.* at 16 (emphasis in original).

⁶² *Id.* at 18-19 (emphasis in original).

⁶³ Ex. A43: *Legal Implications of the Clean Power Plan: Hearing Before the S. Comm. on Environment & Public Works, Subcomm. on Clean Air & Nuclear Safety*, 114th Cong. (May 5, 2015) (written statement of E. Scott Pruitt, Attorney General, State of Oklahoma), https://www.epw.senate.gov/public/_cache/files/6/0/60e46f76-2eb8-4761-bd88-b89b31f7d0ad/01AFD79733D77F24A71FEF9DAFCCB056.agscottpruitt.pdf.

⁶⁴ Ex. A51: Brief in Support of Plaintiff's Motion for Preliminary Injunction (ECF #6) at 13, *Oklahoma v. McCarthy*, No. 4:15-cv-00369 (N.D. Okla. July 1, 2015).

⁶⁵ *Id.* at 19, 24.

⁶⁶ *Id.* at 13-14.

The proposed CPP repeal notice Administrator Pruitt would sign two years later makes the same argument:

While building block 1 constituted measures that could be applied directly to a source—that is, integrated into its design or operation—building blocks 2 and 3 employed measures that departed from this traditional, source-specific approach to regulation and that were expressly designed to shift the balance of coal-, gas-, and renewable-generated power at the grid-wide level, subjecting these building blocks to claims that they constituted energy, rather than environmental, policy.

82 Fed. Reg. at 40,037/3.

Although the October 2017 CPP repeal notice did not specify who had been “subjecting” building blocks 2 and 3 to those “claims,” Administrator Pruitt was certainly among them. When he filed the Oklahoma-only motion to stay the final CPP in October 2015, he told the court that “serious constitutional doubt as to the Rule’s validity may be avoided only by interpreting Section 111(d)’s ‘best system of emission reduction’ standard consistent with its plain meaning as limited to facility-based measures like control systems and work practices,” that “EPA, however, itself lacks the authority to carry out all but the first of these building blocks, as well as supporting actions necessary to reorganize the production, regulation, and distribution of electricity,” that “consistent with plain meaning, ‘best system of emission reduction’ must be limited to inside-the-fenceline measures to avoid constitutional infirmity,” and that his inside-the-fenceline interpretation, “limited to source-level measures, also avoids constitutional doubt, because it concerns only sources of emissions themselves.”⁶⁷ He sounded the same note in Congress while the CPP litigation was pending in the D.C. Circuit, testifying that section 111(d) standards “must reflect the ‘application of the best system of emission reduction’ to that ‘source,’ i.e., to a ‘building, structure, facility, or installation.’”⁶⁸ Thus, not only is Administrator Pruitt attempting to replace EPA’s current legal interpretation with the one he had been promoting, he is also justifying that change on the ground that he (and others) had previously criticized EPA’s interpretation.

⁶⁷ Ex. A70: Petitioner Oklahoma’s Motion for Stay of EPA’s Existing Source Performance Standards for Electric Generating Units (ECF #1580577) at 2-3, *Oklahoma v. EPA*, No. 15-1364 (D.C. Cir. Oct. 28, 2015). Joint filings Mr. Pruitt made against the CPP with other state attorneys general are consistent. Oklahoma also joined the application for an administrative stay of the CPP in August 2015, which argued that “EPA is limited to requiring the States to adopt energy policy measures that ‘hold[] the industry to a standard of improved design and operational advances.’ [citation] Blocks 2 and 3 go well beyond this, and are thus entirely unlawful.” Ex. A59: Application for Administrative Stay by the State of West Virginia and 15 Other States (Aug. 5, 2015) at 4, <https://www.regulations.gov/document?D=EPA-HQ-OAR-2013-0602-37226>.

⁶⁸ Ex. A84: *Impact of the EPA’s Clean Power Plan on States: Hearing Before H. Comm. on Science, Space & Technology, Subcomm. on Environment*, 114th Cong. (May 26, 2016) (written statement of E. Scott Pruitt, Attorney General, State of Oklahoma), <https://science.house.gov/sites/republicans.science.house.gov/files/documents/HHRG-114-SY18-WState-SPruitt-20160526.pdf>; *id.* (video: Scott Pruitt testimony at 44:28-49:56), <https://science.house.gov/legislation/hearings/environment-subcommittee-hearing-impact-epa-s-clean-power-plan-states>.

3. Administrator Pruitt's statements since taking over EPA continue to show a closed mind

After becoming Administrator, Mr. Pruitt did not pretend that his new job had opened his once-closed mind. He instead made a seamless transition from champion of the fight against the CPP to biased decision maker in the CPP repeal administrative process. He continues to publicly attack the CPP as unlawful and call for its repeal. The only difference is that now he occupies the office that has the power to determine the fate of the CPP.

The day after he was sworn in, Administrator Pruitt and EPA both used official social media accounts to promote a *Wall Street Journal* interview in which he stated that the “past administration didn’t bother with statutes” and “disregarded the law,” and in which he explained that he expected to quickly withdraw the CPP.⁶⁹ In a subsequent television interview on *This Week*, he even went so far as to accuse the Obama Administration of intentionally trying to “kill jobs throughout the country through the Clean Power Plan,” a statement that EPA highlighted in a press release.⁷⁰

After President Trump issued Executive Order 13783 on March 28, 2017, calling for a “review” of the CPP, Administrator Pruitt signed an “Announcement” that EPA would be reviewing the CPP.⁷¹ That evening EPA asked the D.C. Circuit Court, poised to issue a ruling on the legality of the CPP, to hold in abeyance the CPP challenges, which had been pending before the *en banc* Court since the oral argument six months earlier.⁷² The abeyance EPA requested continues to this day.

The next day Administrator Pruitt appeared on the Hugh Hewitt radio show and confirmed that withdrawal of the CPP was a foregone conclusion now that he was in charge. He reiterated his long-held belief that, through the CPP, EPA had “reimagined its authority under the Clean Air Act to regulate CO₂ with stationary sources in a way that just isn’t consistent with the framework that Congress passed.” Explaining the significance of the new Executive Order, he said, “really what happened yesterday with the Clean Power Plan is cleaning up the mess, you know, clearing the decks, if you will.”⁷³ The day after, Administrator Pruitt signed letters to all

⁶⁹ Ex. A100: Scott Pruitt, Facebook (Feb. 18, 2017), <https://www.facebook.com/EPAScottPruitt/posts/1408365892541915> (linking to Ex. C10: Kimberley A. Strassel, *Scott Pruitt's Back-to-Basics Agenda for the EPA*, Wall Street Journal, Feb. 17, 2017, <https://www.wsj.com/articles/scott-pruitts-back-to-basics-agenda-for-the-epa-1487375872>).

⁷⁰ Ex. A103: Press Release, U.S. Environmental Protection Agency, EPA Administrator Pruitt Previews President Trump’s Executive Order on Energy Independence (Mar. 26, 2017), <https://www.epa.gov/newsreleases/epa-administrator-pruitt-previews-president-trumps-executive-order-energy-independence>; see also Ex. A101: Scott Pruitt (@EPAScottPruitt), Twitter (Mar. 26, 2017, 7:37 AM), <https://twitter.com/EPAScottPruitt/status/846008281260834816>; Ex. A102: Scott Pruitt, Facebook (Mar. 26, 2017), <https://www.facebook.com/EPAScottPruitt/posts/1444794498899054>.

⁷¹ Review of the Clean Power Plan, 82 Fed. Reg. 16,329 (Apr. 4, 2017).

⁷² Notice of Executive Order, EPA Review of Clean Power Plan and Forthcoming Rulemaking, and Motion to Hold Cases in Abeyance (ECF #1668274), *West Virginia v. EPA*, No. 15-1363 (D.C. Cir. Mar. 28, 2017).

⁷³ Ex. C11: Interview by Hugh Hewitt with Scott Pruitt, EPA Administrator, *EPA Administrator* [sic] *Scott Pruitt: “The Days Of ‘Sue And Settle’ ...Have Ended.”* (Mar. 29, 2017) (transcript available at

state governors offering his opinion that they no longer had any obligation to comply with the Clean Power Plan and that any deadlines would be tolled while the Supreme Court stay was in effect. “The days of coercive federalism are over,” he proclaimed.⁷⁴

He was on *Fox News Sunday* three days later to further praise the executive order and criticize the legal foundation of the CPP, arguing that “The past administration just made it up. They re-imagined authority under the statute.” As to what to do about the carbon dioxide emissions the CPP was designed to reduce, Administrator Pruitt said, “you can’t just simply, from the EPA perspective, make that up. You can’t do what the President did previously with the Clean Power Plan, President Obama, and his administration, to simply re-imagine authority. That’s why we have a U.S. Supreme Court stay against the Clean Power Plan.”⁷⁵ Despite the absence of any court rulings on the merits of the CPP, he justified repeal of the CPP on the mere existence of the litigation he recently led against the rule:

You’ve talked about many times, the regulatory overreach, about executive fiat that the previous administration engaged in. We can’t continue that process because what happens, Chris [Wallace], is clean air is not advanced because you have the litigation such as the Clean Power Plan. You have stays of enforcement against that Clean Power Plan, and there’s no progress being made with clean air and we also are spending money on litigation.⁷⁶

In May 2017 Administrator Pruitt wrote an editorial again attacking the legality and wisdom of the CPP and confirming that he had prejudged the outcome of the “review” of the CPP. He wrote in an editorial that for those who “expect lawful, effective and economically sound regulation — the Clean Power Plan failed on all three counts.” He proclaimed that President Trump’s executive order “was a moment in which a promise became an economic reality. As EPA Administrator, I immediately ordered my Agency to comply with the March 28

<http://www.hughhewitt.com/epa-administrator-scott-pruitt-days-sue-settle-ended/>) (audio available at <http://www.hughhewitt.com/wp-content/uploads/03-29hhs-pruitt.mp3>).

⁷⁴ See, e.g., Ex. A108: Letter from Scott Pruitt, EPA Administrator, to Matt Bevin, Governor of Kentucky (Mar. 30, 2017), https://www.epa.gov/sites/production/files/2017-03/documents/ky_bevin.pdf; Ex. A107: Press Release, U.S. Environmental Protection Agency, EPA Administrator Sends Clean Power Plan Guidance Letter to Governors (Mar. 30, 2017), <https://www.epa.gov/newsreleases/epa-administrator-sends-clean-power-plan-guidance-letter-governors-0>; Ex. A110: Scott Pruitt, Facebook (Mar. 31, 2017), <https://www.facebook.com/EPAScottPruitt/posts/1450735668304937>; Ex. A111: Scott Pruitt, Facebook (Mar. 31, 2017), <https://www.facebook.com/EPAScottPruitt/posts/1450940428284461>. A number of the undersigned state attorneys general responded to Administrator Pruitt’s letter, disagreeing with his legal opinion and pointing out that his attempt to “persuade the Governors of his view of how a stay issued in the course of the litigation should affect parties’ future compliance responsibilities” was “inconsistent with his agreement not to participate in the litigation in light of his representation of Oklahoma in the case.” Ex. B12: Letter from Michael J. Myers, Assistant Attorney General, Office of the New York Attorney General, to Kevin S. Minoli, EPA Acting General Counsel (Aug. 30, 2017), https://ag.ny.gov/sites/default/files/2017_0830_letter_to_epa_re_cpp_stay.pdf.

⁷⁵ Interview by Chris Wallace, *Fox News Sunday*, with Scott Pruitt, EPA Administrator, *Scott Pruitt on balancing environmental, economic priorities* (Apr. 2, 2017) (preliminary transcript available at <http://www.foxnews.com/transcript/2017/04/02/scott-pruitt-on-balancing-environmental-economic-priorities-mitch-mcconnell-on-gorsuch-nomination-health-care-reform.html>) (video available at <http://video.foxnews.com/v/5382367267001/?#sp=show-clips>).

⁷⁶ *Id.*

executive order, and signed four new rules, which included a review of the Clean Power Plan.”⁷⁷ EPA issued his editorial, verbatim, as a news release. A week later he directed the public to an article that showed he still held the view that all of the lawsuits he filed, such as the one to invalidate the CPP, were correct.⁷⁸ An EPA press office statement on the article quotes him as explaining that he sued his agency so many times because, “They deserved it and they deserved it because they exceeded their statutory authority, they exceeded their constitutional authority.”⁷⁹

The notice of proposed rulemaking to withdraw the CPP, which Administrator Pruitt signed on October 10, 2017, states that he intends to “rescind” EPA’s 2014 “Legal Memorandum for Proposed Carbon Pollution Emission Guidelines for Existing Electric Utility Generating Units” because it is “inconsistent with the statutory interpretation proposed” in the proposed CPP repeal rule. Specifically, the Legal Memorandum is objectionable to Administrator Pruitt because significant portions are “devoted to arguing that the BSER on which performance standards under CAA section 111(d) is based can encompass measures other than physical or operational changes taken at the level of and applicable to an individual source.” 82 Fed. Reg. at 48,042/3. In other words, Administrator Pruitt wants to “rescind” the Legal Memorandum because EPA’s existing legal interpretation is contrary to one he has spent years promoting.

Although the October 10, 2017, CPP repeal notice ostensibly requests public comment, Administrator Pruitt’s statements surrounding release of the proposal indicate his mind is made up. EPA’s press release announcing the proposal said that the Supreme Court’s stay prevented the CPP’s “devastating effects to be [sic] imposed on the American people.” Continuing to cast himself as a defender against this alleged devastation, Administrator Pruitt pledged that he was committed to “righting the wrongs of the Obama administration by cleaning the regulatory slate,” and criticized the CPP for requiring actions “outside the fence line.”⁸⁰ He told another media outlet that, unlike the Obama Administration, he would not simply make up the law. He explained that when EPA did so in the CPP, the “Supreme Court intervened and said, stop the enforcement of the rule because it’s going to impact the marketplace in ways that we don’t think

⁷⁷ Ex. C12: Press Release, U.S. Environmental Protection Agency, In Case You Missed It ...EPA is Putting American Workers First (May 2, 2017) (republishing Scott Pruitt, *EPA is putting American workers first*, Washington Times, May 2, 2017), <https://www.epa.gov/newsreleases/case-you-missed-it-epa-putting-american-workers-first-0>; Ex. A113: U.S. Environmental Protection Agency (@EPA), Twitter (May 2, 2017, 7:50 AM), <https://twitter.com/EPA/status/859419758990635008>.

⁷⁸ Ex. A114: Scott Pruitt (@EPAScottPruitt), Twitter (May 11, 2017, 12:05 PM) <https://twitter.com/EPAScottPruitt/status/862745467679121408> (linking to article entitled *Scott Pruitt Explains Why He Sued EPA So Many Times: ‘They Deserved It’*).

⁷⁹ Ex. A116: Press Release, U.S. Environmental Protection Agency, EPA’s Weekly Round-Up (May 12, 2017), <https://www.epa.gov/newsreleases/epas-weekly-round>.

⁸⁰ Ex. A117: Press Release, U.S. Environmental Protection Agency, EPA Takes Another Step To Advance President Trump’s America First Strategy, Proposes Repeal Of “Clean Power Plan” (Oct. 10, 2017), <https://www.epa.gov/newsreleases/epa-takes-another-step-advance-president-trumps-america-first-strategy-proposes-repeal>; see also Ex. A118: Scott Pruitt, Facebook (Oct. 10, 2017), <https://www.facebook.com/EPAScottPruitt/posts/1649983501713485>.

meet the statutory criteria or authority of the agency.”⁸¹ In fact, the Supreme Court’s order contained no discussion of its reasoning whatsoever.⁸²

Administrator Pruitt has demonstrated time and again that his mind is unalterably closed and that he has prejudged whether the CPP should be repealed, whether it is within EPA’s legal authority, and specifically whether section 111(d) guidelines must be based solely on controls applied directly at power plants. On October 11, 2017, the day after formally proposing to repeal the CPP, Administrator Pruitt again appeared on the Hugh Hewitt radio show to promote his position.⁸³ Mr. Hewitt reminded Administrator Pruitt that he must not prejudge the outcome of the administrative process:

Because I know you know from your time as Attorney General of Oklahoma that the Agency is obliged to take seriously the comments it receives during this process, you will not prejudge the conclusion. . . . The first thing is you have to revoke a deficient rule if indeed it is found by the notice and comment process to be deficient. Is that in fact correct, Scott Pruitt? Is that the order you’re following?

Despite this clear prompting, Administrator Pruitt responded by explaining how, in fact, he had already determined the scope of EPA’s legal authority and had settled upon an approach he preferred, *The Oklahoma Attorney General’s Plan*:

Yes. Yes, yes, Hugh, I think that as we look at the sequencing of this, I mean, you’ve got a rule that’s been stayed by the U.S. Supreme Court. But you don’t know how long that stay is going to, you know, remain in place. . . . So this is a

⁸¹ Ex. C16: Interview by Rob Bluey with Scott Pruitt, EPA Administrator (Oct. 17, 2017) (transcript available at <http://dailysignal.com/2017/10/20/trumps-epa-chief-charts-new-course-interview-scott-pruitt/>) (video available at Heritage Foundation, Facebook (Oct. 17, 2017), <https://www.facebook.com/heritagefoundation/videos/10155780088559481/>) (Pruitt interview at 11:35-46:32)). Administrator Pruitt continues to share the video of this interview through his official EPA Facebook account. *See* Scott Pruitt, Facebook (Oct. 17, 2017), <https://www.facebook.com/EPAScottPruitt/> (last visited Jan. 8, 2018).

⁸² Ex. A73: *Chamber of Commerce v. EPA*, No. 15A787 (U.S. Feb. 9, 2016) (order granting application for stay), http://www.supremecourt.gov/orders/courtorders/020916zr3_hf5m.pdf. In addition to this and the explanation of the Supreme Court’s reasoning that he provided during his Senate confirmation process (*see* text at note 49, *supra*), Administrator Pruitt recently testified to Congress with yet another theory about the Court’s rationale for the stay: [I]t was unprecedented for the U.S. Supreme Court to enter a stay against the Clean Power Plan. And, as you know, you don’t get a stay of enforcement on a rule unless there’s a likelihood of success on the merits later. And so, there was an understanding that the steps taken by the previous administration, Building Blocks 1, 2, 3, and 4, there was a reimagining of authority that took place under Clean Air Act that caused a lot of confusion as to what was authorized and what wasn’t. That’s not the proper way to approach these issues

Ex. A119: *The Mission of the U.S. Environmental Protection Agency: Hearing Before H. Comm. on Energy & Commerce, Subcomm. on Environment*, 115th Cong. (Dec. 7, 2017), at 51-52 (preliminary transcript), <http://docs.house.gov/meetings/IF/IF18/20171207/106701/HHRG-115-IF18-Transcript-20171207.pdf>; *id.* (video: testimony at 56:17-57:08), <https://energycommerce.house.gov/hearings/mission-u-s-environmental-protection-agency/>.

⁸³ Ex. C17: Interview by Hugh Hewitt with Scott Pruitt, EPA Administrator, *EPA Administrator Scott Pruitt On Clean Power Plan Rulemaking* (Oct. 11, 2017) (transcript available at <http://www.hughhewitt.com/epa-administrator-scott-pruitt-clean-power-plan-rulemaking/>) (audio available at <http://www.hughhewitt.com/wp-content/uploads/10-11hhs-pruitt.mp3>).

situation, Hugh, that we had to provide clarity first and foremost about the deficiency of this particular rule. But we have also been doing our work to prepare for, you know, what does the statute allow us to do? I actually introduced something in June of 2015 [sic], Hugh, called the Oklahoma Plan. I went through a Section 111 of the Clean Air Act and evaluated what authority existed to regulate CO₂ under Section 111, which deals with power generation facilities. I was at the National Press Club that very month about five or so days before the Clean Power Plan came out, and was debating someone from the NRDC, and shared this entire plan with them. There are steps that we can take with respect to this issue. But they are modest. They are humble

As noted above, the merits of Administrator Pruitt's firmly held views on the illegality of the CPP are not relevant to whether he may participate in a rulemaking that eliminates the CPP. It is because he has an unalterably closed mind on the subject that due process, fairness, and the requirements of rational decision making are violated by his participation in the process.

C. Administrator Pruitt's prejudging of issues is not excused because he is a lawyer

EPA cannot rationalize Administrator Pruitt's past actions as Oklahoma Attorney General as merely the work of a hired lawyer doing the bidding of an impersonal client "state," such that he still has an open mind on whether to repeal the CPP. As an initial matter, the Attorney General of Oklahoma is not just any lawyer, acting in his client's best interests without regard to his own views. In Oklahoma the Attorney General is an independently elected officer who is not appointed by the Governor. The Attorney General is "the chief law officer of the state." Okla. Stat. Ann. tit. 74, § 18 (West). His duties "call for the exercise of personal judgment based on the facts and circumstances surrounding each particular question," and he "possesses complete dominion over every litigation in which he properly appears in the interest of the State." *State ex rel. Derryberry v. Kerr-McGee Corp.*, Okla., 516 P.2d 813, 818, 821 (Okla. 1973).

In this capacity, as previously described, Mr. Pruitt built his reputation around fighting certain regulations adopted by the Obama Administration, and he made great efforts to promote himself as one of the leaders in the struggle against the CPP specifically. He made sure that the public was well aware of his crusade against the CPP, sought campaign donations for his efforts, and even lobbied for a change to Oklahoma law that would effectively give him veto power over Oklahoma's ability to implement the CPP. These are not the actions of a mere hired advocate whose mind might remain open enough, once in the job as regulator, to fairly consider a rule he had previously opposed on behalf of a client.

D. Administrator Pruitt has made an irrevocable promise to repeal the CPP

An agency decision maker is free to express opinions and discuss policy positions as part of the rulemaking process, so long as "he remain[s] free, both in theory and in reality, to change his mind upon consideration of the presentations made by those who would be affected." *Ass'n of Nat'l Advertisers, Inc. v. FTC*, 627 F.2d at 1172. Having vowed to fulfill President Trump's promise to abolish the CPP, Administrator Pruitt has no such freedom in theory or in reality.

Administrator Pruitt, as a practical matter, cannot now change his mind “upon consideration of the presentations” of the public.

