

News Release

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FOR IMMEDIATE RELEASE

HARVARD CONSTITUTIONAL LAW PROFESSOR LAURENCE TRIBE CALLS FOR WITHDRAWAL OF EPA'S PROPOSED POWER PLANT CARBON RULE

Washington, D.C., Dec. 5 – Laurence H. Tribe, professor of constitutional law at Harvard Law School and the Carl M. Loeb University Professor at Harvard University,¹ has called for withdrawal of the U.S. Environmental Protection Agency's (EPA) proposed rule to regulate carbon emissions for existing power plants. In comments submitted to EPA this week, Professor Tribe said EPA is reaching beyond its constitutional authority and is acting outside the bounds of the law.

"EPA's actions serve as a breathtaking example of executive overreach and an assertion of power beyond the agency's authority," said Professor Tribe. "The proposed rule lacks legal basis. It also represents an improper attempt by EPA unilaterally to remake a portion of the American economy on the basis of a hitherto obscure provision of the Clean Air Act, which is a fatally flawed interpretation."

Professor Tribe's comments consist of four major arguments:

- 1. The proposed rule repudiates a policy of prudent coal use shared by Democratic and Republican administrations for decades:** EPA is attempting to reverse decades of bipartisan federal policy emphasizing increased use of domestic coal to achieve U.S. energy independence, reduce imported foreign oil, and provide reliable and affordable electricity.
- 2. The proposed rule raises serious constitutional questions under the separation of powers, articles I and II, and principles of Federalism:** A Presidential speech does not have the force of law and cannot provide EPA with the authority to adopt the proposed rule. Constitutional questions aside, the proposal is also beyond EPA's statutory authority to adopt, and the proposed rule is invalid under Section 111(d) of the Clean Air Act.

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¹ Affiliation provided for identification purposes only.

- 3. The proposed rule violates Fifth Amendment due process and the takings clause by threatening to upset well-settled investment backed expectations developed in reliance on longstanding federal policy and by singling out a few to bear the burdens that should be borne by society as a whole:** As EPA Administrator McCarthy stated to the Senate Environment and Public Works Committee on July 23, 2014: "The great thing about this [EPA Power Plan] proposal is that it really is an investment opportunity. This is not about pollution control." EPA does not claim the proposed rule would affect climate.
- 4. The proposed rule violates structural limits on EPA authority and principles of Federalism:** The proposed rule impermissibly conflicts with state agencies currently exercising authority over electricity regulation. The proposal contradicts the Clean Air Act and would raise serious constitutional questions under the Tenth Amendment and principles of Federalism. It effectively dictates the fuel mix each state must adopt by determining the "state goal" for emissions, which is a target states must achieve.

Click [here](#) to read the full submission.

Laurence Tribe is a professor of constitutional law at Harvard Law School and the Carl M. Loeb University Professor at Harvard University. He was retained by Peabody Energy to provide an independent analysis of the proposed EPA rule as a scholar of constitutional law. The opinions expressed represent Professor Tribe's judgments in that capacity, not views that it would be proper to attribute to Harvard Law School or Harvard University.

Professor Tribe has argued before the United States Supreme Court more than 35 times and works with the firms Massey & Gail LLP and Shook, Hardy & Bacon, LLP on a variety of matters.

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