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U.S. Chamber of Commerce challenging new EPA ozone standard in court

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The U.S. Chamber of Commerce announced a lawsuit Wednesday challenging the Environmental Protection Agency's ground-level ozone standards, marking yet another Obama administration policy likely to be decided in the courts rather than on Capitol Hill.

The Chamber said it was joining other business groups to ask the U.S. Court of Appeals for the D.C. Circuit to overturn the rules, saying the EPA's tightened standards for ozone emissions are unworkable and will be a major pain to businesses already struggling to comply with rules issued in the previous decade.

It joins cases on immigration, Obamacare's contraceptive policies and several other lawsuits against the EPA, all of which are winding their way through the courts and will serve as either an endorsement or rebuke of President Obama's expansive use of executive authority to try to force through his agenda.

"A lot of the Obama legacy is in the hands of the courts," said Darrell West, vice president and director of governance studies at the Brookings Institution. "Because of the congressional dysfunction, President Obama has expanded the use of executive orders, and many of these issues are now under litigation."

Immigration has emerged as the biggest of the fights. Mr. Obama claimed powers last year to grant a deportation amnesty, work permits and Social Security cards to more than 5 million illegal immigrants without the approval of Congress. The policy has been halted by an appeals court, which said Mr. Obama was breaking immigration laws with his expansive claim of power.

The president's attorneys are seeking a speedy review in the Supreme Court.

“It looks almost certain that the Supreme Court will take the immigration case,” said Ilya Shapiro, a senior fellow in constitutional studies at the Cato Institute.

Also on immigration, Mr. Obama has asked an appeals court to overrule a lower-court judge who said immigration agents were mistreating children caught at the border by putting them in dormitory-style detention facilities with their parents.

On Obamacare, a federal judge has allowed a lawsuit by the Republican-controlled House of Representatives to go forward. The lawsuit says Mr. Obama spent money that Congress specifically zeroed out of the annual budget — a strike at Capitol Hill’s power of the purse.

Next to come could be challenges to detaining terrorism suspects at Guantanamo Bay. Mr. Obama could claim powers to close the detention facility despite legislation passed by Congress — and signed by the president himself — specifically forbidding it.

Asked at his year-end press conference whether he believes he has the authority to transfer Guantanamo detainees unilaterally, the president said he would give Congress one more chance to heed his will.

“As I said — and I think you’ve seen me on a whole bunch of issues like immigration — I’m not going to be forward-leaning on what I can do without Congress before I’ve tested what I can do with Congress,” he said.

But nowhere has the president been as active as on the environment, where previous rulings affirmed broad jurisdiction for the EPA.

The ozone lawsuit challenges EPA rules announced in October lowering the amount of allowable ground-level ozone, a common air pollutant, from 75 parts per billion to 70. The EPA says reducing the level will result in fewer premature deaths, fewer missed work and school days, and fewer asthma attacks.

The National Association of Manufacturers also denounced the EPA rules Wednesday and said it would join the litigation.

Other recently announced lawsuits over EPA actions include challenges from states and groups such as the Competitive Enterprise Institute to the agency’s Clean Power Plan, the first national set of limits on carbon pollution from power plants.

More than a dozen states have won a halt to the EPA’s Waters of the U.S., or WOTUS, rules, designed to give the federal government a say in land-use and permitting decisions across millions of acres.

Mr. Shapiro said it's notable that parties like states, and not just industry groups, are suing over actions from the EPA, warranting more attention from the courts. In 2009, Congress rejected a cap-and-trade scheme for power plants akin to what the EPA proposed in October.

“The EPA has really stretched itself and pushed itself to the limit,” Mr. Shapiro said.

Alden Abbott, a senior legal fellow at The Heritage Foundation, said that although some high-profile issues are tied up in courts, many of Mr. Obama's actions will hinge on what the next president does with them and that a Republican president could have the opportunity to reverse things.

“What's sauce for the goose is sauce for the gander,” Mr. Abbott said. “There can be a couple of court decisions, but a lot really depends on the nature of the new president as to how these executive actions turn out.”