With Administrator Pruitt, Vice President Pence, and a group of coal company executives and miners looking on and applauding, President Trump signed the executive order directing EPA to “review” the CPP.⁸⁴ No one could mistake this, however, for an invitation to Administrator Pruitt to dispassionately consider the wisdom of the rule. The President told those gathered and the public that:

One after another, we’re keeping our promises and putting power back into the hands of the people. First, today’s energy independence action calls for an immediate reevaluation of the so-called Clean Power Plan. Perhaps no single regulation threatens our miners, energy workers, and companies more than this crushing attack on American industry.⁸⁵

The White House press release of the same day further cast revealing the CPP as the completed fulfillment of one of candidate Donald Trump’s promises.

FULFILLING HIS PROMISE: By taking action on the Clean Power Plan, President Trump is fulfilling his promise to the American people. As a candidate, Mr. Trump promised “we will eliminate... the Clean Power Plan—these unilateral plans will increase monthly electric bills by double-digits without any measurable improvement in the climate.”⁸⁶

A few days later Administrator Pruitt himself equated the “review” of the CPP with a campaign promise fulfilled (adding that the CPP stay further justified the executive order):

... I think what’s important this past week is to recognize that the President is keeping his promise to the American people to roll back regulatory overreach that’s been occurring the last several years. And as you know, the Clean Power Plan is subject to a U.S. Supreme Court stay. And the steps that have been taken by the EPA historically, have equally been challenged several times with respect to CO₂ regulation. And each of those times the Supreme Court and courts have entered and said that the power that’s been used has been an overreach. And so, the President is keeping his promise to deal with that overreach⁸⁷

⁸⁴ Nine months later, Administrator Pruitt continues to use a picture from the event as the cover photo on his official EPA Facebook account. Ex. A120: Scott Pruitt, Facebook, <https://www.facebook.com/EPAScottPruitt/> (last visited Jan. 8, 2018).

⁸⁵ Ex. A104: Remarks by President Trump at Signing of Executive Order to Create Energy Independence, White House (Mar. 28, 2017) (transcript available at <https://www.whitehouse.gov/the-press-office/2017/03/28/remarks-president-trump-signing-executive-order-create-energy>) (video available at https://www.youtube.com/watch?v=OdkThe_O50M, see 7:56-9:29).

⁸⁶ Ex. A105: Fact Sheet, White House, President Trump’s Energy Independence Policy (Mar. 28, 2017), <https://www.whitehouse.gov/the-press-office/2017/03/28/president-trumps-energy-independence-policy>

⁸⁷ Interview by Chris Wallace, Fox News Sunday, with Scott Pruitt, EPA Administrator, *Scott Pruitt on balancing environmental, economic priorities* (Apr. 2, 2017) (preliminary transcript available at <http://www.foxnews.com/transcript/2017/04/02/scott-pruitt-on-balancing-environmental-economic-priorities-mitch->

EPA also issued a press release, using various sources to praise the executive order and attack the CPP, quoting one who declared that “By executive order, President Trump has axed the CPP.”⁸⁸ And, weeks before Administrator Pruitt signed the proposed CPP repeal, President Trump himself bragged that the rule was already gone. Campaigning for former Alabama Attorney General and CPP litigation opponent Luther Strange, President Trump declared mission accomplished, slashing Xs in the air with an imaginary pen:

As your Attorney General, Luther helped you lead the fight in court against the Obama Administration’s big power grabs. That includes challenging the EPA’s Clean Power Plan, which, by the way, did you see what I did to that? Boom. Gone. Look at that guy. He knows. Gone. And I did that one without Luther.⁸⁹

Administrator Pruitt has, consistent with his previous statements and actions, personally, irrevocably committed himself to fulfilling President Trump’s promise to end the CPP. A week after proposing the CPP repeal, Administrator Pruitt repeated the claim that the Obama Administration had declared a war on coal and fossil fuels, but that “It ended under President Trump.”⁹⁰ Weeks later, in a pre-taped address, he explained:

There’s great optimism across the country because of President Trump’s leadership and those that are leading across the country to get tremendous change with respect to regulatory reform. And just to update you a little bit on what we’ve been doing – we’ve been providing clarity, regulatory reform in areas that matter. We’ve withdrawn the Clean Power Plan, and we’re providing, you know, certainty and clarity there.⁹¹

And there is no reason to think that in this rulemaking Administrator Pruitt will open his mind to a new perspective on the CPP when this is how he sees his role with respect to President Trump: “I seek every day, and I mean this sincerely, to bless him. I want to bless him and the decisions he’s making.”⁹²

mcconnell-on-gorsuch-nomination-health-care-reform.html) (video available at <http://video.foxnews.com/v/5382367267001/?#sp=show-clips>).

⁸⁸ Ex. A112: Press Release, U.S. Environmental Protection Agency, High Accolades Across the Country on Trump’s Energy Independence Executive Order (Apr. 4, 2017), <https://www.epa.gov/newsreleases/high-accolades-across-country-trumps-energy-independence-executive-order>.

⁸⁹ President Trump Remarks at Senator Strange Campaign Rally, Huntsville, Ala. (Sept. 22, 2017), at 1:00:40-1:01:20, <https://www.c-span.org/video/?434480-1/president-trump-campaigns-alabama-senator-luther-strange>.

⁹⁰ Ex. C16: Interview by Rob Bluey with Scott Pruitt, EPA Administrator (Oct. 17, 2017) (transcript available at <http://dailysignal.com/2017/10/20/trumps-epa-chief-charts-new-course-interview-scott-pruitt/>) (video available at Heritage Foundation, Facebook (Oct. 17, 2017),

<https://www.facebook.com/heritagefoundation/videos/10155780088559481/> (Pruitt interview at 11:35-46:32)).

⁹¹ The Heartland Institute, *Scott Pruitt at Heartland’s America First Energy Conference* (Nov. 14, 2017), <https://www.youtube.com/watch?v=SvXvoZ6o1sM>.

⁹² Ex. C16: Interview by Rob Bluey with Scott Pruitt, EPA Administrator (Oct. 17, 2017) (transcript available at <http://dailysignal.com/2017/10/20/trumps-epa-chief-charts-new-course-interview-scott-pruitt/>) (video available at Heritage Foundation, Facebook (Oct. 17, 2017), <https://www.facebook.com/heritagefoundation/videos/10155780088559481/> (Pruitt interview at 11:35-46:32)).

Given his personal commitment to make true the President's promise that the CPP is dead, Administrator Pruitt is not remotely able to fairly consider the comments from members of the public who want the CPP's effective carbon dioxide emissions reductions nor is he free to change his mind about whether to repeal the rule. He must therefore be disqualified from participating in rulemaking concerning repeal of the CPP. *Ass'n of Nat'l Advertisers, Inc. v. FTC*, 627 F.2d at 1172; *cf. Int'l Snowmobile Mfrs. Ass'n v. Norton*, 340 F. Supp. 2d at 1261 ("Given these definite statements from the Assistant Secretary . . . , it does not seem that the [agency] could have issued any other rule than the one that was ultimately contained in the [final rule]."). EPA's failure to disqualify him to date constitutes a procedural violation that would subject any final action to reversal by a reviewing court. *See* 42 U.S.C. § 7607(d)(9)(D); 5 U.S.C. § 706(2)(D). Because EPA cannot legally finalize the proposed CPP repeal through this tainted rulemaking process, it must withdraw the proposal.

II. EPA'S FAILURE TO REQUIRE ADMINISTRATOR PRUITT TO UNDERGO THE ETHICS AUTHORIZATION PROCESS BEFORE PARTICIPATING IN THE RULEMAKING DISREGARDS REQUIRED PROCEDURES IN VIOLATION OF THE CLEAN AIR ACT

An independent reason that EPA must withdraw the CPP repeal proposal is that, because EPA failed to observe procedures required by law, any resulting final rule would be subject to reversal. *See* 42 U.S.C. § 7607(d)(9)(D); 5 U.S.C. § 706(2)(D). Federal ethics regulations provide a mechanism for EPA to analyze the appearance of lack of impartiality by Administrator Pruitt in connection with this rulemaking, but EPA did not follow those procedures and claims that it need not do so. That failure is arbitrary and capricious and is "so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such error[] had not been made." 42 U.S.C. § 7607(d)(9)(D). *See United States v. Caceres*, 440 U.S. 741, 754 (1979) ("Agency violations of their own regulations . . . may well be inconsistent with the standards of agency action which the APA directs the courts to enforce."); *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 523 (D.C. Cir. 1983) ("At a minimum, failure to observe the basic APA procedures, if reversible error under the APA, is reversible error under the Clean Air Act as well.").

First, EPA failed to require Administrator Pruitt to follow the procedures specified in 40 C.F.R. § 2635.502(d) to obtain ethics authorization before he became involved in the CPP repeal rulemaking. That provision sets forth a multifactor test for determining whether an agency employee may participate in a particular matter where it would raise a question in the mind of a reasonable person about the employee's impartiality.

As Administrator Pruitt conceded in his May 4, 2017, recusal memorandum, he would need to obtain ethics authorization to participate in any of the lawsuits he filed against EPA while serving as Oklahoma Attorney General⁹³—including his lawsuits against the CPP—as

⁹³ Ex. B8: Memorandum from E. Scott Pruitt, EPA Administrator, to Acting Assistant Administrators, et al., My Ethics Obligations (May 4, 2017), *available at* <https://foiaonline.regulations.gov/foia/action/public/view/record?objectId=090004d2812efc2b&fromSearch=true>

each is considered a “particular matter involving specific parties,” and he has a covered relationship with his recent employer, the State of Oklahoma.⁹⁴ He has not, however, recused himself from participating in EPA rulemakings directly related to litigation matters on which he has acknowledged a conflict.

Although the current CPP repeal rulemaking would achieve the exact same outcome Administrator Pruitt sought in his various attempts to overturn the CPP through the courts, neither Administrator Pruitt nor EPA’s Designated Agency Ethics Official have even evaluated whether he can be involved in this rulemaking under the federal ethics procedures.⁹⁵ Not only has Administrator Pruitt not obtained any authorization before participating in the rulemaking on the CPP, EPA denies any obligation for him to do so. In a September 2017 interview, EPA’s Designated Agency Ethics Official explained that although Administrator Pruitt “recused himself from specific cases . . . the ethics rules authorize [him] to participate in generally applicable regulatory actions.”⁹⁶ Administrator Pruitt made a similar claim in his May 4, 2017, recusal memorandum, stating that the ethics limitation in 40 C.F.R. § 2635.502(d) “does not extend to particular matters of general applicability, such as rulemaking.”⁹⁷ This is a misunderstanding of the law and an abuse of discretion.

(original version; memorandum updated May 17, 2017 (Ex. B9)). In that memorandum Administrator Pruitt set forth his ethics obligations with respect to the CPP litigation (among other cases), explaining that “Thus far, I have not participated in any of the cases listed in this recusal statement officially at all.”

⁹⁴ An employee has a covered relationship with a person or entity for whom he “served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.” 5 C.F.R. § 2635.502(b)(iv).

⁹⁵ EPA’s failure to undertake this practice is shown by its inability to produce any evidence that it did so. On April 7, 2017, the California Attorney General made a request to EPA under the Freedom of Information Act for records pertaining to EPA’s efforts to ensure that Administrator Pruitt complies with federal ethics regulations.

Ex. B7: Letter from Timothy E. Sullivan, Deputy Attorney General, California Attorney General’s Office, to National Freedom of Information Officer, EPA (Apr. 7, 2017), https://oag.ca.gov/system/files/attachments/press_releases/FOIA%20Letter%20to%20EPA.pdf. Because EPA failed to respond to the request, California was forced to sue EPA in U.S. District Court for the District of Columbia on August 11, 2017. *See Ex. B11*: Complaint, *California v. EPA*, No. 1:17-cv-01626 (D.D.C. Aug. 11, 2017). Pursuant to a stipulated schedule, on November 15, 2017, EPA produced all records in its possession pertaining to eighteen subcategories of requested records. That production consisted of only seven documents. EPA’s final response to the below requests demonstrated that it did not possess any of the following records:

7. Impartiality Determinations (including any determinations under 5 C.F.R. § 2635.502) regarding Scott Pruitt’s authorization or ability to participate as Administrator in an activity or decision.

8. Requests by Scott Pruitt to any EPA employee for an Impartiality Determination (including any determination under 5 C.F.R. § 2635.502).

10. Documents reviewed by EPA ethics officials in evaluating an Impartiality Determination (or other determination under 5 C.F.R. § 2635.502) regarding Scott Pruitt.

11. Notices of disqualification and disqualification statements required by 5 C.F.R. § 2635.502(e) regarding Scott Pruitt.

EPA will not complete its production of records related to other subcategories until May 7, 2018, well after the comment period for the proposed CPP repeal closes on January 16, 2018.

⁹⁶ Ex. C14: Robin Bravender, *A specialist in Greek drama is killing the climate rule*, E&E News Climatewire (Sept. 11, 2017), <https://www.eenews.net/stories/1060060183>.

⁹⁷ Ex. B8: Memorandum from E. Scott Pruitt, EPA Administrator, to Acting Assistant Administrators, et al., My Ethics Obligations (May 4, 2017), available at <https://foiaonline.regulations.gov/foia/action/public/view/record?objectId=090004d2812efc2b&fromSearch=true> (original version; memorandum updated May 17, 2017 (Ex. B9)). When this conflict was pointed out to him by Senators during his confirmation process, Administrator Pruitt responded similarly that he did not understand federal

While it is generally true that the obligation to seek prior ethics authorization applies in the case of a “particular matter involving specific parties,” and that rulemakings of general applicability are usually not treated as a “particular matter involving specific parties,” the general rule instructing all federal employees to avoid the appearance of impropriety in carrying out their official duties still applies:

Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

5 C.F.R. § 2635.101(b)(14). Moreover, the ethics regulations specify that involvement in matters that do not involve “specific parties,” such as most rulemakings, may still require the employee first to obtain proper ethics authorization when there is a reasonable question as to whether participation “would raise a question regarding his impartiality.” 5 C.F.R. § 2635.502(a)(2).⁹⁸ In such a circumstance, the employee must seek authorization before participating in the matter and cannot participate without such authorization. *Id.* (stating that the employee should use the same process to determine whether to participate as would apply to the other conflicts described in that section).⁹⁹

As discussed in Section I, *supra*, the record overwhelmingly shows that Administrator Pruitt has already made up his mind and cannot impartially determine whether it is appropriate to repeal the CPP. Reasonable people can and have questioned Administrator Pruitt’s ability to be

ethics regulations on recusal to apply to regulatory rulemakings of general applicability. See Ex. A93: Questions for the Record 118 (response to Sen. Markey questions 15, 16), 120 (Markey 21), 226 (response to Sen. Whitehouse question 88) (full document available at https://www.epw.senate.gov/public/_cache/files/6d95005c-bd1a-4779-af7e-be831db6866a/scott-pruitt-qfr-responses-01.18.2017.pdf).

⁹⁸ The preamble to the Office of Government Ethics’ proposed rule introducing this provision (which was adopted in the final rule), explains that even apart from “particular matters involving specific parties,” an employee is expected to use the ethics authorization process when an appearance problem arises: “Notwithstanding the section’s use of this concept [specific parties] and its focus on specified relationships, questions about an employee’s impartiality can arise from any number of interests or relationships an employee might have and *in connection with his or her participation in matters that do not necessarily involve specific parties*. Proposed § 2635.502 therefore provides that *an employee should use the process* set forth in that section when circumstances other than those specifically described raise questions about his or her impartiality in the performance of official duties.” Standards of Ethical Conduct for Employees of the Executive Branch, Proposed Rule, 56 Fed. Reg. 33,778, 33,786 (July 23, 1991) (emphasis added); see also Ex. B1: Memorandum from Robert I. Cusick, Director, U.S. Office of Government Ethics, to Designated Agency Ethics Officials, “Particular Matter Involving Specific Parties,” “Particular Matter,” and “Matter,” No. DO-06-029 (Oct. 4, 2006) at 7, n.9 (“[A]n agency may require an employee to recuse from particular matters that do not involve specific parties, based on the concern that the employee’s impartiality reasonably may be questioned under the circumstances.”), [https://www2.oge.gov/Web/OGESites/0/C10C6B23AC67F74685257E96005FBDD7/\\$FILE/do-06-02_9.pdf](https://www2.oge.gov/Web/OGESites/0/C10C6B23AC67F74685257E96005FBDD7/$FILE/do-06-02_9.pdf).

⁹⁹ The procedure to be followed to resolve issues described in 5 C.F.R. § 2635.502 is found in subsection (d). As a result of that procedure, “Unless the employee is authorized to participate in the matter [by the agency designee], an employee shall not participate in a particular matter involving specific parties when . . . the role of a person with whom he has a covered relationship[] is likely to raise a question in the mind of a reasonable person about his impartiality. Disqualification is accomplished by not participating in the matter.” 5 C.F.R. § 2635.502(e).

impartial as to rulemaking on the rules he sought to overturn in his previous job.¹⁰⁰ And publicly available information showing his history of advocating on behalf of and fundraising from industries that have opposed the CPP and other EPA regulations exacerbates the appearance of lack of impartiality he created through his own statements and actions.¹⁰¹ In view of these circumstances, it was arbitrary and capricious for EPA not to go through the process described in 40 C.F.R. § 2635.502(d) to determine whether Administrator Pruitt should have been disqualified from the CPP repeal rulemaking.

Second, EPA's error is so serious and related to matters of such relevance to the CPP repeal that there is a substantial likelihood that it will affect any final rule undoing the CPP. It is important to the integrity of this rulemaking process that Administrator Pruitt not have participated, as his involvement tainted what is supposed to be an objective and fair decision making process. Indeed, avoiding after-the-fact repercussions of a conflicted employee's involvement in a matter was one of the reasons why the Office of Government Ethics promulgated the regulation in 5 C.F.R. § 2635.502(a)(2). As it explained:

[E]mployees have long been obligated to act impartially and to avoid even the appearance of loss of impartiality. However, they have not been provided a specific mechanism to resolve difficult issues of whether, in particular circumstances, a possible appearance of loss of impartiality is so significant that it should disqualify them from participation in particular matters. The proposed rule would provide employees with *a means to ensure that their conduct will not be found, as a matter of hindsight, to have been improper*.¹⁰²

Because EPA failed to undertake proper ethics review and disqualification procedures in the face of Administrator Pruitt's obvious appearance of lack of impartiality, any final rule repealing the CPP will likely be invalidated. EPA should withdraw its proposal.

* * *

Administrator Pruitt has already made up his mind that the CPP must be repealed. In light of his past conduct and his statements that the CPP is invalid as a matter of law and should not be implemented, Administrator Pruitt has already prejudged the outcome of the current administrative process to determine whether it should be repealed. His participation to date and his continued participation in this rulemaking proceeding is therefore a violation of due process and principles of fair rulemaking. *Ass'n of Nat'l Advertisers, Inc. v. FTC*, 627 F.2d at 1170,

¹⁰⁰ See, e.g., Ex. B6: Letter from 30 U.S. Senators to Scott Pruitt, Attorney General of Oklahoma (Feb. 16, 2017) ("[A]s EPA Administrator, even if you were recused from participating in decision-making on the litigation itself, you may attempt to use your authority to direct EPA personnel to change EPA regulations to accomplish exactly the same outcome your lawsuits sought to accomplish. Such an action would be a clear attempt to bypass the spirit of the conflict of interest regulations."), <https://www.wyden.senate.gov/download/?id=4F2F7979-432B-4046-98C3-6EFEEE2DE627&download=1>.

¹⁰¹ See, e.g., Alex Guillén & Esther Whieldon, *Energy executives, secretive nonprofit raise money to back Pruitt*, Politico (Jan. 6, 2017), <https://www.politico.com/story/2017/01/scott-pruitt-epa-nonprofit-backers-233306>.

¹⁰² Standards of Ethical Conduct for Employees of the Executive Branch, Proposed Rule, 56 Fed. Reg. 33,778, 33,786 (July 23, 1991) (emphasis added).

1174. Because of this, any resulting rule repealing the CPP should be struck down on the ground that it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” or “contrary to constitutional right, power, privilege, or immunity.” 42 U.S.C. § 7607(d)(9)(A), (B); 5 U.S.C. § 706(2)(A), (B). EPA must therefore withdraw its proposed rule repealing the CPP.

Sincerely,

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Enclosures: Exhibits A1-A120
Exhibits B1-B12
Exhibits C1-C17

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January 9, 2018

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Exhibit 2



U.S. EPA Administrator Scott Pruitt ✓ shared U.S. Environmental Protection Agency's post.

February 18, 2017 · 🌐



U.S. Environmental Protection Agency ✓

February 18, 2017 · 🌐

Read U.S. EPA Administrator Scott Pruitt's first interview since his nomination to be our agency's administrator:



Scott Pruitt's Back-to-Basics Agenda for the EPA

Potomac Watch columnist Kimberley A. Strassel interviews Scott Pruitt, the recently confirmed administrator of the Environmental Protection Agency. He plans to follow his statutory mandate—clean air and water—and to respect...

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THE WEEKEND INTERVIEW

Scott Pruitt's Back-to-Basics Agenda for the EPA

The new administrator plans to follow his statutory mandate—clean air and water—and to respect states' rights.

By Kimberley A. Strassel

Feb. 17, 2017 6:57 p.m. ET

Republican presidents tend to nominate one of two types of administrator to lead the Environmental Protection Agency. The first is the centrist—think Christie Todd Whitman (2001-03)—who might be equally at home in a Democratic administration. The other is the fierce conservative—think Anne Gorsuch (1981-83)—who views the agency in a hostile light.

Scott Pruitt, whom the Senate confirmed Friday, 52-46, doesn't fit either mold. His focus is neither expanding nor reducing regulation. "There is no reason why EPA's role should ebb or flow based on a particular administration, or a particular administrator," he says. "Agencies exist to administer *the law*. Congress passes statutes, and those statutes are very clear on the job EPA has to do. We're going to do that job." You might call him an EPA originalist.

Not that environmentalists and Democrats saw it that way. His was one of President Trump's most contentious cabinet nominations. Opponents objected that as Oklahoma's attorney general Mr. Pruitt had sued the EPA at least 14 times. Detractors labeled him a "climate denier" and an oil-and-gas shill, intent on gutting the agency and destroying the planet. For his confirmation hearing, Mr. Pruitt sat through six theatrical hours of questions and submitted more than 1,000 written responses.

