Climate Agenda on the Line

Carbon rule's stay marks unusual blow to the president's environmental push

By Amy Harder And Brent Kendall

WASHINGTON—The Supreme Court's unexpected move this week to block a federal carbon-emissions rule was a significant blow to President Barack Obama's environmental agenda, underscoring the unusual way in which that ambitious agenda is now in a state of suspended animation.

Mr. Obama's administration has pushed rules on everything from emissions to waterways to fracking. But the courts have begun to question whether it has exceeded its legal authority, and their final decisions will determine whether Mr. Obama's environmental legacy will be monumental or more modest.

The Supreme Court's stay of the rule limiting carbon emissions by power plants—which will remain in place while courts consider more than 30 lawsuits—is the third instance since last fall of federal courts have halting major new environmental rules.

Courts have blocked an Interior Department rule setting stricter standards for hydraulic fracturing on federal lands and an Environmental Protection Agency rule that would bring smaller waterways and wetlands under federal protection. The regulations are in precarious positions less than a year before Mr. Obama leaves office.

"When the pendulum starts to swing toward executive authority, there's going to be a real likelihood that the courts are going to pull back a little bit," said Jim W. Rubin of Dorsey & Whitney LLP, a former environmental lawyer with the Justice Department. The president's environmental legacy "will be determined by what survives court scrutiny."

Behind these cases is a core battle between the executive and legislative branches. Republicans say Mr. Obama, in taking unilateral actions, is acting like a king and not a president. The White House responds that Congress's refusal to act on critical issues like climate change—or even recognize it as a problem—leaves Mr. Obama little choice.

While the high court's action is far from final, it raises questions about a landmark international climate-change accord reached last year in Paris that Mr. Obama sees as the centerpiece of his environmental legacy.

Mr. Obama has rolled out nearly two dozen major rules and scores of smaller ones during his tenure, aimed at clamping down on pollution from oil, natural gas and coal, and at compelling industries to shift toward renewable energy sources such as wind and solar.

Similar clashes over alleged presidential overreach are taking place on other hot-button issues. The Supreme Court this spring will consider the president's plan to defer deportation for millions of illegal immigrants. A lower court is considering a suit by Republicans alleging the Obama administration defied Congress in how it paid for part of the Affordable Care Act.

White House officials said they are confident the courts will uphold the EPA rule, and they suggested Mr. Obama won't stop pursuing executive actions despite legal setbacks.

"Litigation over this administration's policies, and in particular Clean Air Act standards, is nothing new," said Dan Utech, deputy assistant to the president for energy and climate change. "In litigation the pathway is not always smooth. But at the end of the day, we prevail. And we are confident we will do so here. The Clean Air Act gives EPA clear authority—and legal responsibility—to regulate carbon pollution from the power sector."

The rule will remain in place while courts consider more than 30 lawsuits.

The administration's recent legal difficulties follow notable earlier successes. The EPA won a major ruling in 2012 when an appeals court upheld rules setting greenhouse-gas emission standards for automobiles. That court also blessed a central EPA finding that greenhouse gases like carbon dioxide are a danger to public health and likely have been a driver of global warming over the past half-century. The Supreme Court chose not to review those findings.

The tide seemed to turn in mid-2014 as courts began airing concerns about executive authority. The justices chastised the EPA for seeking to expand a clean-air permitting program to include greenhouse gases without clear congressional authorization.

The latest EPA rule would require a 32% cut in power-plant carbon emissions by 2030, based on 2005 emissions levels.

The Supreme Court considers several hard-to-meet criteria for stay requests, including whether the challengers will likely win their case and whether the denial of a stay will result in irreparable harm.

Supporters of both sides said they couldn't recall another instance when the justices intervened to stay a new regulation whose legality had yet to be fully evaluated by a lower court. "It clearly indicates that five justices have grave doubts about EPA's legal authority to do this rule," said Thomas Lorenzen of Crowell & Moring LLP, a former Justice Department lawyer who defended earlier EPA rules.