

Biden Plans New EPA Power Plant Rule. Will SCOTUS Kill It?

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Bracewell's **Jeff Holmstead** recently [considered with *E&E News*](#) what levels of pollution controls were established under the Supreme Court's decision in *West Virginia v. EPA* and how carbon capture plays into that equation.

Holmstead said the *West Virginia* decision offered EPA clarity on what it can do as well as what it can't.

"From just a good policy perspective, I think the Supreme Court power plant case helped quite a bit," he said.

For example, the court explicitly declined to use its *West Virginia* decision to limit EPA to emissions controls that can be achieved "inside the fenceline" at power plants. While the Trump-era rule that replaced the Obama administration's 2015 Clean Power Plan required only modest heat-rate improvements on-site at existing generating stations, it provided states very little flexibility in designing their implementation plans.

"The Supreme Court said, 'No, states have discretion as long as they meet the targets,'" said Holmstead.

The high court's decision does mean that EPA can't reprise the Clean Power Plan's gambit of basing emissions limits on what can be achieved through trading. But it opens a space for states to choose trading as a compliance mechanism.

In fact, the court spoke approvingly of a George W. Bush-era rule for power plant mercury — which Holmstead oversaw at the agency — that set limits based on what power plants can achieve but created compliance flexibility through trading.

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Holmstead expected EPA to afford states similar flexibility in carrying out this rule. That might be expressed in a guidance to states that EPA releases after the proposals.

“I would say like states like California and the [Regional Greenhouse Gas Initiative] states that already have cap-and-trade programs will be able to continue to use those [for EPA compliance] as long as they get to the same emission reductions that EPA is saying,” he said.

Eleven Northeastern and mid-Atlantic states currently participate in RGGI, which is a cooperative effort to reduce heat-trapping gas emissions.