When Mr. Pruitt sat down Thursday for his first interview since his November nomination, he spent most of the time waxing enthusiastic about all the good his agency can accomplish once he refocuses it on its statutorily defined mission: working cooperatively with the states to improve water and air quality.

"We've made extraordinary progress on the environment over the decades, and that's something we should celebrate," he says. "But there is real work to be done." What kind of work? Hitting air-quality targets, for one: "Under current measurements, some 40% of the country is still in nonattainment." There's also toxic waste to clean up: "We've got 1,300 Superfund sites and some of them have been on the list for more than three decades."

Such work is where Washington can make a real difference. "These are issues that go directly to the health of our citizens that should be the absolute focus of this agency," Mr. Pruitt says. "This president is a fixer, he's an action-oriented leader, and a refocused EPA is in a great position to get results."

That, he adds, marks a change in direction from his predecessor at the EPA, Gina McCarthy. "This past administration didn't bother with statutes," he says. "They displaced Congress, disregarded the law, and in general said they would act in their own way. That now ends."



ILLUSTRATION: KEN FALLIN

Mr. Pruitt says he expects to quickly withdraw both the Clean Power Plan (President Obama's premier climate regulation) and the 2015 Waters of the United States rule (which asserts EPA power over every creek, pond or prairie pothole with a "significant nexus" to a "navigable waterway"). "There's a very simple reason why this needs to happen: Because the courts have seriously called into question the legality of those rules," Mr. Pruitt says. He would know, since his state was a party to the lawsuits that led to both the Supreme Court's stay of the Clean Power Plan and an appeals court's hold on the water rule.

Will the EPA regulate carbon dioxide? Mr. Pruitt says he won't prejudge the question. "There will be a rule-making process to withdraw those rules, and that will kick off a process," he says. "And part of that process is a very careful review of a fundamental question: Does EPA even possess the tools, under the Clean Air Act, to address this? It's a fair question to ask if we do, or whether there in fact needs to be a congressional response to the climate issue." Some might remember that even President Obama believed the executive branch needed express congressional authorization to regulate CO₂—that is, until Congress said "no" and Mr. Obama turbocharged the EPA.

Among Mr. Pruitt's top priorities is improving America's water infrastructure. "I'm going to be advancing this with the president, this idea that when we talk about investing in infrastructure, we need to look more broadly than bridges and roads," he says. "Look at what happened in Flint," the Michigan town where lead was found in the water supply. "Look at what is

happening in California,” where the Oroville Dam’s failure endangers tens of thousands of homes.

Mr. Pruitt defies the stereotype of the fierce conservative who wants to destroy the agency he runs. Nonetheless, he is likely to encounter considerable hostility. The union that represents the EPA’s 15,000-strong bureaucracy urged its members to besiege their senators with calls this week asking them to reject Mr. Pruitt’s appointment. (The effort didn’t have much effect: The vote was nearly along party lines, with only two Democrats and one Republican breaking ranks.) These bureaucrats have the ability to sabotage his leadership. That’s what happened to Mrs. Gorsuch. She went to war with the bureaucracy, and the bureaucracy won.

Mr. Pruitt wants progress. “I am committed to the role of this agency,” he says. “The administration is committed to the role of this agency. There is so much to accomplish. So its important that the career staff here at the EPA know this isn’t a disregard for the agency, it’s a restoration of its priorities.”

He says EPA employees ought to be able to embrace his priorities: “Think about how tangible it would be to the citizens of Washington state to finally have the Hanford nuclear site cleaned up. Think about how tangible it would be to the citizens along the Hudson River, to fix that pollution. These are some of the most direct things we can do to benefit our environment. That ought to get people at the agency excited. It ought to get people in this country excited.”

Mr. Pruitt has read those laws his agency is charged with enforcing, and they guide another major change: a rebalancing of power between Washington and the states. “Every statute makes clear this is supposed to be a cooperative relationship,” he explains, “that Congress understood that a one-size-fits-all model doesn’t work for environmental regulation, and that the state departments of environmental quality have an enormous role to play.”

He faults President Obama’s EPA for its “attitude that the states are a vessel of federal will. They were aggressive about dictating to the states and displacing their authority and letting it be known they didn’t trust the states.” Mr. Pruitt has numbers to back up the claim: During the combined presidencies of George H.W. Bush, Bill Clinton and George W. Bush, the EPA imposed five federal air-quality implementation plans on states. Mr. Obama’s EPA imposed 56.

States’ rights were the motivating impulse behind Mr. Pruitt’s lawsuits against the Obama administration, and he has plenty of examples of the benefits of letting states take the lead on pressing environmental problems. He mentions the progress that a state coalition has made on improving the habitat of the lesser prairie chicken, a threatened species. States have also clubbed together to tackle water pollution in the Chesapeake Bay.

“There is this attitude that has grown of late that Oklahomans and Texans and Coloradans really don’t care about the air they breathe or the water they drink,” he says. “That’s just not the case.” As a demonstration of his commitment to the devolution of power, he pledges to vigorously defend the portion of the EPA’s annual \$7 billion budget—roughly half—that goes to the states as funds and grants: “This is the front line of a lot of the work on air and water quality and infrastructure, and its very important that money continue.”

Mr. Pruitt argues that his renewed focus on statutes and federalism will help produce regulatory certainty, which will be good for business: “The greatest threat we’ve had to economic growth has been that those in industry don’t know what is expected of them. Rules come that are outside of statutes. Rules get changed midway. It creates vast uncertainty and paralysis, and re-establishing a vigorous commitment to rule of law is going to help a lot.”

His focus on jobs and the economy sets him apart from some past EPA administrators. “I reject this paradigm that says we can’t be both pro-environment and pro-energy,” he says several times during the interview. “We are blessed with great national resources, and we should be good stewards of those. But we’ve been the best in the world at showing you do that while also growing jobs and the economy. Too many people put on a jersey in this fight. I want to send the message that we can and will do both.”

Leading the EPA will be a role reversal for the former attorney general, in that it will place him on the receiving end of litigation. Lawsuits are proving to be the favorite weapon of the anti-Trump “resistance,” and environmental groups have declared their intention to bury Mr. Pruitt in court filings if he attempts to “roll back” their agenda. Yet he’s sanguine at the prospect.

“Most lawsuits against the EPA historically have come either because of the agency’s lack of regard for a statute, or because the EPA failed in an obligation or deadline,” he says. “But we protect ourselves by hewing to the statutes. It will prove very difficult for environmental groups to sue on the grounds that they think one priority is more important than another—because that is something that really is at the discretion of agency.”

Speaking of lawsuits, Mr. Pruitt says he plans to end the practice known as “sue and settle.” That’s when a federal agency invites a lawsuit from an ideologically sympathetic group, with the intent to immediately settle. The goal is to hand the litigators a policy victory through the courts—thereby avoiding the rule-making process, transparency and public criticism. The Obama administration used lawsuits over carbon emissions as its pretext to create climate regulations.

“There is a time and place to sometimes resolve litigation,” Mr. Pruitt allows. “But don’t use the judicial process to bypass accountability.” Some conservatives have suggested the same tactic might be useful now that Republicans are in charge. “That’s not going to happen,” he insists. “Regulation through litigation is simply wrong.” Instead, Mr. Pruitt says, the EPA will return to a rule-making by the book. “We need to end this practice of issuing guidance, to get around the rule-making procedure. Or rushing things through, playing games on the timing.”

For similar reasons, Mr. Pruitt plans to overhaul the agency’s procedure for producing scientific studies and cost-benefit analyses. “The citizens just don’t trust that EPA is honest with these numbers,” he says. “Let’s get real, objective data, not just do modeling. Let’s vigorously publish and peer-review science. Let’s do honest cost-benefit work. We need to restore the trust.”

Ms. Strassel writes the Journal’s Potomac Watch column.

Appeared in the February 18, 2017, print edition as ‘A Back-to-Basics Agenda for the EPA.’

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Exhibit 4

We've made some changes to EPA.gov. If the information you are looking for is not here, you may be able to find it on the EPA Web Archive or the January 19, 2017 Web Snapshot.



News Releases from Headquarters

EPA Administrator Pruitt Previews President Trump's Executive Order on Energy Independence

"We have made tremendous progress on our environment, we can be both pro-jobs and pro-environment."

03/26/2017

Contact Information:

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WASHINGTON – During an interview on "This Week with George Stephanopoulos," U.S. EPA Administrator Scott Pruitt previewed the President's upcoming executive order on the American Energy Independence. Administrator Pruitt laid out the core message of the pending action, saying that job growth and a healthy environment aren't at odds.

"George, the President is keeping his promise to the American people this week with respect to the Executive Order coming down on Tuesday-- the Energy Independence Executive Order. We need a pro-growth and pro-environment approach for how we do regulations in this country. For too long, we have accepted a narrative that if you're pro-growth, pro-jobs, you're anti-environment. That's not where we have been as a country. We have made tremendous progress on our environment, we can be both pro-jobs and pro-environment. The Executive Order will address the past administration's effort to kill jobs throughout the country through the Clean Power Plan."

Watch the interview here: <http://abcnews.go.com/topics/news/whitehouse/scott-pruitt.htm>

R042

Exhibit 5



Administrator Pruitt ✓

@EPAScottPruitt

Follow



On "This Week," I previewed how President Trump will put forward a plan to cut job-killing regulations.



9:37 AM - 26 Mar 2017

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Exhibit 6



U.S. EPA Administrator Scott Pruitt ✓

March 26, 2017 · 🌐

President Trump is going after burdensome regulations. I explained how on "This Week."

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Exhibit 7

EPA Administrator Scott Pruitt: “The Days Of ‘Sue And Settle’...Have Ended.”

EPA Administrator Scott Pruitt joined me this morning:

Audio:

[03-29hhs-pruitt](#)

Transcript:

HH: Aside from President Trump, the man who is doing the most on the domestic policy agenda in Washington, D.C. is the administrator of the Environmental Protection Agency, Scott Pruitt, formerly the attorney general of Oklahoma, and a longtime friend of mine. You heard me say over and over on this program how excited I was that he was nominated, how hopeful I am for what he does at the EPA. He joins me now for the first time in his position as administrator of EPA. I'm going to have to get used to calling you Administrator Pruitt as opposed to General Pruitt, General Pruitt. Welcome, good morning.

SP: (laughing) Well, good morning to you.

HH: You are making the New York Times' head explode, you and the President. And I want to, instead of focusing on the reaction, ask you first to state what has EPA done on two things – the Clean Power Plan and the Waters of the United States?

SP: Well, we have taken two very significant steps. We've started the rulemaking process to provide clarity and regulatory certainty with respect to WOTUS, Waters of the United States, and the Clean Power Plan. I mean Hugh, as you know, both with respect to the WOTUS and the Clean Power Plan, the courts have intervened, unprecedented. The U.S. Supreme Court issued a stay against the Clean Power Plan because of its likely unlawfulness. The previous administration reimagined its authority under the Clean Air Act to regulate CO2 with stationary sources in a way that just isn't consistent with the framework that Congress passed. And with WOTUS, the Waters of the United States, this agency went out and reimagined the definition of what a water of the United States equals so it included puddles and dry creek beds all over the country. It was a power issue. Really, both of these issues were about power. It's about displacing state authority, displacing the oversight that states have in industry as far as providing clean air and clean water, and trying to make all decisions from here in Washington, D.C. So we have begun a progress on both fronts to undo, rescind, dial back those unlawful actions and to provide clarity to the marketplace.

HH: Now Administrator Pruitt, I want to remind people you were an attorney general. You are a sworn officer of the law. You know what you are doing. And what you are doing is via the rulemaking process, the Administrative Procedures Act. Will any regulatory move you make, will you commit that it will be done via notice and comment rulemaking appropriately under the APA and not in the cover of darkness, not a 30 second strike with a phone and a pen?

SP: Absolutely. In fact, one of the things we've done internally, Hugh, is send a memo out to our regions and also to headquarters to say that the days of sue and settle, the days of consent decrees governing this agency where the EPA gets sued by an NGO, a third party, and that third party sets the agenda, sets the timelines on how we do rulemaking, and bypassing rulemaking entirely have ended. And we've sent that out across the agency.

HH: Now can we pause on that, because although some conservatives might want to rush forward, and I am actually attracted to sue and settle on some, because of the Endangered Species Act, the ridiculous abuse. But I can set it aside if we publicly set it aside and explain to people why the rule of law compels that. So take a swing at that, if you will, Administrator Pruitt.

SP: Well, I mean, look, the Congress has adopted the Administrative Procedures Act for a reason. When regulators make decisions in Washington, D.C. that impact citizens and industry across the country, we need to hear from them. We need to understand how it's going to apply in Texas and Oklahoma and Kansas, and all over the country. And so it's an opportunity. When you file a rule, it's a proposed rule, and you take comment for a period of time, and it's the obligation of the agency to respond to that comment, to deal with those issues that are raised by respective states and citizens and industry across the country. And then you finalize the rule with that information in hand. When you use the courts, you know, when someone sues, a third party, and NGO, Sierra Club or otherwise, sues the EPA and then the EPA outside of the regulatory process enters into something called a judgment consent decree and then changes statute, changes timelines, changes obligations under a statute. That's regulation through litigation. That's an abuse of the process. And whether it's for conservative causes or liberal causes, that's still a breach of the process and should not be done.

HH: You see, that is originalism, and I want now to compliment whoever on your team, and if it was you, you, for coming up with the idea of EPA originalism, because the Clean Power, the Clean Air Act, the Clean Water Act, the Endangered Species Act, the National Environmental Policy Act, are all Republican-authored laws...

SP: Yes.

HH: ...put forward by Richard Nixon and signed by Richard Nixon in order to advance the Teddy Roosevelt conservationist cause. But they've gone far beyond their boundaries, like the Waters of the United States rule on puddles contravening even the Rapanos decision issued by, you know, if you use Justice Kennedy's opinion, the narrowest view. It's out of control, and I don't think the country quite gets what EPA originalism means and how important it is.

SP: No, you, I really appreciate you saying that, because the core mission of the EPA is very important. There are air quality issues. There are water quality issues that cross state lines, and the importance of being that national agency that ensures that we are respecting those kinds and focused upon those kinds of that relief is very important and a key mission of the EPA. But what's happened in the last several years, as I indicated earlier, is a reimagining of authority,

an assertion of authority and power that is just inconsistent with the framework. You mentioned, you know, process and how important that is. The rule of law is the other part that's very important, Hugh, because really what you're saying is that Congress has spoken and said EPA, you have this authority under the Clean Water Act. You have this authority under the Clean Air Act, and the TSCA and all these other types of environmental laws have been passed, but no more. And you should work with the states and partner with them to achieve those outcomes. What's happened over the last several years is just simply a disregard of that, and that's what we're trying to get back to.

HH: Congressman Henry Waxman was so adamant about trying to pass a global warming climate change bill, and his own caucus rebuked him and would not send it forward, and the Senate would not accept it, and it is not the law. And so President Obama put forward the Clean Power Plan, which I believe is deeply illegitimate because of the fact it followed the rejection of the effort to pass a law. But you, you know, the environmental reporter club really doesn't want to hear that, Administrator Pruitt. Are you able to get the message through that you're about the law, not about their policy agenda?

SP: Yes. I mean, Lord Acton talked about political atheism, and that's exactly what you're describing, is that results are all that matter to these groups. Process and rule of law should be disregarded. And that's something that we have to, you know, what happens when you take that approach? Well, what we've had in the last several years – uncertainty. You're not advancing the environment. You're not actually advancing clean air and clean water, because when you do those things, you have litigation. Litigation causes uncertainty in the marketplace. Those that are regulated don't know what's expected of them, so they can't invest and meet the obligations to achieve clean air and clean water. So it's a mess. And so really what happened yesterday with the Clean Power Plan is cleaning up the mess, you know, clearing the decks, if you will. We've begun that process to rescind that type of approach, and then set a new path forward. You know, you mentioned CO2, Hugh. I mean, there are two major points on the continuum. Massachusetts V. EPA, a Supreme Court case in 2007 that said what, that the EPA had to make a decision on whether to regulate CO2, not that it had to, but it had to make a decision whether it should. And then in 2009, there was an endangerment finding that was issued by this agency. The Congress has never spoken on this issue. And so there's a very fair and fundamental question that needs to be asked. Are the tools in the toolbox to address the CO2 issue? This agency has tried twice to do so – the tailoring rule, which was struck down in the UR decision, and the Clean Power Plan, which the Supreme Court issued an unprecedented stay to stop its enforcement. So those questions have to be asked and answered. Those in Congress that believe that this is a priority issue perhaps need to reevaluate the authority under the Clean Air Act and see if it actually the tools are in the toolbox. But we're going to have a very humble view of our actions under the Clean Air Act. We're going to operate within the framework, respect state interest and partnership, and achieve very tangible outcomes on the environment for both air, water and land.

HH: You know, Administrator Pruitt, this is why the left does not like you very much, is you are very articulate in putting this forward and very persuasive in your defense of it. And therefore, they're going to come after you hammer and tong. And I know you know that, but they've been doing that for years. Tell me about your relationship with President Trump. You've been in the Oval a lot with him talking about this stuff. Is he fully committed to this regulatory reform agenda to get back to the rule of law?

SP: Yeah, every time the President sees me, he says you're cleaning out the arteries. So, and look, we can be pro-growth, pro-jobs and pro-environment, and that's what he and I have talked about. And only this past administration made us choose sides. And each administration prior recognized that America is wise enough, innovative enough, committed enough to the environment. Wealthy nations take care of the environment. So as we promote growth, as we promote wealth, as we become more wealthy as a country, we take better care of the environment. We can do both. You know that old saying you can't have your cake and eat it, too? Whoever says that doesn't know what you're supposed to do with cake. And that's what we're focused on, Hugh, is making sure we have a pro-growth, pro-jobs agenda, and a pro-environment agenda, and we can achieve both.

HH: And I would add a pro-rule of law agenda. This actually transcends EPA, but you are part of this. It's that we just have to have everyone realize the Congress writes the laws, not agencies, 45 seconds to you, Administrative Pruitt.

SP: Well, it's 5th grade civics. I mean, it really is 5th grade civics. The executive branch exists to enforce the laws as passed by whatever legislative body, whether it's at the state level or the federal level. And we don't have the authority to fill in the gap. We don't have the authority to pinch hit for Congress. We don't have the authority to reimagine our authority under the Clean Air Act or Clean Water Act. So getting back to the core mission of the agency, providing very tangible relief to those across the country, 1,300 Superfund sites across the country that need cleanup, some of which have been on a national priority list for 30-40 years, it doesn't sound like much of a priority list to me. So you know, the port of Portland and Butte, Montana, and Columbia Falls, Montana, I mean, some of the most pristine areas of our country, let's get back to the business of providing real tangible environmental benefits at the same time respecting rule of law.

HH: Scott Pruitt, great to talk to you. Come back early and often, Administrator Scott Pruitt of the EPA.

End of interview.

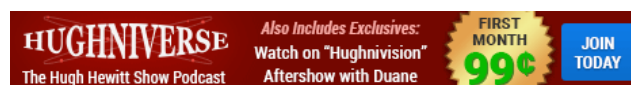


Exhibit 8



Scott Pruitt on balancing environmental, economic priorities; Mitch McConnell on Gorsuch nomination, health care reform

Published April 02, 2017

This is a rush transcript from "Fox News Sunday," April 2, 2017. This copy may not be in its final form and may be updated.

CHRIS WALLACE, FOX NEWS ANCHOR: I'm Chris Wallace.

Congress's investigation into links between the Trump and Russia gets sidetracked by questions of whether a committee chair is working to help the White House.

(BEGIN VIDEOTAPE)

REP. ADAM SCHIFF, D-CALIFORNIA: There's no question that there is a cloud over the investigation.

SEAN SPICER, WHITE HOUSE PRESS SECRETARY: What occurred between Chairman Nunes and coming here was both routine and proper.

REP. JASON CHAFFETZ, R-UTAH: It's very mysterious to me, though, why all of a sudden, General Flynn is suddenly out there saying he wants immunity. I don't think Congress should give him immunity.

WALLACE: We'll get the latest on what the president calls a witch hunt and what some Democrats are calling a cover-up when we sit down with Senate Majority Leader Mitch McConnell.

Then, in the wake of the GOP's defeat on health care, President Trump moves ahead with the rest of his agenda, this week rolling back Obama climate change policies.

DONALD TRUMP, PRESIDENT OF THE UNITED STATES: My action today is the latest in a series of steps to create American jobs and to grow American wealth.

WALLACE: We'll discuss the president's move to revive the fossil fuel industry with Scott Pruitt, head of the Environmental Protection Agency. It's a "Fox News Sunday" exclusive.

Plus, President Trump attacks members of his own party, but the House Freedom Caucus fights back.

REP. JUSTIN AMASH, R-MICHIGAN: It may allow a child to get his way, but that's not how our government works.

WALLACE: We'll ask our Sunday panel about the growing civil war inside the GOP.

And our "Power Player of the Week," going even deeper into space.

UNIDENTIFIED MALE: This telescope is 100 times more sensitive than the Hubble.

WALLACE: All, right now, on "Fox News Sunday."

(END VIDEOTAPE)

WALLACE: And hello again from Fox News in Washington.

The White House is fighting back against the investigation into possible links between the Trump campaign in Russia, claiming the press and Congress should focus instead on allegations the Obama administration conducted political surveillance of the Trump team.

In a moment, we'll discuss the fallout with Senate Majority Leader Mitch McConnell.

But, first, let's bring in Fox News correspondent Kevin Corke with the latest from the White House -- Kevin.

KEVIN CORKE, FOX NEWS CORRESPONDENT: Chris, as is usually the case in Washington scandals, it's the cover-up and not the crime that usually ensnares. And there are legitimate questions about that with respect to the ongoing controversy over what House Intelligence Committee Chair Devin Nunes know about possible surveillance of Trump aides and how he came about getting that information, news you may recall claim to have such compelling information he needed to rush to the White House and tell the president himself. But he did that without sharing what he found with fellow members of the Intelligence Committee, which is highly unusual.

This as FOX News has confirmed that Nunes received key information from a pair of White House aides, calling into question not only his relationship with the administration, but his ability to be impartial. As this investigation unfolds, concerns further complicated by his decision to delay former Acting Attorney General Sally Yates from testifying about possible links between Russia and the Trump campaign, hearings that would have included former Director of National Intelligence James Clapper and former CIA Director John Brennan.

