In *West Virginia v. EPA*, the Supreme Court is reviewing Obama's Clean Power Plan. The Clean Power Plan (CPP) itself no longer has any practical relevance, but there's every reason to predict the Court will strike it down anyway. The ruling will also restrict EPA's future options. The big question is what the Biden Administration should do next. That depends on the breadth of the Court's opinion.

The Clean Power Plan was the centerpiece of the Obama Administration's climate policy. It had three pillars: (1) reductions in emissions from coal-fired power plants; (2) shifts by the owners of coal plants to gas and renewables, and of gas-fired plants to renewables; (3) shifts by states toward the same kinds of shifts for their overall power mixes. The Clean Power Plan has no practical significance today: the deadlines in the Plan have long since passed, and the U.S. has achieved the Plans national target for other reasons even though the plan itself never went into effect. The Trump Administration said that the second two prongs, involving shifts away from coal and toward renewables, went beyond EPA's powers under the Clean Air Act. The Trump EPA also said it was very limited in what kinds of emission requirement it could impose on coal-fired power plants themselves.

How to respond to the Court's decision will depend on how sweeping the decision turns out to be. It seems clear that the Court will strike down the third pillar of the Clean Power Plan, which targets overall shifts in a state's generation mix, including shifts away from companies owning fossil fuel plants to other generators. Here are the possible ways the Court might rule, from the narrowest to the most damaging.

**Scenario #1: The Court strikes down only the third prong of the CPP.** That ruling would leave EPA free to treat owners of fossil fuel plants as a separate category and to require the owners to switch some of their generation to lower carbon or zero carbon sources. This outcome would actually give EPA quite a bit of leeway, especially given that many states with high emissions also have electricity markets dominated by one or two utilities. The Biden Administration would have plenty to work with in crafting new regulations.

**Scenario #2: The Court strikes down both the second and third prongs.** This ruling would be more of a severe blow, but not necessarily disastrous. Unless the Court imposes limitations on what kinds of restrictions EPA could place on coal-fired generation plants, EPA could still do quite a bit to cut emissions. In particular, it could require coal plants to co-fire with natural gas or wood chips, which could reduce emissions substantially. I think this is the outcome many environmentalists are hoping for.

**Scenario #3: The Court adopts the Trump Administration's position.** Such a ruling

would leave EPA with very little power to cut carbon emissions from the power sector in a direct way. It might be able to tighten the squeeze on fossil fuels, however, by ramping up other pollution regulations dealing with interstate air pollution, ceilings for particular pollution, regulation of methane leaks from gas production, etc.

**Scenario #4: The Court entirely strips EPA of power to regulate greenhouse gases.** To get to this outcome, the Court would have to overrule its landmark decision in *Massachusetts v. EPA*, something the parties did not request. I view this outcome as quite unlikely … but you never can tell. One side effect of such a ruling would be to make it easier for states and cities to sue utilities and fossil fuel produces for causing climate change. State like California would want to double down on those suits. Overruling *Massachusetts v. EPA* would also eliminate EPA's power to regulate CO2 emissions from vehicles, which would be a big blow. This would also probably eliminate the waiver that allows California to issue regulations of its own. One workaround would be for California to sharply increase the stringency of its regulations for particulate and ozone-producing emissions by vehicles, which it would still have the right to do. This could have the effect of forcing vehicle manufacturers toward more rapid adoption of non-polluting electric vehicles.

In theory, a possible response to any of these scenarios would be new legislation from Congress. That's so unlikely that I almost forgot to mention it at all.

***Keep in mind that the Court might surprise us with some entirely unexpected ruling. And there may be countermoves that I haven't thought of. But at least this is a start gaming out possible responses to the Court's decision.***