The D.C. Circuit issued an opinion today knocking out Trump's Affordable Clean Energy rule. The Trump rule was a rollback of Obama's keystone climate initiative, the Clean Power Plan. The majority opinion plus dissent take up 185 pages, and I won't try to describe it all here. Briefly, here's what the appeals court ruled and why it matters.

The underlying issue was what kind of restrictions EPA could place on carbon emissions from existing power plants. Both rules were based on section 111(d) of the Clean Air Act. The Obama rule required a shift in generation from coal fired power plants to natural gas plants, and from both to renewable energy. The Trump EPA reinterpreted section 111(d) to allow EPA to consider only a narrow category of regulations. Under the Trump interpretation, EPA can't require any shifting in power generation between different sources; it could only require coal-fired power plants to engage in very limited retrofits. The practical effect of the new interpretation was to eliminate any meaningful reductions in carbon emissions.

The Trump EPA took the position that the statute was utterly unambiguous in requiring this result. This was a gamble on their part. Contending that the statute was completely unambiguous was a much harder argument to win. If the argument was successful, however, the result would be to preclude any future effort by a new President to revive the Obama approach.

Trump's EPA lost the gamble. Based on a close examination of the terminology and grammar of the statute, the D.C. Circuit held that it simply didn't say what Trump's EPA claimed. It also relied on the history and purpose of the statue.

The dissenter, a Trump appointee, did not contest the majority on this point. Notably, his view was more radical than the position taken by the Trump Administration, because he claimed that even the Trump EPA's token regulations of emissions from coal plants went too far. He made two arguments for this radical position, one very sweeping and one hyper-technical. The sweeping argument was that the decision to regulate carbon emissions from the power industry was too important to leave to EPA. Instead, Congress needed to explicitly write that decision into law. The dissenter admitted that his argument on that point went beyond existing Supreme Court precedent.

The dissenter's hyper-technical argument was that EPA lacked power to regulate carbon emissions from coal-fired power plants at all because it was already regulating mercury emissions from those power plants under another section of the

statute. I won't go into the details of that argument except it say that it was based on a slip-up in the drafting process of section 111d that resulted in two different versions of the same provision slipping into the final bill.

The majority opinion persuasively shows that the dissenter's sweeping argument was inconsistent with precedent, while his hyper-technical argument was technically lacking. It's notable that the Trump Administration itself had rejected both of the dissenter's arguments at the behest of the utility industry. The utility industry preferred to leave EPA with some authority over power plant emissions, because failing to do so would indirectly open the door to public nuisance lawsuits against the industry in federal court.

Given that Biden will take office tomorrow, the government clearly won't be appealing the D.C. Circuit's ruling. It's possible that one of the other parties, but more likely that the case will be put on ice while the Biden Administration decides what to do. Thus, the door will likely be open for Biden's EPA to return to something along the lines of the Obama rule. That would leave time to issue a new rule that might be both stronger and more legally resilient than the Obama rule.

Of course, any Biden replacement rule would itself be taken to court. There's no way of knowing how the 6-3 conservative majority would rule. It would probably be another three or four years before the new litigation would get to that point. By then, the situation may be much different.

Given the risk posed by the Supreme Court, it would clearly be unwise for the Biden EPA to put all its bets on reviving the Obama approach. It has other tools for reducing carbon emissions. Still, it would be mistake for Biden to ignore the possibilities opened up by today's court ruling. Obama's original rule has been overtaken by events, but Biden's EPA could well begin crafting a replacement.