A "Washington Post" report you may have heard about suggested the Trump administration was behind that delay, something the White House strongly denies.

(BEGIN VIDEO CLIP)

SPICER: I hope she testifies. I look forward to it. It was never -- let's be honest, the hearing was never -- was actually never notified. If they choose to move forward, great. We have no problem with her testifying, plain and simple. The report in "The Washington Post" is 100 percent false.

(END VIDEO CLIP)

CORKE: Chris, Speaker Paul Ryan said that Nunes told him his source has a whistleblower-type information. We'll see what that means.

We don't know at this point, but what we certainly know is that Mike Flynn, the former national security advisor, had his rights violated in this saga. We'll see if he's able to testify with immunity. As time will tell, we will see how that all turns out -- Chris.

WALLACE: Kevin Corke reporting from the White House -- Kevin, thanks for that.

Joining me now from Kentucky to discuss this and much more, Senate Minority Leader Mitch McConnell.

Senator, welcome back to "Fox News Sunday."

SEN. MITCH MCCONNELL, R-KY, MAJORITY LEADER: Good morning.

WALLACE: Let's start with Russia. You were, last month, briefed by FBI Director Comey as part of the so-called Gang of Eight congressional leaders.

Have you seen any evidence of collusion between Russia and the Trump campaign or any evidence that the Obama administration did anything improper in surveilling the Trump team?

MCCONNELL: Well, Chris, as you know, I asked the Senate Intelligence Committee to investigate all of these allegations. Senator Burr and Senator Warner are going forward on a very constructive bipartisan basis.

The only thing I asked them to do is to find out what happened. And once they found out what happened, hopefully, they will be able to a unanimous report and we'll all know what, if anything, went on based on these allegations.

WALLACE: Do you worry -- and, obviously, we don't know what went on -- do you worry, though, that this continuing controversy is interfering with the president's ability to push his agenda?

MCCONNELL: Well, it's certainly not helpful. The president's actual agenda has been really quite constructive. All the efforts to begin the deregulatory effort we need to get the economy moving again, a fabulous Supreme Court nominee that I know we'll be discussing later, moving it forward on tax reform.

This is just what the country needs to get the kind of growth rate that would produce jobs and opportunity for the next generation.

WALLACE: I want to ask you one last question about Russia, too, before we get to the Supreme Court justice.

Given all of the politics on all sides, the continuing controversy, why not appoint an independent, 9/11-style commission or have the Justice Department appoint a special counsel so you have a truly non-partisan, independent investigation that everybody can trust?

MCCONNELL: It's just not necessary, based on what we know now. We've got a bipartisan investigation underway. It's called the Senate Intelligence Committee. Senator Burr and Senator Warner had a joint press conference this week. I think they clearly laid out that they're going wherever the facts take them.

We don't need yet another investigation. We know the FBI is looking at it from their perspective. It's being handled appropriately and it will be handled well.

WALLACE: You have promised that the Senate will confirm Judge Neil Gorsuch to the U.S. Supreme Court by Friday.

Two questions. One, do you stand by that schedule, a Friday vote? And two, do you have the eight votes of Democrats so that you can beat a filibuster?

MCCONNELL: Well, look, Judge Gorsuch deserves to be confirmed. You know, unanimously well qualified by the American Bar Association. My counterpart, Senator Schumer, once called that the gold standard.

In the majority, 99 percent of the time. Ninety-seven percent of his rulings were unanimous. Only reversed one time in a case in which he participated by the Supreme Court. President Obama's former acting solicitor general said there's no principle reason to oppose him. That's why he will ultimately be confirmed.

Exactly how that happens, Chris, will be up to our Democratic colleagues. I think it is noteworthy that no Supreme Court justice has ever, in the history of our country, been stopped by a partisan filibuster, ever.

And, in fact, the business of filibustering judges is a fairly recent invention, ironically, of the now minority in the Senate, the Democrats.

WALLACE: (INAUDIBLE)

MCCONNELL: And in particular, Senator Schumer, who convinced his colleagues, after Bush 43 got elected, to start routinely filibustering judges.

WALLACE: Let me ask you, though, some specific questions. Will there be a confirmation vote by Friday?

MCCONNELL: Yes, we're going to confirm Judge Gorsuch this week.

WALLACE: Secondly, do you have the eight Democratic votes, as we sit here today, to avoid a filibuster?

MCCONNELL: Well, I don't think we know. There are Democrats who have not yet announced their position. I assume, Chris, during the course of the week, what you asked me will become revealed by announcements of Democrats who have not yet set out what they're going to do.

WALLACE: You say that he'll be confirmed one way or the other, so does that mean if you can't stop a filibuster, that you will go to the nuclear option and change the Senate rules so that you can cut off debate with 51 votes and confirm him?

MCCONNELL: Look, what I'm telling you is that Judge Gorsuch is going to be confirmed. The way in which that occurs is in the hands of the Democratic minority. And I think during the course of the week, we'll find out exactly how this will end.

But it will end with his confirmation.

WALLACE: Let me pick up on that. Back in 2013, the Democrats invoked the nuclear option to allow a simple majority, 51 votes, on confirmation of lower court judges. At that time, you said that was a big mistake.

Here you are, sir.

(BEGIN VIDEO CLIP)

MCCONNELL: You think this is in the best interests of the United States Senate and the American people to make advise and consent, in effect, mean nothing?

Obviously, you can break the rules to change the rules to achieve that. But some of us have been around here long enough to know the shoe is sometimes on the other foot.

(END VIDEO CLIP)

WALLACE: Now, you're prepared to do the same thing, break the rules -- change the rules to break the rules.

And the question I have is, I understand you want Neil Gorsuch on the court, but is it worth it?

Because what you're basically doing is destroying part of what makes the Senate special, the need to reach out to a bipartisan majority?

MCCONNELL: Well, the answer to your question is, of course, I was upset about their effort to break the rules in order to change the rules.

But the rest of the story is, when we came to the majority a year and a half later, we discussed whether or not we should change it back.

And I argued against that precisely because the way we ended up was the way the Senate had operated on confirmations for 230 years, down to 2000.

This business of filibustering judges and cabinet appointments is a recent phenomenon. Even though it was always possible, Chris, to filibuster executive branch appointments, it just wasn't done.

And the most conspicuous example of that was the Clarence Thomas nomination. He was confirmed for the Supreme Court 52-48. Just for your listeners to know, all it takes to get a filibuster in the Senate is for any one of the 100 senators to say you have to get 60 votes.

The most controversial Supreme Court nomination in history, not a single senator, not one, not Ted Kennedy, not Joe Biden, no one said you had to get 60 votes.

So even though I very much disliked the way the Senate Democrats did this in 2013, it, in fact, it restored the practice -- the practice and the custom of the Senate down to 2000.

WALLACE: The government runs out of money on April 28, which means we could have another government shutdown on the 29th, which just coincidentally, would be Donald Trump's 99th day in office.

How confident are you that you and Congress can avoid a government shutdown?

MCCONNELL: Yes, I'm very confident. The two appropriations committees are working on the bills on a bipartisan basis. We'll be talking to Senate Democrats. They will be relevant to this process. It will require 60 votes.

I'm confident Senate Democrats are not going to want to shut down the government. They used to use that against us all the time. And I think it worked pretty effectively for them.

And I can't imagine they would want to acquire the government shutdown label.

WALLACE: But, look, there's some argument, they'll say it's you, the Republicans, who could make the shutdown happen. There are a number of priorities that President Trump and other Republicans want that Democrats find unacceptable.

I want to go through a couple of them with you, Senator.

One and a half billion dollars to start building the wall with Mexico, a major defense spending increase and domestic spending cuts. And some House conservatives want defunding of Planned Parenthood.

Question, are you prepared to risk a government shutdown over any of those issues?

MCCONNELL: Look, we're going to negotiate all of those items in the context of this funding bill, which will fund the government through September 30. We'll be debating these issues again for next year's appropriations, we can start October 1.

But we'll be able to work all that out. Nobody wants a government shutdown. I think the Senate Democrats know that every time we've had a government shutdown situation, it's been the Congress that's been blamed, and not the president.

So I would advise President Trump, don't worry about them sticking that label on you. Congress owns the government shutdown brand. And there's no incentive, frankly, for either side to go to the brink. I think we're going to be able to work all this out later this month.

WALLACE: But just to push on one of them, because President Trump says he wants that \$1.5 billion to start building the wall, you would not risk a government shutdown by insisting that be in a spending bill?

(LAUGHTER)

MCCONNELL: What I'm saying, Chris, is we're going to work all this out on a bipartisan basis. The Democrats will be fully involved in the discussion. So will the president. We'll work it out and avoid any kind of catastrophic event.

WALLACE: Senator McConnell, that's a helpful note on which to end.

Thank you. Thanks for your time. It's always good to talk with you, sir.

MCCONNELL: Thank you.

WALLACE: Up next, the man behind President Trump's sweeping effort to roll back Obama climate change policies, EPA chief, Scott Pruitt.

(COMMERCIAL BREAK)

WALLACE: A look at Nationals Park, where Washington's finest have opening day tomorrow for the baseball season. But, there will be no presidential first pitch as the White House declined an invitation.

Mr. Trump, who once called global warming a hoax, signed a sweeping executive order this week calling for regulators to rewrite President Obama's climate change policies.

Joining me now from Oklahoma is Scott Pruitt, Mr. Trump's new administrator for the Environmental Protection Agency.

Mr. Pruitt, welcome to "Fox News Sunday."

SCOTT PRUITT, EPA ADMINISTRATOR: Good morning, Chris. How are you?

WALLACE: Good.

When the Obama EPA announced its Clean Power Plan, it said that the reduction in carbon pollution would have the following health benefits. I want to put them up on the screen.

By 2030, it said there would be 90,000 fewer asthma attacks a year, 300,000 fewer missed work and school days, and 3,600 fewer premature deaths a year.

Without the Clean Power Plan, how are you going to prevent those terrible things?

PRUITT: Well, Chris, I think what's important this past week is to recognize that the president is keeping his promise to the American people to rollback regulatory overreaches that have been occurring the last couple of years. And as you know, the Clean Power Plan is subject to a U.S. Supreme Court state. The steps have been taken by the EPA historically, they've equally been challenged several times with respective CO2 regulation. And each of those times the Supreme Court and courts have said that the power that has been used has been an overreach.

And so, the president is keeping his promise to deal with that overreach, Chris. It doesn't mean that clean air and clean water is not going to be the focus in the future. We're just going to do it right within the consistency of the framework that Congress has passed. Now, I think that's very important to recognize.

WALLACE: But, sir, you're giving me a regulatory answer, a political answer. You're not giving me a health answer. I talked about 90,000 fewer asthma attacks, 300,000 fewer missed days in school and work.

The Obama Clean Power Plan called -- said that carbon pollution from the power sector would be reduced by 30 percent. It would be one-third lower than it was in 2005.

Here's what the American Lung Association says, "Half of all Americans now live in counties with unhealthy air." You talk about all the regulatory overreach, but the question is, there are 166 million people living in unclean air and you are going to remove some of the pollution restrictions, which will make the air even worse.

PRUITT: Well, Chris, a couple things, we are actually pre-1994 levels with respect to our CO2 footprint. So, this country is doing far better than most across the globe. As you know, also since 1980, we've got a 65 percent reduction in those key air pollutants, SOx and NOx and particulate matter and ozone, while at the same time growing our economy.

I think what's happened the last several years is that we've adapted to and adopted this previous administration's views that if your pro-jobs and pro-growth, you can't be pro-environment. If you're pro-environment, you can't be pro-growth and pro-jobs. And that simply is not the way we've done business as a country.

WALLACE: But, sir --

PRUITT: Now, the EPA had --

(CROSSTALK)

WALLACE: If I may, you are talking about these reductions, but even with those reductions, the fact is that according to the American Lung Association, which would have an interest in this, 166 million people are living in unsafe air. And if you do away with the Clean Power Plan and boost -- as the president promises -- coal production, then you're going to make the air even worse. What about those 166 million people?

PRUITT: Chris, I think what you are referring to is, we have about 40 percent of the country in non-attainment right now, those key air pollutants under our ambient air quality standards, which are outside of the CO2 discussion. And I agree wholeheartedly that we need to focus our attention at making sure we make progress there. In fact, that's one of the key priorities of the administration, is to improve air quality to be on the 60 percent attainment that we see.

That's not been a focal point over the last several years as much as it should be. So, I think --

(CROSSTALK)

WALLACE: And you think -- and let me just ask, and you think that rewriting, in effect, doing away with the Clean Power Plan is going to improve air quality which you say is a major goal?

PRUITT: Look -- look, Chris, I mean, I think what we have to keep in mind is that EPA only possesses authority that the Congress gets it. The EPA has tried twice to regulate CO2. One, with the tailoring rule, and the Supreme Court struck it down in the UR decision, and secondly, the Clean Power Plan that the president introduced in 2015, which is subject to a U.S. Supreme Court stay.

As much as we want to see progress made in clean air and clean water, with an understanding that we can also grow jobs, we had to do so within the framework of what Congress has passed. The tools have to be in a tool box.

The past administration just made it up. They re-imagined authority on a statute. There's a commitment with the new administration to have a pro-growth, pro-environment approach to these issues, but also to respect rule of law.

You talked about many times, the regulatory overreach, about executive fiat that the previous administration engaged in. We can't continue that process because what happens, Chris, is clean air is not advanced because you have litigation such as the Clean Power Plan. You have stays of enforcement against that Clean Power Plan and there's no progress being made with clean air and we are also spending money on litigation. So --

(CROSSTALK)

WALLACE: That goes both ways, sir, because the fact is, you are already in litigation on the attempt to reverse the Clean Power Plan. You are already getting sued on that. So, there's litigation either way.

Let me -- let me pursue this issue, because President Trump is going to sit down this week with Chinese President Xi. And for years, American presidents have been pushing Chinese leaders to improve greenhouse gas emissions, to reverse them. Are you comfortable seeing the roles were reversed this week where it will now be the Chinese president pushing President Trump to cut down on pollution?

PRUITT: Look, I mean, Chris, it's quite -- when you look at what happened in Paris, at the Paris agreement and Paris accord, China and India weren't required to take any steps toward reduction of CO2 until the year 2030. That discussion, to think that China and India are more committed to the CO2 reduction in this country I think is quite -- quite false.

WALLACE: Well, can I --

(CROSSTALK)

PRUITT: As I indicated earlier, we are pre-1994 levels, and do you know why? Largely because of innovation and technology, hydraulic fracturing and horizontal drilling, because there's been a conversion to natural gas in the generation of electricity. And what's important, Chris, in my view is that utility companies across this country that are generating electricity, you ought not have the regulator in Washington, D.C., in this instances the EPA picking winners and lawyers, saying to the American people that we're going to be anti-coal, anti-fossil fuel as we generate electricity. That's bad for America.

Fuel diversity is very important. We have shown leadership. As I've indicated, we've made great progress with air quality since 1980. We made progress in the CO2 reduction side as well, at the same time, growing jobs. And so --

WALLACE: If I may --

PRUITT: -- we have nothing to be apologetic about as a country. And the neither does the president (ph).

(CROSSTALK)

WALLACE: Well -- I'm sorry, say that again?

PRUITT: We have nothing to be apologetic about as with respect to leadership that we've shown as a country with respect to these key issues. And the president doesn't either. He shown great leadership and pro-growth, pro-jobs, and pro-environment, and we can do both.

WALLACE: Well, let me ask a specific question on that. You talk about the Paris Accords, which do call for reductions by China and other countries by 2030. And, in fact, China has already begun reducing its carbon emissions from coal power plants as you well. President Xi in January said that the Paris Climate Accord should remain enforced.

As the chief environmental officer for the Trump administration, can you make the same commitment to the Paris climate accords?

PRUITT: Engagement internationally is very important. To demonstrate the leadership that we have shown on this issue with China and India and other nations is very important. Those discussions should ensue.

But what Paris represents is bad deal for this country. We frontloaded our costs. China and India backloaded theirs. That caused a contraction in our economy.

Look, we've shown leadership on this issue in the key way, Chris, and we're going to continue that.

(CROSSTALK)

WALLACE: Sir, the point is that the president is more committed to Paris than the United States is.

PRUITT: But is he more committed in action and deed? And the answer is no.

We've demonstrated through the steps we've taken already, the pre-1994 levels, because of that technology. We can burn coal in clean fashion. We shouldn't have this commitment by the U.S. government to say that fossil fuels are bad. Renewables are good.

The U.S. EPA and the U.S. government should not pick winners and losers, Chris. And that's what happened in the last several years.

WALLACE: You had a famous --

PRUITT: And we demonstrated that leadership.

WALLACE: I'm sorry to rush you along, but we do have limited time, sir. I say respectfully.

You had a famous exchange a couple of months ago -- actually last month that I would like to play right now.

(BEGIN VIDEO CLI)

JOE KERNER, CNBC ANCHOR: Do you believe that it's been proven that CO2 is the primary control knob for climate? Do you believe that?

PRUITT: No, I would not agree that it's the primary contributor to the global warming that we're seeing.

(END VIDEO CLIP)

WALLACE: Mr. Pruitt, there are all kinds of studies that contradict you. The U.N.'s panel on climate change says it is at least 95 percent likely that more than half the temperature increase since the mid-20th century is due to human activities. NOAA, that's our own, National Oceanic and Atmospheric Administration, says there's more carbon dioxide now than in the last 400,000 years, and NOAA says 2015 and 2016 are the two hottest years on record.

Mr. Pruitt, are we supposed to believe that that's all a coincidence?

PRUITT: No, look, Chris, I said to the process -- in my confirmation process, individual senators as well, that there's a warming trend, the climate is changing. And human activity contributes to the change in some measure.

The real issue is how much we contribute to it and measuring that with precision. But then also, what is the process as far as response, what can we do about it, the tools in the toolbox to address the CO2 issue? And you can't just simply, from the EPA perspective, make that up. You can't do with the president did previously with the Clean Power Plan, President Obama, and his administration, to simply re-imagine authority. That's why we have a U.S. Supreme Court stay against the Clean Power Plan. That's why President Trump is dealing with that regulatory overreach and charting a new path forward to deal with these issues within the framework of Clean Air Act.

WALLACE: But, sir, you are kind of sugarcoating what you said. You said there, I would not agree that carbon -- CO2 is a primary contributor to global warming. And the question I have is, what if you are wrong? What if, in fact, the earth is warming? What if it is causing dramatic climate change and that we as humans through carbon emissions are contributing to it?

Simple question, what if you're wrong?

PRUITT: Look, let me say to you, CO2 contributes to greenhouse gas, it has a greenhouse gas effect and global warming, as methane does and other types of gases. The issue is, how much we contribute to it from the human activity perspective and what can be done about it from a process perspective, Chris.

WALLACE: But don't you think the fact that we have these coal power plants belching carbon emissions into the air, you don't think that had -- plays a role?

PRUITT: I think that we've done it better than anybody in the world at burning coal clean, in a clean fashion. The innovative and technological advances that we've seen along with natural gas production and generating electricity, it all contributed to a CO2 footprint that's pre-1994.

Again, we have done better than anybody in the world, and growing our economy and also being a good steward of our environment. We have nothing to be apologetic about. We're going to operate within the framework of the Clean Air Act to deal with these issues and make sure that we advance clean air, clean water, not just with this respect to CO2, but with those key air pollutants under the ambient air quality standard program that we have.

WALLACE: Let me ask you one -- let me ask you one's last question, and again I apologize, sir. Because it goes to the whole question of commitment to trying to improve the environment. Under the president's new budget, the EPA is cut 31 percent, that is more than any other agency.

And I want to put up some of the cuts that are included in the president's budget. Here are some of the 56 programs that would be scrapped: Great Lakes restoration, water runoff control for farmers, pesticide safety.

What does that say about the commitment of this administration and you to cleaning up the environment when you're making a 31 percent cut in your agency and cutting things like that, water runoffs for farmers?

PRUITT: Well, part of -- part of the issue, Chris, is that over the last several years, there has been a lack of commitment to state partnership. You know, we have state Departments of Environmental Quality across the country have the resources and the expertise to deal with clean water and clean air issues. And so, renewing that partnership --

(CROSSTALK)

WALLACE: Are you sure they are going to pick up the slack and might water safety, water runoff, and pesticide safety, and Great Lakes restoration, might that all just go by the wayside?

PRUITT: I've met with several governors, in fact within the first week of being on the job, I met with 20-plus governors. And those governors across the country are committed to pro-jobs and pro-environment. They have to serve their people in those states as well.

And I will tell you this, Chris, this attitude in Washington, D.C., that people in Texas and Oklahoma and Kansas and Colorado and the rest of the country don't care about the water they drink or the air they breathe and are not going to take care of the air and the water locally and states, I just don't believe that. That narrative is something we reject and we look forward to partnering with states across the country to achieve good outcomes.

WALLACE: Mr. Pruitt, thank you. Thanks for joining us. Please come back. It's an important conversation and we'd love to continue it with you, sir.

PRUITT: Thanks, Chris.

WALLACE: Up next we'll bring in our Sunday group to discuss the growing Russia controversy. The Trump team says the real scandal is what the Obama administration did.

(COMMERCIAL BREAK)

WALLACE: Coming up, the battle to confirm the president's Supreme Court nominee, Judge Neil Gorsuch, next week.

(BEGIN VIDEO CLIP)

SEN. CHUCK SCHUMER, D-NY, MINORITY LEADER: If the nuclear option is involved, it's because our Republicans in the Senate chose to do so.

(END VIDEO CLIP)

WALLACE: We'll ask our panel about the threat of a Democratic filibuster, coming up on "Fox News Sunday."

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

SPICER: And it should be very concerned to people that an administration or people in an administration, people serving in government who are providing classified information, who are given clearance in the trust of the United States government, misused, mishandled, and potentially did some very, very bad things with classified information.

(END VIDEO CLIP)

WALLACE: White House spokesman Sean Spicer pushing back on reporters' questions about the Trump campaign and Russia, saying the real focus should be on the Obama administration's leak of classified information about the Trump transition.

And it's time now for our Sunday group. Laura Ingraham, editor of Lizette and a Fox News political analyst, Gerald Seib from The Wall Street Journal, Julie Pace, who covers the White House for the Associated Press, and former national security council staffer Gillian Turner.

