

Institute for Policy Integrity
New York University School of Law

For Immediate Release
September 11, 2013

POLICY INTEGRITY FILES SUPREME COURT AMICUS BRIEF
Argues that EPA has authority to use market-mechanisms to reduce pollution cheaply

NEW YORK—Can EPA effectively reduce pollution at the lowest possible cost? Or must it regulate smokestacks in a costly, cumbersome manner? That is the question the Supreme Court will consider when it hears *Environmental Protection Agency v. EME Homer City Generation* this Term.

This case, which challenges EPA’s cross-state air pollution rule, reaches the nation’s highest court after a lower court set aside three decades-worth of consistent agency interpretation of the Clean Air Act by six administrations of both political parties, to disallow EPA from using market-mechanisms to reduce the amount of dirty air flowing across state borders.

An [amicus brief](#), filed today by the Institute for Policy Integrity, argues that in place of an established, relatively unchallenged understanding of EPA authority, the lower court substituted its preferred policy for that of the agency. In doing so, it acted inconsistently with core principles of American administrative law.

“The public health problem at hand is serious,” said Richard Revesz, Policy Integrity’s Director. “Dangerous levels of air pollution are [causing](#) the early deaths of upwards of 30,000 people per year and causing hundreds of thousands of asthma attacks annually. But the sources of the exhaust are in one state, and the victims in another.”

Pollution from Midwestern states has become so heavy that if New Jersey were to shut down all of its industry, its residents would still breathe air that contains more than the maximum federal allowance for sulfur dioxide.

To deal with the situation at the smallest cost to the economy, EPA’s rule would permit power plants that can cut pollution on the cheap to do so on behalf of other plants. This allows the maximum amount of pollution to be cut at the lowest price.

“We believe the lower court that struck down this plan did so based on a cramped, narrow reading of the law; one both inconsistent with Congress’s intention—to achieve cost-effective means of reaching an environmental goals—and prior court cases,” said Jason Schwartz, Policy Integrity’s Legal Director.

The Institute for Policy Integrity at New York University School of Law is a non-partisan think-tank using economics and law to protect the environment, public health, and consumers.

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Experts are available for comments and interviews.

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