

DAILY ONE

BY JOSH SIEGEL AND ABBY SMITH

BIDEN'S WELCOME GIFT: A federal appeals court gave President-elect **Joe Biden** [a huge welcome gift](#) today: a blank slate to write stricter carbon controls for power plants.

In a ruling this morning, the D.C. Circuit Court of Appeals rejected the Trump EPA's Affordable Clean Energy rule, its weaker carbon standards for power plants that replaced Obama-era climate regulations.

Now, instead of having to slog through a months-long rulemaking process to peel back the Trump-era rule, Biden's team can essentially start from scratch.

Biden has promised to strive toward a carbon-free power sector by 2035. Narrow margins in Congress mean he's unlikely, at least in the near-term, to advance a broader clean electricity standard. EPA regulations, then, will be Biden's best bet.

"A failure by Trump is a major win for the planet," said Clare Lakewood, legal director of the Center for Biological Diversity's Climate Law Institute, in a statement.

It's a massive leg up for Biden: His team will have dozens of Trump-era deregulatory actions to contend with as Biden attempts to put in place his aggressive climate agenda (even though EPA Administrator **Andrew Wheeler** [insists his successor won't need to repeal](#) all of his rulemakings).

Biden's team now won't have to repeal the ACE rule or explain why they're changing their position. The court has done that for them.

Nonetheless, the ruling doesn't mean smooth sailing for Biden's team. Whether and how to regulate carbon emissions from power plants has a lengthy and contentious legal history, and Biden's EPA will have to tread carefully.

The Supreme Court in 2016, in a rare out-of-turn move, paused the Obama administration's Clean Power Plan from going into effect, before even the lower court considered its legal merits. Opponents have said that suggests at least a few justices on the bench were skeptical of the Obama

approach, which would have allowed utilities to cut emissions by abandoning coal-fired power in favor of cleaner burning natural gas and renewable energy.

The high court is even more conservative now after **President Trump's** three appointments, so it doesn't seem likely a Clean Power Plan 2.0 would survive. It's also worth noting the Trump-appointed judge on the D.C. Circuit panel, **Justin Walker**, rejected the ACE rule not because it was too narrow, but because he doesn't believe the EPA has the authority to control power plants' carbon emissions at all.

Biden's backers, however, are cautiously optimistic: "It's true that EPA will need to be careful & strategic and not necessarily reboot the Clean Power Plan," said **Jody Freeman**, director of Harvard's Environmental and Energy Law Program and a former counselor on climate and energy in the Obama White House, in a [tweet](#). "But there are a variety of options for a new rule, and I am uber confident the new team will be smart."

It doesn't hurt that Biden has picked two of the architects of the Clean Power Plan for his climate team: former EPA Administrator **Gina McCarthy** as national climate adviser and former EPA air chief **Janet McCabe** as his nominee for EPA's deputy.

"It looks like we're kicking off a new era of clean energy progress a day early," said Rep. **Kathy Castor**, who chairs the House climate committee.