Well, Laura, the president and his team dug in deeper this week on this whole Russia scandal and their argument now is that the Obama administration surveilled the Trump team and then spread that classified information for political purposes. Is this helping or hurting the White House?

LAURA INGRAHAM, FOX NEWS POLITICAL ANALYST: Well, I think they know that as long as this investigation goes on, the harder it is for them to push on a number of fronts their domestic agenda, foreign policy, because I think a lot of folks do believe that the Russia focus is meant in part to delegitimize the presidency of Donald Trump. So when Sean Spicer makes that point, I think he's right, if -- if Grassley's letter that he sent -- Charles Grassley sent a letter a few days ago --

WALLACE: Senator Grassley.

INGRAHAM: Yes, Senator Grassley, who you don't want to tangle with. I mean when he -- when he -- he's like a dog on a bone when he gets on an issue. He sent a letter to the FBI about Andrew McCabe, who's the number two person at the FBI. Andrew McCabe's wife received \$700,000 in political contributions arranged and facilitated by none other than Clinton friend Terry McAuliffe. And his concern is that all documents that are -- be preserved, all communications better be turned over about what Andrew McCabe knew and when he knew it about the unmasking of individuals who were surveilled during the Trump transition, or during the Trump campaign. If it turns out, at the end of all of this, that the FBI and our intelligence agency have turned into partisan political operations with an agenda, then Republicans and Democrats should be very concerned. If it all turns out this is just a routine investigation, the Trump administration will have egg on its face. But I have a feeling that we're going to find out a lot more about who was involved in the unmasking and who -- who had an agenda.

WALLACE: Well, speaking about finding out a lot more, Julie, with Devin Nunes, the chair of the House Intelligence Committee, who indicated that he got information about surveillance and unmasking from an outsider. Take a look.

(BEGIN VIDEO CLIP)

REP. DEVIN NUNES, R-CALI., CHAIR, HOUSE INTELLIGENCE COMMITTEE: Sources and methods are -- are kept very confidential. We -- we invite whistleblowers to come forward.

QUESTION: What did you have to go to the White House to brief them? Shouldn't they be (INAUDIBLE)? Shouldn't the administration be briefing you?

NUNES: The administration, I don't think, is aware of this. So I want to make sure that I go over there and tell them what I know. Because it -- because it involves them.

(END VIDEO CLIP)

WALLACE: But as the week went on, it became clear that officials at the president's own National Security Council, inside the White House, were deeply involved in this, which raises the question, are to, are the president, and his team, and Devin Nunes all working together to protect Trump?

JULIE PACE, THE ASSOCIATED PRESS: And I think it's important to note that even before Nunes came out and said he had received this new information, there were officials in the White House that were telling reporters, you should really be focused on the issue of improper unmasking. This is where we think the real story is. And then suddenly Devin Nunes shows up and says he's received information on exactly that topic.

Look, if there is on improper unmasking -- improper unmasking of Trump officials for political reasons --

WALLACE: You -- unmasking means identification. Basically that there was -- there was surveillance of -- of people -- it may have not even been an American. It may have been foreigners. In fact, that's what it's thought, and they're talking about Americans and they're supposed to say American person one American person two. If it becomes clear American person one is Donald Trump, you're not supposed to say that.

PACE: You're not supposed to say that, though if you talk to intelligence professionals they say when you are talking about someone like the president, or the president's national security advisor, their identity becomes almost impossible to reveal just based on the nature of the conversation. If there was improper handling of classified information, if it was spread improperly throughout the government, that's a real concern. But the White House and Nunes aren't doing themselves any favors when they try to cover up how this information is getting into the House Intelligence chairman's hands.

WALLACE: Gillian, as someone who worked in the National Security Council, both in the Bush 43 administration and in the Obama administration, how unusual for officials in the National Security Council to get involved in such a partisan -- actively partisan issue, and also for the former national security advisor, Michael Flynn, to seek immunity from criminal prosecution in return for testifying? And -- and along those lines, I want to point out, here's what Mr. Flynn and Donald Trump said during the campaign about the fact that Clinton campaign officials got immunity in the e-mail investigation. Here it is.

(BEGIN VIDEO CLIP)

MICHAEL FLYNN, FORMER NATIONAL SECURITY ADVISER: When you are given immunity, that means that you probably committed a crime.

TRUMP: And if you're not guilty of a crime, what do you need immunity for, right?

(END VIDEO CLIP)

WALLACE: And now President Trump is supporting immunity for Michael Flynn.

GILLIAN TURNER, FOX NEWS CONTRIBUTOR: Yes. Which the whole situation, the whole scenario is highly unusual. But I would say this, that this story, especially with Nunes' involvement, it's like an onion where every day we're peeling back more and more layers. And we could kind of go back and forth for infinity on who checked into the White House when and when they left and who talked to who. But at the core of the story remain two issues, two national security issues. One is the leaking of classified information to include the surveillance issue. The other is potential Russian attempted interference in the United States' general election.

Now, both of these issues are very more important than the politics surrounding them, by which I mean they both have implications for American national defense. And, by the way, they both spanned two presidential administrations at this point. People will push back and say, but there's no evidence of collusion between the Trump campaign team and Russia in the -- in the general election. And that's fine and that's true. But I actually argue that that makes an investigation, a really thorough investigation about Russian efforts, more important because it means that whatever they were able to -- wherever they were able to get to, anything that achieved, they did on their own. Isn't that more compelling?

WALLACE: Well, we don't know that. I mean that's one of the things and as -- as FBI Director Comey said in the House hearing, he said that he -- they are currently investigating Russia and also the possibility of Trump campaign involvement.

Gerry, you and I have covered a lot of scandals, too many scandals in this town. What stands out for you about this one?

GERALD F. SEIB, THE WALL STREET JOURNAL: Well, never a scandal like this. I mean this is singular. I've never seen anything like this. I think what stands out is the fact that you have basic -- core intelligence issues being discussed so publicly and so openly either. I'm not sure that's in anybody's best interest. And I'm not sure it's in the White House interest to have it go on for infinity. I wonder if the White House wouldn't be better served if the -- everybody could just turn down the volume and figure out how we're going to get to the bottom of both of these questions, surveillance and Russian meddling.

And I think the one thing that happened this week was he got a glimpse that maybe there's one place where that can happen, and that's the Senate Intelligence Committee, where you had, you know, two senators, Senator Burr on the Republican side, and Senator Warner on the Democratic side --

WALLACE: The two chairs.

SEIB: The two chairs, the chair and the ranking member, come out, have a press conference and then an initial hearing in which they look like adults, responsible adults, an actual bipartisan effort that might answer some of these questions in a way that's credible and believable and that maybe will make this all go away eventually.

WALLACE: Eventually.

SEIB: Eventually.

WALLACE: The emphasis on the word "eventually."

All right, we have to take a break here. When we come back, we'll discuss the president's war with the conservative Freedom Caucus following his defeat on Obamacare repeal and replace.

Plus, what would you like to ask the panel about the growing divide inside the GOP. Just go to Facebook or Twitter, @foxnewssunday and we may use your question on the air.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

MCCONNELL: We're going to get Judge Gorsuch confirmed. It will be an opportunity for the Democrats to invoke closure. We'll see where that ends.

SCHUMER: If Judge Gorsuch fails to garner 60 votes, the answer isn't to irrevocably change the rules of the Senate, the answer is to change the nominee.

(END VIDEO CLIP)

WALLACE: Senate Minority Leader Mitch McConnell and Democratic Leader Chuck Schumer both showing no signs of blinking in the showdown over the nomination of Judge Neil Gorsuch to the Supreme Court.

And we're back now with the panel.

Well, Laura is our resident Supreme Court watcher and a former Supreme Court clerk under Clarence Thomas. And I'm not taking sides here, I'm just really asking, because it just gets worse and worse and worse, is there winning -- any way out for these just ever more partisan wars, and what do you think -- and I'm not saying this is the fault of one side or the other, about the fact that we're -- it looks like this week we're going to see a part of the institution of the Senate change and turning more into the House where it doesn't take a bipartisan majority of 60, 51 votes, a simple majority, can decide any nomination.

INGRAHAM: Yes, well, I think McConnell was right in his point, this is a 200 year Senate tradition that will be forever changed. And Chuck Schumer, I mean, I hate to say this during a Sunday during Lent but, he's absolutely fraudulent in the way he characterizes this. There has never been a partisan filibuster of a Supreme Court nominee. When my former boss was confirmed, during all of the controversy surrounding Clarence Thomas, there wasn't a filibuster. He was confirmed. And it wasn't the largest of margins, but he was confirmed. The vote went forward and he -- you know, he ended up sitting on the Supreme Court, much to the consternation of the left. But -- but this is just -- this is -- this is ridiculous at this point.

WALLACE: But you -- but, I mean, look, nobody comes into this with clean hands. I mean Republicans were filibustering lower court judges in the Bush administration -- not in the Bush administration, in the Clinton administration. I mean this has gone back and forth.

INGRAHAM: Well, but this -- the Supreme Court nomination process has never gotten to this point where there is a -- a threaten of a partisan filibuster. McConnell -- I mean McConnell is -- he knows this stuff inside and out and he's completely right the way he characterizes it.

Now, I understand that the Democrats don't want Neil Gorsuch to be on the court. I got that. But he's going to be on the court. This, in the end, hurts Chuck Schumer, this hurts the Democrats because if -- if you get rid of, you know, this rule -- this -- this rule, now you will only be able to have 52 justices to -- to confirm the next nominee. That could be --

WALLACE: Fifty-one senators, yes.

INGRAHAM: Fifty-one senators. And it could be the next opening will come in June.

WALLACE: Well, that's what I want to pick up on with you, Gerry. As -- as explosive as this is, this is a conservative judge, Scalia, being replaced by another conservative judge, Gorsuch. There is a lot of talk, and it's speculation, who knows, in June that Anthony Kennedy, the key swing vote in the Senate, might retire. And at that point Trump is -- is naming somebody who can shift the balance of the court for three decades.

SEIB: Right, and that's the argument that some Democrats even are using for not invoking -- letting the nuclear option be invoked this time. This is not an appointment that changes the ideological balance of the court. This preserves it. It's a status quo shift. The next one probably won't be, or may not be. So maybe you ought to preserve your firepower until then.

I think the problem right now is there -- my colleague, Jess Bravin, wrote a good piece this week saying there are dueling narratives here. The Democratic narrative is, this is a stolen Supreme Court seat. This belonged to Merrick Garland. It was supposed to be filled by President Obama. Republicans stopped it. Republicans say there was a national referendum on who should be on the Supreme Court. It was called the presidential election. We won. This is basically a mandate. Those two can't be reconciled.

WALLACE: No, that's right, and as -- as I say, there are no clean hands in this, and there's perfect hypocrisy.

Let's turn to the Trump agenda in the wake of the health care defeat. And the first big issue, which I talked about with Senator McConnell, which is the real possibility of a government shutdown on April 28th.

Julie, the president has been attacking members of the House Freedom Caucus this week, at least they're talking about reaching out to Senate Democrats and House Democrats. Do you have the sense that they have any legislative strategy going forward on this issue, the -- preventing a shutdown or anything else?

PACE: No.

WALLACE: OK, Gillian.

PACE: Moving on.

No, look, I mean they -- they talk about a government shutdown and feeling confident that they are going to be able to -- to avoid that. They talk about reaching out to Democrats. They talk about trying to put pressure on the House Freedom Caucus, but it's largely just talk at this point. And when you -- when you look at the Democrats, there is almost no indication that Democrats are ready to start working with this administration on even something like an infrastructure package, which in theory should have some bipartisan support.

And when it comes to the House Freedom Caucus, you -- you see these guys responding to these tweets from Trump. They are not feeling the pressure. They are not backing away. And this has always been a relationship that has been a little odd between Trump and the Freedom Caucus because they may all be outsiders, they may all want to shake up Washington, but the Freedom Caucus guys come in with a really clear ideology.

WALLACE: Quick -- quick, specific question that I also asked McConnell. Is the president, do you think, willing to shut down the government to insist that funding for the wall, \$1.5 billion, be in the spending bill, which Democrats say will blow it up?

PACE: That is a great question. And that, I think, could be -- could be a real pressure point here. I mean if Trump is willing to go for the mat for the wall funding, it's going to be hard, I think, for him to get support on -- on both sides for that.

WALLACE: And I was going to say, you -- then his supporters will say, you promised us a wall and --

PACE: You promised us this. This is one of the clearest promises of that campaign.

WALLACE: We asked you for questions for the panel, and on the growing divide inside the GOP, we got this tweet from someone known as Frank The Tank who writes, "is it really" -- on the divide inside the GOP -- "is it really a divide, or are they just playing politics as usual at the expense of the people?"

Gillian, how do you answer Frank the Tank?

TURNER: I --

WALLACE: And I want you to address him by name as you answer.

TURNER: Mr. Tank, is that? Mr. Tank, this is for you. I think whether this started out, you know, as more politics as usual or is really grounded in ideological opposition is debatable, depending on what side of the aisle you sit on. But what's clear to people like me, who sit somewhere in between, is that this has now become a very real divide. Maybe entrenched in the wake of the collapse of the health care bill. I think what we're seeing in the last few days especially is, the White House digging in its heels. They've drawn up, as you mentioned, a kind of -- a hit list where they're now targeting people individually, like representative --

WALLACE: By -- by name in tweets.

TURNER: By name. Representatives Amash, Meadows, Sanford, there's a few others. And what we're seeing on the side of the Freedom Caucus is, they're now gearing up for their future. You know, what is -- what is our role going to look like in the tax reform debate? What are we going to -- how are we going to make inroads there. So I think, again, the -- the origins of this and what the original sin is, is kind of OBE at this point, but the battle lines have been drawn now and I don't see a way that this is going to improve over the next few --

WALLACE: And -- and -- and as I said to Julie, the question is, is there an end game here? Does the administration have a game if they're going to alienate the House Freedom Caucus and not reach out to Democrats, there's a problem.

Thank you, panel. See you next Sunday.

Up next, our "Power Player of the Week," NASA's new eye on the universe.

(COMMERCIAL BREAK)

WALLACE: For the past 27 years, the Hubble Space Telescope has been providing answers to some of the mysteries of the universe. But now NASA is ready with a new and improved model with hopes to uncover much more. Here's our "Power Player of the Week."

(BEGIN VIDEOTAPE)

JOHN DURNING, JAMES WEBB SPACE TELESCOPE PROJECT: Size matters when you're trying to collect, you know, light from a distant object.

WALLACE (voice-over): John Durning is talking about the James Webb Space Telescope, a project he's been working on for more than ten years. When it's launched in the fall of 2018, it will be vastly more powerful than the Hubble Telescope.

DURNING: This telescope will be 100 times more sensitive than the Hubble. And so we can see objects that are 100 times more faint than the Hubble can see, 100 times more distant than the Hubble can see.

WALLACE: And, yes, part of that is size.

DURNING: It's 21.5 feet across, where the Hubble was only 10 feet across. We've got seven times the collecting area that Hubble did.

WALLACE: As the Webb sits 1 million miles in space, it will also have five sun shields because heat distorts images.

DURNING: This is -- the area of a tennis court. We have five layers of the sun shield, and each layer is less than half the thickness of a piece of paper.

WALLACE (on camera): How warm is it on this side of the sun shield and how cold is it here?

DURNING: It's about 100 degrees Fahrenheit on the side where the spacecraft is and the sun is. And on this side it's minus 400 degrees Fahrenheit. The sun shield provides an SPF of 1 million to the telescope.

WALLACE (voice-over): We got a look at the Webb in a huge clean room at NASA's Goddard Space Flight Center outside Washington. To get the huge mirror to fit in the spacecraft, they have to fold it up like a transformer. Then they shake it and expose it to deafening noise to make sure it will survive the violence of a rocket launch.

DURNING: They're checking to make sure that the harder (ph) hasn't changed at all after being exposed to that environment.

WALLACE (on camera): What will the Webb allow us to see that we can't see now?

DURNING: Webb will allow us to see is the first stars being formed 13.4 billion years ago.

WALLACE (voice-over): What he means is, in the vast reaches of space, some of the light we see now was emitted from the first stars after the big bang.

WALLACE (on camera): So, in effect, you'll be able to go back in time. You'll see a light that is only now getting to us from 13 billion years ago.

DURNING: It's very exciting. We think we know what we'll see, but we are not positive.

WALLACE (voice-over): The Webb was supposed to launch in 2014 at a cost of \$4 billion. Now it's scheduled for late 2018 at a cost of \$8 billion. But the deputy project manager says it's worth it.

WALLACE (on camera): Is there one question that you hope the Webb will answer?

DURNING: Yes. I would love for them to answer that we're not alone.

WALLACE: Life?

DURNING: Life, yes.

WALLACE (voice-over): For instance, Durning says, the Webb will give a much clearer answer, whether those seven planets that were recently discovered orbiting another star can support life. It's all part of what's being called our new eye on the universe.

DURNING: We have pushed the envelope in every area on this project, logistics, technology, science. Every day, you know, you wake up and say, what's going to hit my desk today, and we just tackle it as a team. It's just a great experience.

(END VIDEOTAPE)

WALLACE: The Webb Telescope is set to begin the first leg of its long journey later this month, leaving the Washington area under cover of darkness. It will be flown to Houston and then Los Angeles for assembly and finally ferried through the Panama Canal to French Guiana for launch late next year.

And that's it for today. Have a great week. And we'll see you next "Fox News Sunday."

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Exhibit 9



Administrator Pruitt  @EPAScottPruitt · 11 May 2017



Scott Pruitt Explains Why He Sued EPA So Many Times: 'They Deserved It':



Scott Pruitt Explains Why He Sued EPA So Many Ti...

'Exceeded their constitutional authority'

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Exhibit 10

Scott Pruitt Explains Why He Sued EPA So Many Times: ‘They Deserved It’

Posted By [Michael Bastasch](#) On 1:13 PM 05/11/2017 In | [No Comments](#)

Environmental Protection Agency Administrator Scott Pruitt said he sued the agency he heads so many times while Oklahoma attorney general because “they exceeded their statutory authority.”

“They deserved it and they deserved it because they exceeded their statutory authority, they exceeded their constitutional authority,” Pruitt [told WDAY’s Rob Port](#) Wednesday.

Pruitt was hammed by Democrats and environmental activists during the confirmation process for suing the EPA at least a dozen times while representing Oklahoma. Pruitt’s recused himself from litigation he brought against the Obama administration.

“When they got outside their lane, they got sued and they got stopped,” Pruitt said during the WDAY interview, not backing down from his record of suing EPA.

Pruitt sued EPA about a dozen times while Oklahoma AG, including filing suits on regulations he’s now reviewing, including the Clean Power Plan (CPP), the “waters of the U.S.” rule (WOTUS) and the Mercury and Air Toxics Standards (MATS).

Trump ordered EPA in March to review regulations that “potentially burden the development or use of domestically produced energy resources,” including the CPP. EPA later [disclosed](#) in a court filing they were also reviewing MATS.

The president ordered EPA and the U.S. Army Corps of Engineers to [rewrite](#) the WOTUS rule in a “manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*.”

But Pruitt wasn’t the only attorney general to sue the Obama EPA. Dozens of states sued EPA over the CPP, WOTUS and MATS. Pruitt was part of a 27-state coalition suing the CPP and a 28-state coalition suing over WOTUS.

Twenty states sued EPA to have the MATS rule overturned. Pruitt’s been consistent in saying he filed these suits because he saw these rules as federal overreach.

“They used the power of Washington, D.C. to coerce, to walk all over the states,” Pruitt told WDAY.

Pruitt wants states to play a larger role in environmental regulation. Pruitt recently approved North Dakota’s plan to create and administer its own implement and enforce its own carbon sequestration program.

“North Dakota is going to be the primary regulator of that,” Pruitt said, adding the state had been trying to create its own program for four years.

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Exhibit 11

We've made some changes to EPA.gov. If the information you are looking for is not here, you may be able to find it on the EPA Web Archive or the January 19, 2017 Web Snapshot.



News Releases from Headquarters

EPA's Weekly Round-Up

05/12/2017

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From meeting with Florida Governor Rick Scott, signing a proposed rule that will let North Dakota regulate CO2 storage and reaffirming his commitment to cleaning-up Superfund sites, it was a successful week at EPA. Below is a recap of all of the good news from an EPA that is protecting the environment and American jobs.

National Stories ...

The New York Times reports one of EPA Administrator Scott Pruitt's top priorities is to clean up toxic Superfund sites. *"Scott Pruitt has directed his regional chiefs to elevate Superfund cleanup efforts to what he describes as their rightful place as the agency's core mission. 'I am making it a priority to ensure contaminated sites get cleaned up. We will be more hands-on to ensure proper oversight and attention to the Superfund program at the highest levels of the agency, and to create consistency across states,' Pruitt said."*

The Washington Examiner reports that Pruitt is working with local leaders to clean-up the East Chicago Superfund site. "Environmental Protection Agency Administrator Scott Pruitt on Friday joined Democrats and Republicans to reaffirm the agency's commitment to communities outside of Chicago hit by high levels of lead contamination. Pruitt had visited the Indiana city of East Chicago last month affected by contamination from a closed lead production facility owned by the firm U.S. Steel that had been designated a Superfund cleanup site by the agency in 2009."

The Washington Times reports Pruitt said that Barack Obama was no 'environmental savior.' *"Mr. Pruitt said the past administration talked a good game on the environment, but has little in the way of concrete accomplishments. He pointed to the environmental disaster in Flint, Michigan, and the Gold King Mine spill, both of which led to widespread water contamination. He also said the administration's attempts to rein in carbon emissions were blocked by federal*

courts, as were other high-profile regulations. At the same time, Mr. Pruitt charged, much of the country remained in non-compliance with federal ozone standards, and the number of Superfund sites — areas contaminated by hazardous waste and identified for federal clean-up efforts — increased during Mr. Obama's tenure."

The Hill reports that Pruitt was highly critical of the previous administration. *"Pruitt was also highly critical of his predecessor, naming similar environmental problems over the last eight years. 'What's so great about that record,' he asked North Dakota conservative radio host Rob Port, after listing similar statistics about air quality, Superfund and the Flint and Gold King disasters. 'I don't quite understand the environmental left when they say that somehow, what the past administration, what was done, was so great.'"*

The Daily Caller reports that Pruitt said he sued the previous administration because they exceeded their statutory authority. *"Environmental Protection Agency Administrator Scott Pruitt said he sued the agency he heads so many times while Oklahoma attorney general because 'they exceeded their statutory authority.' 'They deserved it and they deserved it because they exceeded their statutory authority, they exceeded their constitutional authority.'"*

Additionally, the Daily Caller notes that after the Flint water crisis, the previous administration does not deserve the plaudits it has received. *"Pruitt said the former administration does not deserve the plaudits it has received, especially after the EPA's failure to fix Flint's water system."*

On Hugh Hewitt, Pruitt set the record straight about false information being circulated about the EPA's Board of Scientific Counselors. *"The board of scientific counselors that we have at the EPA, they serve three year terms. And so those are reviewed every three years. Those same individuals can apply through the competitive process. ... There was no firing that took place. These individuals can apply, will apply, I'm sure, in some instances, and very well could be put back on the board. But it's the right thing to do to ensure transparency, its activity, peer-reviewed science and geographical representation on the board."*

Need to Know Network reports that Pruitt said that Obama's administration used the authority of Washington to walk over the states. *"Pruitt said during the interview that the Obama administration used the authority of Washington to walk over the states, and looked at states as mere vessels of federal will. ... Pruitt went on to say that the EPA has restored a focus on "cooperative federalism" and working with the states."*

To The States ...

The Tampa Bay Times reports that Pruitt met with Florida Governor Rick Scott to talk about water issues. *"[Governor Rick] Scott popped in for a visit with EPA Administrator Scott Pruitt to talk water issues."*

The Bismarck Tribune reports that the EPA signed a proposed rule that will let North Dakota regulate CO2 storage wells. *"Tuesday marked a new day for North Dakota's ability to regulate storage of carbon dioxide gas, an important part of a cleaner coal future. The federal Environmental Protection Agency took a first step toward giving the state primary authority to regulate federal Class VI wells for injecting CO2 into deep underground pore space for either long-term storage or for store-and-sell in enhanced oil recovery."*

The Fargo Forum reports Pruitt promised a friendlier, more cooperative relationship with states. ““If you go back to the inception of the agency... Congress has been very insistent in saying the states have a role,’ EPA Administrator Scott Pruitt told me during an interview on my radio show today. ‘The past administration simply disregarded that,’ he continued.”

The Grand Forks Herald reports that all of sudden North Dakota and the EPA are getting along. “Under the Trump administration, there has been a big shift in our state’s relationship with that federal agency. ‘The days of coercive federalism are over,’ new EPA head Scott Pruitt said earlier this year in a letter to Governor Doug Burgum.”

The Minot Daily News reports that North Dakota Governor Doug Burgum said EPA Administrator Pruitt will have the biggest single impact on his state. “Gov. Doug Burgum said he thinks the biggest change for North Dakota as a result of the Trump administration is the president’s new team, in particular, two of its members. Burgum said he feels Scott Pruitt, the new administrator of the Environmental Protection Agency, will have the biggest single impact on North Dakota.”

Ozark News reports that Pruitt slammed the brakes on a pesticide rule from the Obama Administration. “Environmental Protection Agency Administrator Scott Pruitt has announced a 12-month delay for the implementation of the Certification and Training of Pesticide Applicators rule. Pruitt says the new extension will enable EPA to work with states and provide adequate compliance and training resources, after the group received feedback from states and stakeholders that more time and resources were needed to prepare for compliance with the rule.”

Oklahoma City’s KOCO-TV reports that the EPA awarded Oklahoma with an \$855,000 grant to protect water quality. “The Environmental Protection Agency has awarded \$855,000 to the Oklahoma Office of the Secretary of Energy to support management of nonpoint-source water pollution, officials said in a news release. ... ‘Improving the Nation’s water is one of EPA’s highest priorities under the Trump administration,’ said EPA Administrator Scott Pruitt, who was Oklahoma’s attorney general before taking a position in President Donald Trump’s administration.”

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Exhibit 12

#ENVIRONMENT

OCTOBER 9, 2017 / 11:13 AM / 3 MONTHS AGO

EPA chief to sign rule on Clean Power Plan exit on Tuesday

Reuters Staff



WASHINGTON/NEW YORK (Reuters) - The head of the U.S. Environmental Protection Agency said on Monday he would sign a proposed rule on Tuesday to begin withdrawing from the Clean Power Plan, former President Barack Obama's centerpiece regulation to fight climate change.

Scott Pruitt, Administrator of the U.S. Environmental Protection Agency, answers a question during the Concordia Summit in Manhattan, New York, U.S., September 19, 2017. REUTERS/Jeenah Moon - RC1A105CB430

“Here’s the president’s message: The war on coal is over,” EPA Administrator Scott Pruitt told a gathering in the Kentucky coal-

country town of Hazard.

Green groups criticized Monday's announcement and praised the plan, a collection of emissions standards for U.S. states that the Obama administration imposed to reduce pollution from power plants -- the largest emitters of greenhouse gases -- by 32 percent below 2005 levels by 2030.

"No matter who is in the White House, the EPA is legally required to limit dangerous carbon pollution, and the Clean Power Plan is an achievable, affordable way to do that," said Sierra Club Executive Director Michael Brune.

But trade organizations like the National Association of Manufacturers, which participated in a legal challenge to the plan, praised it.

"This regulation was broader than what the law allows," said NAM Vice President Ross Eisenberg. "At the same time, we recognize the need for a policy to address greenhouse gas emissions."

The effort to undo the plan is part of a broader target of the administration of President Donald Trump to revive the coal industry and boost domestic fossil fuels production. The EPA now says the Clean Power Plan introduced by Obama in 2015 was illegal.

Pruitt said the Obama-era plan gave the government too much influence in the competition to generate power in the United States.

Jim Matheson, chief executive of the National Rural Electric Cooperative Association, an electric utility group, agreed. He said ending the plan would take pressure off some cash-strapped utilities that still relied on coal-fired power plants. But he said market forces were already moving utilities away from coal.

Total power generation by coal among the NRECA's members fell from 71 percent in 2014 to 62 percent in 2016, Matheson said.

The EPA has not decided whether it will replace the Clean Power Plan, according to a draft of the proposal seen by Reuters on Friday, or whether or when it will propose a new rule to regulate emissions from existing power plants. But the agency said it would soon solicit information on a potential replacement.

Reporting by David Alexander in Washington and Emily Flitter in New York.;
Editing by Tim Ahmann and Bernadette Baum

Our Standards: The Thomson Reuters Trust Principles.

Exhibit 13

Trump's EPA Chief Charts a New Course: An Interview With Scott Pruitt

Rob Bluey / October 20, 2017

Environmental Protection Agency Administrator Scott Pruitt spoke to me earlier this week at The Heritage Foundation's annual President's Club meeting in Washington. We discussed his leadership of the EPA, the agency's top priorities, and what Pruitt considers true environmentalism. An edited transcript of our interview, along with the full video, is below.

Bluey: You've had a busy week. On Monday, you took a decisive action and ended the sue and settle process that has been plaguing the EPA and our government for a number of years. Can you explain to this audience why that is so significant and what it actually means?

Pruitt: Yes, well, it's good to be with you. In fact, I see [former Attorney] General [Edwin] Meese here in the front and it's always good to see General Meese. He has served as a great inspiration to me over the years.

With respect to this particular question on sue and settle, it is actually something General Meese talked about back in the 1980s. We've seen agencies at the federal level for many years engage in rulemaking through the litigation process, where a third party will sue an agency and, in the course of that lawsuit, an agency will agree to certain obligations. Maybe take a discretionary duty under statute and make it nondiscretionary or there will be a timeline in a statute and they'll change the timeline.

But suffice it to say, they engage in what we would call substantive rulemaking, and then the court blesses it without much inquiry. The agency will take that consent decree and go to the states and citizens all over the country and say, 'Thou shalt,' and sometimes that mandate is totally untethered to the statute—the obligations that Congress has passed for that agency to engage in.

It is fifth-grade civics. I don't know if they teach civics in fifth grade anymore, but at least they used to. I hang out at the executive branch; we're an executive branch agency. My job is to enforce the laws as passed by whom? Congress. They give me my authority. That's the jurisdictional responsibilities that I have, and when litigation is used to regulate ... that's abusive. That's wrong. We took the first step under the Trump administration [Monday] to end the sue and settle process entirely at the EPA.

It is not just an attitude shift, not just a commitment to not engage in sue and settle and regulation for litigation. We actually put directives in the memoranda, safeguards if you will.

For instance, if there is settlement that we are engaged in, settlement discussions with a third party that sued the agency, we will post that settlement for all the world to see, for at least 30 days, for people to comment on it across the country so that there is transparency with respect to those discussions.

A Conversation With Scott Pruitt

U.S. Environmental Protection Agency Administrator Scott Pruitt joins us LIVE to discuss how he's rolling back Obama-era energy regulations and more.

Posted by The Heritage Foundation on Tuesday, October 17, 2017

If a state seeks to intervene in litigation with respect to issues that impact them, we're going to have a very generous and accommodating attitude to our states participating in those settlement discussions. But here's one of the more important ones: in the past the sue and settle process has been affected by third parties. They would go to the EPA and they would say, 'Let's work out a deal,' and, as I indicated, go to the court, put it within a consent decree without any type of transparency.

But then here's the kicker: They would pay attorneys fees to the group that sued them. So the group is effectively engaging in rulemaking and they get attorneys fees to get paid to do it.

In my directive to the agency, I said this: We're not going to pay attorneys fees anymore in that regard. If we have a settlement and there's no prevailing party, there shouldn't be attorneys fees. We've directed no attorneys fees as part of the end of this sue and settle practice. It's been a busy week already but every week is that way.

Bluey: The left, over the past generation, has defined environmentalism in a way that is counter to freedom, conservation, even science. I want to ask, what do you consider true environmentalism?

Pruitt: That's a great question, and it's one our society needs to ask and answer. The past administration told everyone in this room at some point, told the American citizens across the country, that we have to choose between jobs and growth and environmental stewardship.

We've never done that as a country. To give you an example, since 1980, there are certain pollutants that we regulate under the Clean Air Act, criteria pollutants, they are called. ... We've reduced those pollutants over 65 percent since 1980, but we've also grown our [gross domestic product] substantially.

We, as a country, have always used innovative technology to advance environmental stewardship, reduction of those pollutants, but also grown our economy at the same time. It was the past administration that told everyone that you had to choose between the two. That just simply is a false narrative. It's a false choice, so we need to ask ourselves, what is true environmentalism?

True environmentalism from my perspective is using natural resources that God has blessed us with to feed the world, to power the world with the sensitivity that future generations cultivate, to harvest, to be respectful good stewards, good managers of our natural resources, to bequeath those natural resources for the next generation.

It would be like having this beautiful apple orchard that can feed the world and the environmental folks of the past would say, 'Build a fence. Don't touch the apple orchard, though it can feed people.' That's not the proper approach. They would say it's so pristine and we shouldn't touch it. That's not what we should do. We should harvest that apple orchard. We should use it to benefit our fellow mankind, but with environmental stewardship in mind for future generations. We can do both. That's what we need to do with the EPA going forward and we are doing that.

Bluey: I'm glad you brought up [former President Barack] Obama and his administration because the media often portrays him as an environmental hero and you're portrayed as the villain. What are you most frustrated about with the media's coverage of you personally and the EPA in general under President Trump?

Pruitt: Well, I don't like the hero-villain thing that you put me through there, but when you look at the past administration and what they actually achieved as far as environmental outcomes, they did not achieve very much.

In fact, look at those criteria for what we do regulate. One-hundred-twenty-million people in this country live in areas that don't meet air quality standards. That's what the previous administration left us with. They had Flint, Michigan, and Gold King, Colorado, with respect to water. With respect to those areas that we regulate that have land waste, we have more sites than when President Obama came into office.

They tried to regulate carbon dioxide twice and struck out twice. So really when you look at that agenda, what did they actually achieve other than uncertainty and adversarial relationships with those across the country?

When you look at farmers and ranchers, for example, they are our first environmentalists. They are our first conservationists. When you look at the greatest asset that they have it is their land. They care about the water that they drink. They care about the air that they breathe. We should see them as partners, not adversaries. We should see them as states in the same vein. They have expertise and resources that we don't have. We have resources that they don't have. It should be a partnership and collaboration.

I've been on a 25-state tour over the last two to three months with respect to the Waters of the United States rule. We're withdrawing that rule. We're getting that right. As we've gone through that process, I was in Utah with Gov. [Gary] Herbert talking about issues there, the second driest state in the country. The very next day, I was in Minnesota; [there are] different issues in Minnesota with respect to waters than in Utah.

As we do our work in D.C., we should do our work in collaboration and in partnership, in cohesion with states so that we can work on environmental issues from Superfund to air quality to water quality across the full spectrum in things that we do in partnership with those folks. That's the failure of the past administration. They saw them as adversaries and not partners.



Kayakers find themselves surrounded by the toxic mine waste that flowed into Colorado's Animas River from the Gold King Mine in 2015. (Photo: Jerry McBride/Durango Herald/Polaris/Newscom)

Moreover, they acted outside the scope of their authority, which created tremendous uncertainty. President Trump, who is doing a fabulous job, is leading with great courage and conviction. He's in the White House today because of two primary things: the American people want courage and they want action, and he embodies both of those in his leadership.

But as we look to these issues in areas that we regulate with respect to air land and water, these are issues that we ought to be working together to achieve and setting clear objectives. Where should we be in air quality in two to four years? Where should we be in investment of air and water infrastructure? How do we improve remediate those sites with respect to the Superfund?

Let me give you an example. There's a site just outside of St. Louis, Missouri. It's a site that has 8,000 tons of uranium from the Manhattan Project commingled with the 38,000 thousand tons of solid waste dispersed over this large geographic area outside of St. Louis.

It was discovered in 1970. In 1990, the EPA listed that site on the national priority list. Twenty-seven years later, as we're in this auditorium together, the agency still has not made a decision on how to remediate that site, excavate, or cap the site. Twenty-seven years ... to not even make a decision? That's totally unacceptable. In fact, that's one of the things that as I came into this position, I was so stuck by.

As I was engaged in meetings at the office, there just appeared to be a lack of urgency, a lack of focus, a lack of energy to do what's right to serve the American people—the fundamental way to provide real, tangible environmental outcomes in water, air, and Superfund.

We're getting back to the basics and we're operating under the rule of law. We're respecting process and we're also engaging in federalism principles to ensure that we're partnering together. It sounds like a pretty good agenda to me and I think in this country, we ought to be adopting that, not vilifying it to your question.

Bluey: I want to ask specifically about the Waters of the United States rule you raised. At Heritage, it's an issue that we've done a lot of work on. It's something we recognize that has a tremendous impact across this country. You've made a decision that you were going to conduct a reevaluation. What are your goals as you go through that process and coming out of it?

Pruitt: Clarity. I mean, that's what's so crazy about the past administration. ... Let me give you a little background. The last time we defined that was 1986 as far as Waters of the United States. We provided guidance in 2008; that's about as far as the definition of a water of the United States is. So the past administration said we need to provide clarity across the country when federal jurisdiction begins and ends. If that was their objective, they failed miserably. Because people all over the country have no idea today where federal jurisdiction begins and ends under that 2015 rule.

I mentioned Utah. I was in Salt Lake City with Gov. Herbert with an Army Corps of Engineers representative about two months ago. We were standing outside of this subdivision and this Army Corps of Engineers representative pointed to this thermal drainage ditch and said, "Scott, that is a water of the United States," and I said, "It's not going to be anymore." That's really the challenge here—that you had so much confusion and uncertainty about what waters were in [and] what waters were out.

So what does that mean? That means land use across this country is held hostage because folks aren't going to deploy capital. They aren't going to allocate resources They aren't going to put capital at risk and then face a fine five or 10 years from now saying you should've had a permit because this is covered under Waters of the United States.

The No. 1 objective is to get the definition right and to provide clarity across the country on when federal jurisdiction ends and we're going to do that in 2018. We're going to withdraw the rule that's in place right now and that will be finished by the end of the year. Then we've got a substitute definition, and this is where the environmental left misses it. They call this deregulation. This is regulatory reform, this is regulatory clarity. We're getting rid of the deficient rule and then we're going to provide a new definition that provides bright line criteria by which to define where jurisdiction begins and ends. That's so key and that's what we are going to accomplish in 2018, and it's not going to be the federal drainage ditch.

Bluey: The Clean Power Plan is another major action you've taken recently. In the same context, what are the implications of doing away with that? And where do you see it going next?

Pruitt: For the first time in history, the Supreme Court entered a pending litigation and issued a stay of enforcement against the Clean Power Plan. That case is being litigated in the D.C. Circuit. The Supreme Court intervened and said stop the enforcement of the rule because it's going to impact the marketplace in ways that we don't think meet the statutory criteria or authority of the agency.

So again, uncertainty. We had uncertainty in the utility sector, so let me say this to you: generally, from a regulatory perspective this is going to be a very profound statement, regulations should make things regular. That's our job to take a statute and administer the statute and make things regular across the full spectrum of people subject to the statute or subject to the regulation. It's not to pick winners and losers.

It's not the job of the EPA to say to the utility company in any state of the country, you should choose renewables over natural gas or coal. We need fuel diversity in the general electricity. We need more choices, not less. No agency at the federal level should use their coerce power to force business utility companies to take those fuel sources away. They should be making it on cost, stability, and I would say resiliency of the grid.

The president talks a lot about economic growth. We're already at 3-plus percent and this tax cut package is going to provide tremendous growth. When you grow your economy at 3 to 4 percent as opposed to 1 percent, the power grid, the resiliency of the power grid takes more significance, so when you reduce fuel sources that takes on more vulnerabilities.



President Donald Trump and EPA Administrator Scott Pruitt announced in June the United States would withdraw from the Paris climate accord. (Photo: Ron Sachs/Newscom)

We need solid hydrocarbons like coal to be stored onsite to address peak demand. We need natural gas, we need renewables, we need all that. Chancellor [Angela] Merkel, in this Paris accord situation, I know you didn't ask about this, but I have to get this in, when we talk about this Paris accord issue, if Germany is so concerned about this reduction of CO₂, why is Chancellor Merkel getting rid of all nuclear in Germany? Its hypocritical and, by the way, we're at pre-1994 levels in this country and from 2000-2014 after we exited Kyoto, we reduced our CO₂ footprint by 18 percent, almost 20 percent, and that's in the same timeframe.

This country has always led with action, not words and labels like Paris. The president made a tremendously courageous decision by saying we're going to get out of the Paris accord, put America first, and make sure that we lead with action and not words.

Bluey: What is your strategy for rolling back cumbersome regulations that hurt small businesses?

Pruitt: There has been a threefold strategy that has been introduced to the agencies since Day One. In fact, as I addressed the agency on the first day, I talked about three primary things.

One, respect for rule of law. The only authority we have is the one Congress gives us in the statutes, which enhances regulatory certainty when we act congruent to statutory guidelines.

Secondly, we are going to respect process, which means that as we go through rulemaking, we're actually going to do what Congress says. We're going to propose a rule. We're going to take comment and it's our responsibility to respond to that comment. Then, we're going to finalize that rule by being informed of how it's going to impact folks all over the country. That's good. That's how consensus is built.

Thirdly, we're going to respect federalism. Congress is prescribed into the Clean Air Act, into the Clean Water Act certain responsibilities placed upon states. They imagined and really believed that we can work together.

Those are the three primary principles by which we are doing our work. I think as we do that, it's going to create better outcomes for air, land, and water, as far as environmental outcomes.

But as far as when you look at the disrespectful process—that's the reason the sue and settle aspect makes the remedy there is so important. I think if we get back to the basics there and focus on those three cornerstone principles, we're going to see better outcomes as far as air attainment, water infrastructure, sites being remediated on the Superfund list, and it's going to be very encouraging.

And for small business, we've also done something else. President Bush introduced something, and it actually dates back to the Clinton administration. It was called the Common Sense Initiative. President Bush built on that and called it the sector strategy, where we bring in sectors of our economy—farming and ranching, chemical companies, energy, oil and gas, and others.

We've updated that because it went by the wayside under the Obama administration. We've revived that and we've created something called the smart sector strategy. Those businesses are now dialoguing with us on how we can work together going into the future to achieve better outcomes in the environment.

Bluey: What's an issue that you are engaged in that isn't getting the attention it deserves—that you think this audience should know about?

Pruitt: Well, I think one that isn't talked about a lot is last year Congress adopted some amendments to the Toxics Substances Control Act, TSCA, and created new responsibilities for our agency. For instance, chemicals that enter the flow of commerce, we have to approve those chemical before they enter the stream of commerce.

When I came into this position, we had a backlog of over 700 of those chemicals. We cleared those out by July of this year. We focused resources and we provided certainty to folks across the marketplace on whether those chemicals could be used in an effective way. We're implementing those changes to TSCA that I think provides certainty to those that are regulated.

The other area I want to talk about is the Superfund arena. I mentioned the one site in West Lake, Missouri. I'd love to tell you that is an isolated example—that that is just one of many of the 1,336 sites that we regulate. We have many, unfortunately, sites that have languished on that list since inception of the program in the 1980s—sites that been there for decades with respect to no decision and very little action.

The American people deserve, in my view, answers and leadership in how to remediate those sites. That's the most tangible benefit that we can provide to folks environmentally.

Just recently, San Jacinto, a site in Houston that is off of I-10 in a harbor there, where there is a bunch of barge traffic. There was a site listed around 2009-2010, and it has dioxin on the site. When the hurricane came through there was much concern about the dioxin being released into the barge traffic and it impacting folks' health. The remedy that has been in place for the past 10 years was literally putting rocks on top of the site to prevent release. It sounds crazy but that's exactly the case.



A tanker arrives in the Houston Ship Channel near a spot where the road dead ends into water at the San Jacinto battlefield.

(Photo: Rick Wilking/Reuters/Newscom)

When I was there after the storm, I said that is not acceptable. We're going to make a decision for the betterment of the community to fix that site and provide permanence. Just last week I signed that record decision giving direction on how we are going to provide that relief to prevent the release of dioxin into the water supply in Houston, Texas.

We've got to take concrete steps to prevent those environmental issues. We're doing such good work that no one, I really shouldn't say no one ... folks see it in the communities. There's great optimism across the country, except in Washington, D.C., so that means things are going really well.

Bluey: Can you describe the shortcomings of the scientific evidence for climate change and the type of data that would be needed to convince you that climate change is happening?

Pruitt: Well, a couple things. Let me address something a little bit big picture and then I'll get into the specific question.

I have advisory boards at my agency. The CASAC, the science advisory board that advises me on air quality issues. I have BOSC and I have the Science Advisory Board.

The scientists who make up these bodies, and there are dozens and dozens of these folks, over the years those individuals as they've served those capacities, guess what has also happened? They've received moneys through grants and sometimes substantial moneys through grants.

I think what's most important at the agencies is to have scientific advisers who are objective, independent minded, providing transparent recommendations to me as the administrator and to our office on the decisions that we're making on the efficacy of rules that we're passing to address environmental issues.

If we have individuals that are on those boards that are receiving money from the agency, sometimes going back years and years to the tune of literally tens of millions of dollars, over time, that to me causes questions on the independence and the veracity of the transparency of the recommendations that are coming our way.

Next week, I want you to know something, and I'm not trying to get ahead of myself too much, but next week we are going to fix that. Next week, I am going to issue a directive that addresses just that, that's much like the sue and settle, to ensure the independence, transparency, and objectivity with respect to the scientific advice that we are getting at the agency.

Now, on this issue with respect to climate change, it's not a question about whether climate change occurs. It does. It's not a matter of whether man contributes to it. We do. The question is how much do we contribute to it and how do we measure that with precision? It's a little bit more difficult questions like when we have individuals telling us in 2017 that they know what the ideal global average surface temperature should be in the year 2100, I think there should be a debate around that. I think there ought to be discussion around that very issue.

There are some, perhaps in this very room that believe that it poses an existential threat. If it poses an existential threat, I want to know. If it's more important than ISIS and North Korea, I think we better know about it. So let's have a real, meaningful discussion about it.

The American people deserve, in my view, an objective, transparent, honest discussion about what we know and what we don't know, with respect to CO₂. It's never taken place. That's the reason I've been proposing a red team, blue team exercise where we bring red team scientists in and blue team scientists in and they would engage in a multi-month process asking of each other these very difficult questions to help inform the American public on these issues to help build consensus toward this very important issue.

Here's the last thing I will say about it. That is a very important exercise and it's something that Steve Koonin actually published in the Wall Street Journal about three or four months ago. I think it was a well-written piece and you ought to go read it. There's actually another piece that Bret Stephens wrote in the New York Times about this very issue where politicians have taken information that we know and stretched it so far on this issue that it strains credibility.

We need to have a very honest and open discussion about this as a citizenry and as a country with respect to what we do. But here's the other thing, what are the tools in the toolbox? That matters. Remember what I said earlier: the only authority I have is the one Congress gives me.

We have to ask and answer the question, What does the Clean Air Act say to this issue as far as regulation of CO₂? The last time the Clean Air Act was amended—anyone want to guess when that was? I know you study this every day—1990. Twenty-seven years ago. If you go back and read post the amendments, the Clean Air Act from 1990, Congressman [John] Dingell is not the most conservative member to ever have served in Congress. Congressman Dingell said to regulate greenhouse gas emissions under the Clean Air Act of 1990 would be a glorious mess. The Clean Air Act was set up to address local and regional air pollutants, not the global phenomena of GHG and CO₂.

We have to ask the question, one, What do we know? And let's inform ourselves about it. But we also have to ask ourselves, What can we do about it and what tools are in the toolbox? I can't make that up. That's what the last administration did. When they made it up, they got sued and they got stays of enforcement like the Clean Power Plan, which does not achieve any environmental outcomes and creates uncertainty in the marketplace. It was part of their war on coal, their war on fossil fuels.

I have to ask you a question rhetorically. Where is it in the Clean Air Act that the EPA has the authority to declare war on any sector of our economy? I don't see it. And that's what the last administration did. It ended under President Trump.



Administrator Scott Pruitt speaks to EPA employees in February. (Photo: Joshua Roberts/Reuters/Newscom)

Bluey: I have a couple of questions about what it's like to work at EPA headquarters. Specifically, are you running into any internal or political challenges with a staff that might not be willing to carry out the mission you articulated earlier?

Pruitt: Let me say a couple of things. One, having led a business, having been in that space and whatnot, I didn't start from the premise that folks weren't willing to be partners. In fact, the very first day I was there, I talked about rule of law and process and federalism, as I indicated to you. But also said to the folks there that I was going to listen and I was going to learn from them, but that we were going to lead, we were going to make decisions.

And so I've tried to exercise good will in working with folks. I don't want people presuming certain things about me that are not based in fact and I shouldn't presume certain things about others. I've tried to lead that way at the agency. That being said, I do think that there is a lack of urgency in some of these areas with respect to Superfund and otherwise, and we're revitalizing those areas actually. And we're actually getting the things done that matter and holding folks accountable.

There's a gentlemen I brought into leadership. He worked for Gov. [Doug] Ducey in Arizona, and I was with Governor Ducey a couple of weeks ago and I thanked him for his contribution. But this individual came to me—he led the [Department of Environmental Quality] there in Arizona, and then he went into the Cabinet under Governor Ducey—and when he came into leadership at the DEQ in Arizona he said, Scott we had over 700 people that we employed and I started focusing on metrics and

performance and everyday asking and answering what progress are we making? Are we actually remediating sites? And measuring that every single day. And there were some people in the agency, he said to me, that weren't into that. They weren't into accountability. And those folks just kind of left. And at the end of that process, it went from an agency of around 700 to an agency of around 350.

He said Scott, what's amazing to me is that when that happened we were actually producing better results with the 350, measuring outcomes, than we had with 700. Now, that person is now at the EPA, and I've given him a charge. We have a dashboard that we've created, a dashboard of measuring results every single day. His name is Henry Darwin, by the way. I call this the 'Darwin Effect,' And I say, 'Henry, how are we progressing today? How are we doing in air quality?'

Let me ask you something, What's Republican and Democrat about improving air quality? Where's the political issue around that? Where's the political issue around avoiding Flint, Michigan, and Gold King, Colorado? Where's the Republican/Democrat approach to remediating Superfund sites and actually making sure they're actually reused and communities can enjoy those areas once again?



LeeAnne Walters of Flint, Michigan, shows water samples from her home amid growing health concerns in 2015. (Photo: Ryan Garza/ZUMA Press/Newscom)

Their shouldn't be any political margin on any of those issues. These are not controversial things. We ought to focus on the good work of the agency, respectful of law, engage in partnership. And you know what's going to happen? Good things. We ought to celebrate that as a country. So the Darwin Effect is in full force and we are going to make sure that we achieve accountability.

Just one other thing—permitting. Permitting has been a big issue with respect to infrastructure. Permitting, sometimes, at our agency, has not been, ‘Is there an issue and how do we fix it?’ It’s been obstructionism. It’s taken a decade, or 12 years or 15 years—and I’m not making this up—where it takes that long to make a decision on a permit. That’s not a decision. That’s simply no, just cloaked in no decision, right?

When I met with Henry, I said, ‘Henry we’ve got to have an outside time where all permits are processed. Let’s establish a timeline that all permits are going to be processed within X number of years or whatever.’ This was one of our first meetings and I decided two years or something; let’s find the right time. He said, Scott, ‘I was thinking more like six months.’ I said, ‘I love you Henry.’ So by the end of 2018, every permit that we issue, up or down, you’re going to know within six months.

Bluey: What has it been like working with President Trump? What can you tell us about it?

Pruitt: It’s been wonderful. As I shared with you earlier, the president is full of courage and he’s full of action. He wants results. That’s what the American people want.

They don’t like all the blather, they don’t like all the labels, they don’t like all the bumper stickers. Let’s actually achieve things. That’s what he’s done his whole life.

I seek every day, and I mean this sincerely, to bless him. I want to bless him and the decisions he’s making. I want to carry out my responsibilities at our agency in a way that is respectful of the things I’ve talked about today. There’s so much optimism across our country—with respect to all the various states and stakeholders that there’s a different trajectory.

You know, several years ago there was a book that I picked up called “The Culture Code.” It’s a book written by a French sociologist, and I don’t normally pick up those books, but this was an interesting book where his business, his career is that he engages in surveys and focus groups. Coca-Cola or IBM will hire him and say, ‘OK, you go out and find the code, the one word that describes my company.’ He did that, that’s his whole career.

He wrote this book and he talks about these various areas, but he spent one entire chapter on America. He surveyed all these people across the country, focus groups, asking questions. He boiled the code word for America down to one word—one word. Anybody want to guess what it is? Dream.

And I’ll tell you as a country, we’ve lost that a little bit. We’re a little bit more risk averse than we used to be. We don’t dream and aspire like we used to be. This president is reinvigorating that. This administration is reinvigorating that.

We have nothing to be apologetic about as a country. We’re the best in the world. We feed the world, we power the world. And oh, by the way, when it comes to environmental stewardship, we’re better than anybody else. And that’s the Gospel truth.

Let's not be apologetic. Let's lead with action. And that's what the president is doing. I love serving with him. I love serving him. And there's much optimism, much hope ahead.

Exhibit 14

We've made some changes to EPA.gov. If the information you are looking for is not here, you may be able to find it on the EPA Web Archive or the January 19, 2017 Web Snapshot.



News Releases from Headquarters › Air and Radiation (OAR)

EPA Takes Another Step To Advance President Trump's America First Strategy, Proposes Repeal Of "Clean Power Plan"

10/10/2017

Contact Information:
press@epa.gov

WASHINGTON (October 10, 2017) – Today, U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt issued a Notice of Proposed Rulemaking (NPRM), proposing to repeal the so-called “Clean Power Plan (CPP).” After reviewing the CPP, EPA has proposed to determine that the Obama-era regulation exceeds the Agency’s statutory authority. Repealing the CPP will also facilitate the development of U.S. energy resources and reduce unnecessary regulatory burdens associated with the development of those resources, in keeping with the principles established in President Trump’s Executive Order on Energy Independence.

“The Obama administration pushed the bounds of their authority so far with the CPP that the Supreme Court issued a historic stay of the rule, preventing its devastating effects to be imposed on the American people while the rule is being challenged in court,” **said EPA Administrator Scott Pruitt.** “We are committed to righting the wrongs of the Obama administration by cleaning the regulatory slate. Any replacement rule will be done carefully, properly, and with humility, by listening to all those affected by the rule.

CPP Appears to be Inconsistent with the Clean Air Act

The CPP, issued by the Obama administration, was premised on a novel and expansive view of Agency authority that the Trump administration now proposes to determine is inconsistent with the Clean Air Act. In fact, the CPP was put on hold in February 2016, when the U.S. Supreme Court issued an unprecedented, historic stay of the rule.

“EPA will respect the limits of statutory authority. The CPP ignored states’ concerns and eroded longstanding and important partnerships that are a necessary part of achieving positive environmental outcomes. We can now assess whether further regulatory action is warranted; and, if so, what is the most appropriate path forward, consistent with the Clean Air Act and principles of cooperative federalism,” **said Administrator Pruitt.**

The CPP was issued pursuant to a novel and expansive view of authority under Section 111 of the Clean Air Act (CAA). The CPP required regulated entities to take actions “outside the fence line.” Traditionally, EPA Section 111 rules were based on measures that could be applied to, for, and at a particular facility, also referred to as “inside the fence line” measures. Prior to the CPP being issued, every single Section 111 rule on the books, including a handful of existing source rules and around 100 new-source rules, obeyed this limit. As the CPP departed from this traditional limit on EPA’s authority under an “inside the fence line” interpretation, EPA is proposing to repeal it.

EPA has now sent the NPRM to the Federal Register for publication. Upon publication, the public will have 60 days to submit comments.

The repeal package includes:

1. The “preamble,” which lays out the proposed legal interpretation, policy implications, and a summary of the cost-benefits analysis of the proposed repeal; and
2. The “Regulatory Impact Analysis (RIA),” an in-depth cost-benefit technical analysis.

CPP Repeal Saves up to \$33 Billion in Avoided Costs in 2030

The proposed repeal both examines the Obama administration’s cost-benefit analysis, as well as provides insights to support an updated analysis of the environmental, health, and economic effects of the proposed repeal. The Trump administration estimates the proposed repeal could provide up to \$33 billion in avoided compliance costs in 2030.

The previous administration’s estimates and analysis of these costs and benefits was, in multiple areas, highly uncertain and/or controversial. Specific areas of controversy and/or uncertainty in the Obama administration’s analysis of CPP include:

Domestic versus global climate benefits: The previous administration compared U.S. costs to an estimate of supposed global benefits, and failed to follow well-established economic procedures in estimating those benefits.

“Co-benefits” from non-greenhouse-gas pollutants: The Obama administration relied heavily on reductions in other pollutants emitted by power plants, essentially hiding the true net cost of the CPP by claiming benefits from reducing pollutants that had nothing to do with the rule’s stated purpose.

Energy cost and savings accounting: The Obama administration counted “energy efficiency” results of their rule as an avoided cost, resulting in a cost estimate being considerably lower than it would have been if they used the appropriate practice of considering these effects as benefits, rather than subtracting them from costs. Had the Obama administration used the Office of

Management and Budget's longstanding requirements and accounted cost and savings accordingly, it would have presented a more accurate accounting of the total cost of the CPP.

In this proposed repeal and its accompanying technical documents, this administration is, in a robust, open, and transparent way, presenting a wide range of analysis scenarios to the public.

As part of the notice-and-comment process for this proposed repeal, EPA will continue this analysis and inform the public, as necessary, to get feedback on new modeling and other information. The final action on this proposed repeal will address the results of this ongoing work.

Forthcoming is an Advanced Notice of Proposed Rulemaking (ANPRM) that will be reflective of a thoughtful and responsible approach to regulatory action grounded within the authority provided by the statute.

“With this action, the Trump administration is respecting states’ role and reinstating transparency into how we protect our environment,” **said Administrator Pruitt.**

Background

On March 28, President Trump signed an Executive Order on Energy Independence, establishing a national policy in favor of energy independence, economic growth, and the rule of law. The purpose of the Executive Order (EO) is to facilitate the development of U.S. energy resources and to reduce unnecessary regulatory burdens associated with the development of those resources. That same day, EPA Administrator Scott Pruitt signed four Federal Register notices in response to the EO, including a formal announcement of review of the Clean Power Plan. After substantial review, the Agency has proposed to determine that the Clean Power Plan (CPP) must be repealed.

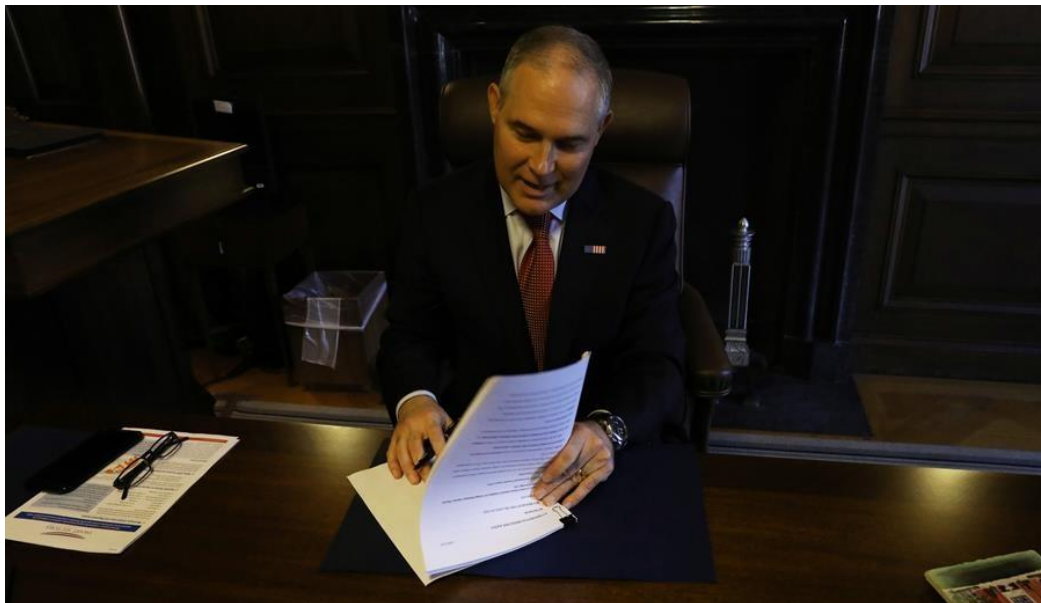


Exhibit 15



U.S. EPA Administrator Scott Pruitt

October 10, 2017 · 🌐

Today I signed a Notice of Proposed Rulemaking proposing to repeal the Clean Power Plan (CPP). The Obama administration pushed the bounds of their authority so far with the CPP that the Supreme Court issued a historic stay of the rule, preventing its devastating effects to be imposed on the American people while the rule is being challenged in court. We are committed to righting the wrongs of the Obama administration by cleaning the regulatory slate. Any replacement rule will be done carefully, properly, and with humility, by listening to all those affected by the rule. Read the full press release here: <https://www.epa.gov/.../epa-takes-another-step-advance-presid...>



EPA Takes Another Step To Advance President Trump's America First Strategy, Proposes Repeal Of "Clean Power Plan" | US EPA

[EPA.GOV](https://www.epa.gov)

99 Likes · 312 Comments · 35 Shares

🔗 Share

Exhibit 16

↻ Administrator Pruitt Retweeted



Leader McConnell  @SenateMajLdr · 10 Oct 2017



Thank you @POTUS and @EPAScottPruitt for repealing Obama-era harmful anti-coal job regulations bit.ly/2yekzRQ



1.4K



173



669



Exhibit 17

EPA Administrator Scott Pruitt On Clean Power Plan Rulemaking

EPA Administrator Scott Pruitt joined me this morning to discuss the new rulemaking on the Obama Era "Clean Power Plan," [which was enjoined by federal courts](#):

Audio:

[10-11hhs-pruitt](#)

Transcript:

HH: In the swirl of breaking news, including the awful smoke hanging over Northern California, where the destruction of 2,000 homes, the death of 17 Americans, the missing of 240 other Americans, is obscured a lot of important news. One of those, the announcement yesterday by U.S. Environmental Protection Agency Administrator Scott Pruitt, of the rulemaking to reverse the Clean Power Plan rule, which was originally promulgated on October 23rd, 2015 by the EPA.

Administrator Pruitt joins me now. I always say when he does come on he is my friend. My son works at EPA. That's called self-regulation, so people don't suggest that I am keeping other than transparent disclosure from you. Administrator Pruitt, welcome back.

SP: Good morning, Hugh.

HH: I have to begin with the Congressional Research Service assessment of the Clean Power Plan. It says on October 23rd, 2015, the U.S. Environmental Protection Agency published its final Clean Power Plan rule to regulate emissions of greenhouse gasses, specifically carbon dioxide. The Clean Power Plan would require states to submit plans to achieve state levels specific CO2 goals, reflecting emission performance rate, and that the Clean Power Plan has been one of the more singularly controversial environmental regulations ever promulgated by the EPA. The Congressional Research Service goes on to discuss how it has been enjoined by the courts. So what did you do yesterday against that backdrop?

SP: Well, breathtaking in light of what the previous administration did, Hugh, because for the first time ever, the EPA took its authority and said we can dictate, really coerce states and utility companies across the country and tell them how to generate electricity. You know, when you look at how we generate electricity in this country, we obviously use multiple energy sources. Fuel diversity is very key and important to keep costs down, but also stability and resiliency of the grid. That's coal, oil, natural gas, hydro, renewables, an entire mix of energy sources. What the last administration did is no, we're going to dictate to you. We're going to use our authority to say fossil fuels should not be used. We're going to shift to renewables across the country, and really it was a power grab over the power grid, Hugh. And so it had never been done in history. And so it's so unprecedented, that the U.S. Supreme Court, you mentioned October of 2015. In February of 2016, the U.S. Supreme Court entered an historic and unprecedented stay against the rule going into effect, because it was so breathtaking as to how the previous administration interpreted their authority. So what we did yesterday is begin the process, propose a rule to withdraw that very deficient rule, and provide clarity to folks across the country with respect to how we generate electricity, and really, respect mostly, Hugh, the statutory framework that Congress has given us to regulate.

HH: Now Administrator Pruitt, when you roll back something called the Clean Power Plan, or put it in peril of roll back, which is what you did as you began the rulemaking to change the Clean Power Plan, immediately, the kneejerk reaction is oh, my gosh, Team Trump is rolling back clean air in America. That is not what happened yesterday. Would you explain to people what the rulemaking process is, and why in fact this rule has never gone into effect in the first place?

SP: Yeah, there's been no effect whatsoever. No impact other than negative impact and uncertainty across the country. It's never truly been used or even complied with. So the supposed benefits of the rule, we have not obviously received those. And there was a great amount of questions, Hugh, to begin with about the cost benefit analysis about the cost, extraordinary cost this was going to cost consumers, utility consumers across the country. In some states, it was going to increase utility rates upwards of 40-50%. So this was a tremendously costly rule with very little benefit to the environment. In fact, right now, Hugh, this is what's lost in this whole discussion. We're at pre-1994 levels with respect to our CO2 footprint. And we have done that largely through technology and innovation, not government mandate. You know, when we talk about the results we have as a country, we ought to celebrate the progresses we've made. Those pollutants, as an example, that we regulate under the Ambient Air Quality Program have been reduced over 65% since 1980. So we are making tremendous progress, because industry and states and citizens and innovation and technology are truly being utilized today than ever before. And we need to always keep in mind as we generate electricity, it serves the manufacturing base, the jobs base in this country, an economy that needs robust growth. And we need reliability in the power grid to achieve that. And the past administration just simply ignored all aspects of the statute, all aspects of how we've done regulation historically, and then tried to impose their will upon this country in a way that was entirely deficient under the law. So the U.S. Supreme Court intervened, stopped that from happening, and what we are now doing is responding from a regulatory perspective to hopefully, as we go forward, do it the right way, as opposed to the overreach that we saw in the past administration.

HH: Because I know you know from your time as Attorney General of Oklahoma that the Agency is obliged to take seriously the comments it receives during this process, you will not prejudge the conclusion. But I am curious about the debate in the media and what you think of it. There are some critics who say you ought to have proposed a new rule, and you ought to have withdrawn the so-called Endangerment Finding at the same time. I replied to them, no, there's an A-B-C order here. The first thing is you have to revoke a deficient rule if indeed it is found by the notice and comment process to be deficient. Is that in fact correct, Scott Pruitt? Is that the order you're following?

SP: Yes. Yes, yes, Hugh, I think that as we look at the sequencing of this, I mean, you've got a rule that's been stayed by the U.S. Supreme Court. But you don't know how long that stay is going to, you know, remain in place. And as such, those folks that are regulated across the country, they don't want the uncertainty, because what did the rule require? It actually required them to displace certain investments that they had made in coal generation facilities. I mean, let's make no mistake about it. The last administration declared a war on coal. Now that is amazing in and of itself. You know, for a president and for an EPA, a federal body, a federal agency to declare war on any sector of our economy is absolutely astounding. But they did it unapologetically, and they made tremendous

progress in reducing and contracting mining jobs in this country. That's wrong. A regulatory body ought never engage in a war on any sector of our economy. We're to make things regular for those across the country so that they know what's expected of them as they invest money, allocate resources, and try to achieve good outcomes on behalf of the environment. So this is a situation, Hugh, that we had to provide clarity first and foremost about the deficiency of this particular rule. But we have also been doing our work to prepare for, you know, what does the statute allow us to do? I actually introduced something in June of 2015, Hugh, called the Oklahoma Plan. I went through a Section 111 of the Clean Air Act and evaluated what authority existed to regulate CO2 under Section 111, which deals with power generation facilities. I was at the National Press Club that very month about five or so days before the Clean Power Plan came out, and was debating someone from the NRDC, and shared this entire plan with them. There are steps that we can take with respect to this issue. But they are modest. They are humble, because frankly, when you look at the Clean Air Act and the tools that Congress has given us, it is, they're not robust in dealing with this issue. And the reason that is, is because the Clean Air Act hasn't been amended since 1990. It's been 27 years ago, and the folks that were involved in amending the Clean Air Act in 1990 were very, very clear that they saw the Clean Air Act as focused on regional and local air pollutants, to reduce those air pollutants, and not this global phenomena called GHG, or CO2 reductions. And so we only have the tools that Congress give us, Hugh. You know that. That's 5th grade civics. We can't reimagine authority.

HH: I also know, I also know the power of the market is much more extraordinary than the power of regulation, and that natural gas is displacing other sources of energy on its own in accord with the market forces driving it, but that interventions by the government in the acceleration in some areas can be counterproductive, in fact. Administrator Pruitt, the regulatory reform agenda overall, I've told people that you're going through it with Waters of the United States, the WOTUS rule. I believe the market is up, because it's pricing regulatory reform into it. Other people think it's because it's pricing the tax cut in. But these rule reforms do have enormous impacts on the GDP of the United States.

SP: Look, I mean, if you ask folks over the last several years what has been the greatest impediment to economic growth, they would tell you regulatory uncertainty. And that's not just in the energy and environmental space. That's in the finance area, that's in health care. It was across the full spectrum of the past administration, because we all know this. The previous administration ruled by executive order. And when you rule by executive order, when you actually legislate in the executive branch, you tell your administrative agencies, executive branch agencies that you govern to say go out and make the law, that that created tremendous uncertainty, because those that are regulated look at a statute passed by Congress, and it says one thing. And then an executive branch agency is passing regulation that says exactly the opposite. So what do you do if you're in the finance, health care, energy area? You don't invest money. You don't put money at risk, because if you put money at risk, that means you may lose it because of the arbitrary type of response of the executive branch agencies. So what we're trying to get back to today, Hugh, is sending a message across the country that we are going to do what the statute requires. And when we do what the statute requires, that provides certainty to those that are regulated, and here's the real important thing. It benefits the environment, because it allows people to then invest and deploy resources to achieve outcomes and not face the prospects of displacement of capital, uncertainty, and litigation. When you think about the WOTUS rule, CPP, these plans we're talking about, every one of them was subject to litigation and a stay of a federal court. And they never went into effect, because the past administration simply made it up. And that's just, that's not our authority to do that, and we're not going to do that.

HH: Scott Pruitt, it is always good to talk to you, Administrator. Press on. I am sure the process will be long and arduous, but legal in the end and upheld by the courts because it's being administered by a former state Attorney General.

End of interview.

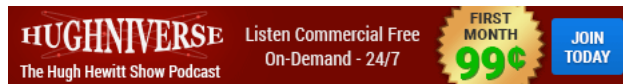


Exhibit 18

CLIMATE

Trump Wants to Repeal Obama's Climate Plan. The Next Fight: Its Replacement.

By LISA FRIEDMAN SEPT. 28, 2017

WASHINGTON — President Trump failed again this week to fulfill his promise to repeal and replace the Affordable Care Act, President Barack Obama's signature health plan. Now he is taking aim at Mr. Obama's central environmental legacy, the Clean Power Plan.

The administration has made clear its desire to repeal the Obama energy plan. But what would take its place remains a mystery.

The Environmental Protection Agency is expected in the coming days to reveal its strategy for reversing the Clean Power Plan, which was intended to reduce greenhouse gas emissions from power plants across the country. Yet while Mr. Trump has declared the Obama-era plan dead — “Did you see what I did to that? Boom, gone,” he told a cheering crowd in Alabama recently — industry executives say they expect that utilities could still be subject to some restrictions on carbon emissions.

“I would be surprised if repeal did not lead to replacement,” said Paul Bailey, president of the American Coalition for Clean Coal Electricity.

If the E.P.A. does open the door to a new, weaker set of rules that utilities and others favor, it will most likely touch off a legal battle with environmental groups and pose a bureaucratic challenge to an agency where critical senior positions

remain vacant. It could also force the agency's administrator, Scott Pruitt, who has rejected the scientific consensus that human emissions cause climate change, to implicitly acknowledge that greenhouse gases harm human health and that the E.P.A. has an obligation to regulate them.

"There's an internal debate over what the overall approach toward greenhouse gases should be, and it's hard to formulate policy if you haven't come to terms with the outcome of the debate," said David M. Konisky, a professor of public and environmental affairs at Indiana University.

The parallels between the Clean Power Plan and the Affordable Care Act go only so far. The health care law, which was passed by Congress, offered a tangible benefit to many Americans and was firmly in place when Mr. Trump entered office. The Clean Power Plan, a regulation, not legislation, has not taken effect and is tied up in a federal appeals court.

But environmental activists and conservative opponents alike say both cases show that demanding a policy be repealed is easier than making it happen. Finding a replacement is even harder.

"From the perspective of advocacy and political strategy, I think there's a lot of similarities. Members of Congress campaigned for six or seven years to fully repeal Obamacare, and there were no conversations about replace, or nothing of substance," said Christine Harbin, vice president of external affairs at Americans for Prosperity, a conservative advocacy group. Of the Clean Power Plan, she said, "It may be difficult to fully repeal."

The Clean Power Plan aimed to reduce carbon dioxide emissions from existing power plants 32 percent below 2005 levels and required each state to develop carbon-cutting plans. Enacting the regulation was considered vital to helping the United States reach its commitment to reduce emissions under the Paris agreement. Mr. Trump has said he intends to withdraw from that accord.

The United States Chamber of Commerce, coal companies and most Republican lawmakers strongly opposed the regulation. Mr. Trump signed an executive order in

March to eliminate it, fulfilling a campaign promise to end what he denounced as a job-killing regulation.

Over the past several months, though, some of the very people who advocated killing Mr. Obama's climate policy have told Mr. Pruitt that his agency should devise a new, albeit weaker, rule to regulate carbon emissions in its place. Leading industry groups — including the Chamber of Commerce and the National Association of Manufacturers, and utility lobbies like the Edison Electric Institute — have pressed the administration for a replacement.

“We didn't always see eye-to-eye with the last administration on how to deal with climate in the regulatory space,” said Ross Eisenberg, vice president of energy policy at the National Association of Manufacturers, which joined 28 states to challenge the Clean Power Plan in federal court. “But we're comfortable with having a policy, even a regulation, that addresses climate change. It's about getting the regulation right.”

In public, industry leaders say their companies already are on a greener trajectory. Behind the scenes, they also worry that simply killing the climate rule would not hold up in court, and would invite even tougher regulations under a future Democratic president. They are advocating a narrow regulation that allows utilities to reduce pollution at individual plants, like substituting fuel or improving the efficiency of furnaces.

Dan Byers, the senior director for policy at the Chamber of Commerce's Global Energy Institute, said it's important that the E.P.A.'s repeal opens the door to such a replacement. Without one, he said, the agency would be vulnerable to lawsuits for not regulating carbon dioxide.

“The uncertainty that would be associated with that is far more risky than having a rule in place which is reasonable, achievable and cost-effective,” he said.

The E.P.A. declined to answer questions about the repeal process.

“We don't comment on rules undergoing interagency review,” Amy Graham, an agency spokeswoman, said in a statement.

If Mr. Pruitt moves to replace the Clean Power Plan, it could signal that he intends to abandon a larger fight to challenge the essential underpinning of federal climate policy.

The so-called endangerment finding, adopted after the Supreme Court found in 2007 that greenhouse gases are a pollutant subject to regulation under the Clean Air Act, declares that such emissions may “reasonably be anticipated to endanger public health or welfare.” Mr. Pruitt has been under pressure from people who reject established climate science to challenge the determination, but a chorus of more pragmatic voices inside the administration and industry have insisted that doing so would be a legal morass with an uncertain outcome.

Myron Ebell, a climate denier who led the E.P.A. transition team for the Trump administration, said he still hoped to see Mr. Pruitt challenge the endangerment finding in the future. That could happen through a series of debates on climate science that Mr. Pruitt has described as a “red team, blue team” exercise.

In the meantime, Mr. Ebell said he was confident the Clean Power Plan would crumble and said the failure of Republicans to upend the Affordable Health Care was a lesson for Democrats: Pass legislation.

“If you want to make something durable, you better get a law passed by Congress,” he said. “What one president can do by pen and by phone another president can undo by pen and by phone.”

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A version of this article appears in print on September 29, 2017, on Page A13 of the New York edition with the headline: As Trump Takes Aim at Obama’s Clean Power Plan, a Legal Battle Looms.

Exhibit 19

News Stories

Wednesday, February 10, 2016

ICYMI: U.S. Supreme Court grants stay on implementing Clean Power Plan

The Oklahoman ~ February 10, 2015

by Paul Monies

The U.S. Supreme Court on Tuesday halted implementation of the Clean Power Plan, granting a stay sought by Oklahoma and more than two dozen other states, utilities and coal companies.

The court ruled 5-4 to reverse an earlier decision by the U.S. Court of Appeals for the District of Columbia that denied a stay on the Obama administration's plan to reduce carbon dioxide emissions and other greenhouse gases from power plants.

The Supreme Court halted the plan until the appeals court could issue its decision on several lawsuits against the rule. The appellate court has consolidated those cases and scheduled oral arguments for June 2.

Oklahoma Attorney General Scott Pruitt said granting the stay gives states some clarity. His office joined in the stay appeal on behalf of Oklahoma and the Department of Environmental Quality.

"They can sit back, take a breath and let the legal process work," Pruitt said Tuesday. "I think at the end of the day, the Supreme Court has indicated that we're going to win on the merits, as well. It's a huge step, and something that illustrates how seriously the Supreme Court is taking these types of issues."

David Doniger, director of the climate and clean air program at the Natural Resources Defense Council, said his group was confident the rule ultimately will be upheld.

"The electricity sector has embarked on an unstoppable shift from its high-pollution, dirty-fueled past to a safer, cleaner-powered future, and the stay cannot reverse that trend," Doniger said in a statement. "Nor can it dampen the overwhelming public support for action on climate change and clean energy."

In a statement, EPA expressed its disappointment with the stay.

"We're disappointed the rule has been stayed, but you can't stay climate change and you can't stay climate action," the agency said. "Millions of people are demanding we confront the risks posed by climate change. And we will do just that. We believe strongly in this rule and we will continue working with our partners to address carbon pollution."

Pruitt has fought the Clean Power Plan at every stage, including in the draft stage before the rule was finalized last year. Tuesday's granting of a stay from the Supreme Court was his first victory on the environmental rule.

Pruitt said his office has won stays from courts on other Obama administration rules on water and immigration.

"Our involvement in each of those of three signature issues of the president stops them dead in their tracks," he said. "Each of those rules will be dormant and not survive his presidency."

Carbon regulation

Pruitt said Congress, not the EPA, should decide how to regulate carbon dioxide emissions from power plants. He said the section of the Clean Air Act under which the Clean Power Plan is based is an unprecedented use of that part of the law.

"The EPA doesn't have the latitude to make it up," Pruitt said. "If the policymakers in Washington, D.C., along with the executive branch, determine that CO2 is a hazardous air pollutant under Section 112 and should be regulated, they should pass that law and give that authority to the EPA. Until that occurs, the EPA can't simply make it up and act in the space of Congress."

U.S. Sen Jim Inhofe, R-Tulsa, called the stay a "major blow to President Obama's legacy on climate change."

"These regulations were the foundation of the president's commitment to the Paris Climate Agreement," Inhofe said in a statement. "The court's action should demonstrate once again to the world that this president has committed the U.S. to actions that are unenforceable and legally questionable."

Little state effect

In practical terms, the Clean Power Plan stay will have little effect in Oklahoma, which already has an executive order from Gov. Mary Fallin stopping the Department of Environmental Quality from planning for the rule's implementation.

Under the plan, the Environmental Protection Agency expects Oklahoma to cut its greenhouse gas emissions rate from power plants 32 percent by 2030. The first deadline for implementation is in 2022, but states were supposed to submit preliminary plans by September. If states don't submit compliance plans, the EPA will impose a federal plan.

Oklahoma Gas and Electric Co. and Public Service Co. of Oklahoma previously said their plants likely could meet the Clean Power Plan goals, largely because earlier EPA rules for mercury and regional haze already forced them to make changes to their fossil-fuel generation.

The utilities continue to study how the rule might affect the Southwest Power Pool, which plans transmission and operates a wholesale electricity market in Oklahoma and parts of 13 other states.

Exhibit 20



Scott Pruitt ✓

November 17, 2016 · 🌐

Over the last 6 years, I have done my part, fighting tirelessly against the Affordable Care Act, WOTUS, Immigration, and the Clean Power Plan. Which one of these should President-elect Trump tackle first?



Trump's First 100 Days?

I have done my part to fighting against the Affordable Care Act, WOTUS, Immigration, and the Clean Power Plan. In his first 100 days in office, what should President-elect Trump focus on tackling? Take my survey and let me know!

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Exhibit 21



Scott Pruitt ✓

@ScottPruittOK

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Exhibit 22



John Woolley and Gerhard Peters

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DONALD J. TRUMP

XLV President of the United States: 2017-present

Press Release - President-Elect Donald J. Trump Intends to Nominate Oklahoma Attorney General Scott Pruitt to Serve as the Administrator of the Environmental Protection Agency

December 8, 2016

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(New York, NY) – President-elect Donald J. Trump today announced his intent to nominate Oklahoma Attorney General Scott Pruitt to serve as the Administrator of the Environmental Protection Agency, a cabinet-level position. An expert in Constitutional law and one of the country's top attorneys general, Pruitt brings a deep understanding of the impact of regulations on both the environment and the economy making him an excellent choice to lead the Environmental Protection Agency.

"For too long, the Environmental Protection Agency has spent taxpayer dollars on an out-of-control anti-energy agenda that has destroyed millions of jobs, while also undermining our incredible farmers and many other businesses and industries at every turn. As my EPA Administrator, Scott Pruitt, the highly respected Attorney General from the state of Oklahoma, will reverse this trend and restore the EPA's essential mission of keeping our air and our water clean and safe," said President-elect Donald Trump. "My administration strongly believes in environmental protection, and Scott Pruitt will be a powerful advocate for that mission while promoting jobs, safety and opportunity."

"I am deeply grateful and honored to serve as President-elect Trump's EPA Administrator," said Mr. Pruitt. "The American people are tired of seeing billions of dollars drained from our economy due to unnecessary EPA regulations, and I intend to run this agency in a way that fosters both responsible protection of the environment and freedom for American businesses."

Mr. Pruitt will be deeply involved in the implementation of President-elect Trump's energy plan, which will move America toward energy independence, create millions of new jobs and protect clean air and water.

Mr. Pruitt will ensure that we conserve our natural habitats, reserves and resources, while unleashing an energy revolution that will bring vast new wealth to our country. Mr. Pruitt agrees with President-elect Trump that we must rescind all job-destroying executive actions and eliminate all barriers to responsible energy production. This will create at least a half million jobs each year and produce \$30 billion in higher wages.

Mr. Pruitt has been a national leader against the EPA's job-killing war on coal. As Oklahoma's Attorney General, Pruitt established the state's first "federalism unit" to combat unwarranted regulation and overreach by the federal government. Pruitt agrees with President-elect Trump that states should have the sovereignty to make many regulatory decisions for their own markets.

Citation: Donald J. Trump: "Press Release - President-Elect Donald J. Trump Intends to Nominate Oklahoma Attorney General Scott Pruitt to Serve as the Administrator of the Environmental Protection Agency," December 8, 2016. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=119781>.

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Exhibit 23

EPA

Pruitt recuses himself from Clean Power Plan, WOTUS suits

Kevin Bogardus and Amanda Reilly, E&E News reporters

E&E News PM: Friday, May 5, 2017



U.S. EPA Administrator Scott Pruitt said he would recuse himself from several cases on which he pursued against the agency as Oklahoma attorney general. Photo by Susan Walsh, courtesy of AP Images.

U.S. EPA Administrator Scott Pruitt has recused himself from several cases that he pursued against the agency as Oklahoma attorney general.

Pruitt has signed a [recusal statement](#), dated yesterday, which was obtained by E&E News under the Freedom of Information Act. The four-page document lays out several lawsuits pending before the agency that Pruitt has agreed to step away from during his tenure as EPA chief.

"This recusal statement addresses all of my ethics obligations," Pruitt said in the statement.

Pruitt said he would not participate for one year after his Senate confirmation in matters involving certain parties, including the state of Oklahoma and the Rule of Law Defense Fund, a public policy group involving Republican attorneys general that targeted environmental rules.

In addition, Pruitt has recused himself from a dozen pending cases involving EPA, including high-profile litigation over the Clean Power Plan and cases in both federal appeals and district courts over the controversial Clean Water Rule.

Among the recusals are also several cases involving Obama-era air rules. Those include EPA's methane regulations for new oil and gas sources, the 2015 ozone standard, the agency's cost analysis of mercury standards for power plants, and standards governing emissions released during industrial equipment breakdowns.

Pruitt also agreed not to participate in the legal proceedings over the Volkswagen AG diesel emissions scandal.

In all the cases, Oklahoma was either a party, petitioner or intervenor, with Pruitt often leading the charge. Most of the litigation over the Obama rules, however, has been stayed by the courts while EPA reviews whether to eliminate or revise the regulations.

Pruitt's recusal statement suggests certain cases in which Oklahoma joined other states as an amicus shouldn't pose an ethics concern because the state wasn't a direct party and didn't author briefs.

Among that category of litigation is the pending Supreme Court case over which is the correct legal venue to hear challenges to the Clean Water Rule, otherwise known as the Waters of the U.S. rule, or WOTUS. The court is expected to hear arguments on that case in the fall.

In addition, Pruitt said he has not participated in any of the cases listed in his recusal statement "officially at all," and he "will continue to recuse for now."

Further, if the EPA administrator does plan to participate in any of the listed cases, he will seek an ethics determination from the agency's top ethics official, who will apply federal impartiality standards.

Pruitt's situation is similar to one of his predecessor's at the agency. President Obama's first EPA chief, Lisa Jackson, was given several "impartiality determinations" during her tenure ([Greenwire](#), Feb. 14).

Pruitt has also set up a "screening arrangement" where EPA officials will ensure that he doesn't participate in matters involving any of the listed entities in his recusal statement.

EPA Chief of Staff Ryan Jackson will screen all matters, including existing litigation, to make sure they don't conflict with Pruitt's statement. Jackson along with Sarah Greenwalt, a senior adviser to the EPA chief, will receive a copy of his recusal statement and are directed to consult with ethics officials "if they are ever uncertain whether or not I may participate in a matter."

Pruitt's top subordinates also will receive a copy of his recusal statement, and in consultation with ethics officials, he will "revise and update my ethics agreement and/or this memorandum" if circumstances change. Jackson, ethics officials and other lower-level staff will receive a copy of that revised statement as well.

"This memo demonstrates Administrator Pruitt is following the rules. By taking these steps, we're keeping the focus on EPA's mission to protect human health and the environment," said J.P. Freire, an EPA spokesman.

Longtime critic

Before Pruitt was confirmed as EPA administrator, he was one of the agency's most vocal critics — "a leading advocate against the EPA's activist agenda," according to his official Oklahoma attorney general biography. As a state attorney general, Pruitt sued the agency over several of its regulations, including the Clean Power Plan and the Clean Water Rule.

Pruitt's opposition to the agency that he now leads has resulted in pressure from Democrats on Capitol Hill. They have been questioning whether Pruitt has sought ethics advice and then heeded that advice as head of EPA, requesting documents — like the administrator's recusal statement — for weeks.

Senate Democrats sent a [letter](#) earlier this week questioning Pruitt over his alleged conflict of interest regarding litigation over EPA's ground-level ozone standard ([E&E News PM](#), May 2).

In a [letter](#) sent last month to the EPA chief, they pushed Pruitt to recuse himself from working on the Clean Power Plan, given he had previously litigated against the regulation.

As EPA administrator, Pruitt has taken several actions to begin rolling back that rule, including initiating the regulation's review; filing a court motion to hold in abeyance litigation against the rule; and telling governors that they didn't have to comply with the rule, considering it was subject to a Supreme Court stay.

In March, Democrats sent a similar [letter](#) to the EPA administrator regarding the Clean Water Rule. Pruitt also has already taken official action to review that rule.

Pruitt's ethics came under scrutiny during his Senate confirmation process.

Pruitt signed an [ethics agreement](#) where he said that during his first year at EPA, he would seek authorization to participate in matters that involved the state of Oklahoma.

In addition, Pruitt said repeatedly during his Senate confirmation hearing that he would consult ethics officials at EPA, including over litigation he was part of against the agency. He also committed to recuse himself from those cases if told to do so by those officials.

"I have every willingness and desire to recuse, as directed by EPA ethics counsel," Pruitt said at the hearing in January. "And if directed to do so, I will in fact do so, to recuse from those cases."

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