

U.S. Supreme Court Requires EPA to Consider Regulating GHG

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On April 2, 2007, the United States Supreme Court issued a landmark ruling on climate change.

Massachusetts v. Environmental Protection Agency, 549 U.S. ____ (2007). In a 5-4 decision, the Court held that, contrary to the Bush Administration's position, the Clean Air Act ("CAA") gives the United States Environmental Protection Agency ("EPA") the authority to regulate greenhouse gas ("GHG") emissions from new automobiles. Justice John Paul Stevens wrote the opinion for the Court; Chief Justice Roberts and Justice Scalia wrote dissenting opinions, both of which Justices Alito and Thomas joined.

This case started in 1999, when several environmental groups filed a petition demanding that EPA issue a rule regulating GHG emissions from new motor vehicles under the CAA. After considering public comment and scientific reports, in September 2003, EPA entered an order denying the petition. The environmental groups, joined by twelve intervenor States from across the country, including Massachusetts, California, Illinois, and New York,

and by local government entities, collectively sought review of EPA's order in the United States Court of Appeals for the District of Columbia Circuit. Although the three-judge Circuit Court panel produced three separate opinions, the majority ruling favored EPA's position. 415 F.3d 50 (D.C. Cir. 2005). Massachusetts and the other petitioners sought and were granted *certiorari* from the Supreme Court, which heard oral arguments on November 29, 2006. The three issues before the Supreme Court were:

1. Do the states and environmental groups have standing to sue the EPA?
2. Does the CAA give EPA the authority to regulate GHG emissions from automobiles?
3. Even if the EPA has authority, does it nevertheless have discretion not to regulate GHG emissions?

The Court answered the first two questions in the affirmative and remanded the case for further proceedings by EPA to answer the final question.

A very important part of the Supreme Court's decision addresses the issue of standing, *i.e.*, a party's right to bring an issue before any federal court for decision. The Court found that Massachusetts, because it is a sovereign state, met all of the legal requirements for standing — "it has suffered a concrete and particularized injury that is either actual or imminent, [] the injury is fairly traceable to the defendant [EPA], and [] it is likely that a favorable decision will redress that injury." *Massachusetts v. EPA*, No. 05-1120, slip op. at 14 (2007). The emphasis on Massachusetts' status as a sovereign state is significant because it limits the precedential value of the Court's decision regarding standing. As Chief Justice Roberts notes in his dissent, "[t]he good news is" that by granting Massachusetts standing to sue based on its special status, the Court "limits the future applicability of the diluted standing requirements applied in this case." *Id.*, Roberts dissent at 15.

The next part of the Court's decision focuses on the CAA's

scope with respect to climate change issues. The Court held that EPA has statutory authority under the CAA to regulate GHG emissions from automobiles. Specifically, the CAA, which was written in broad terms to ensure regulatory flexibility to address changing circumstances and scientific developments, includes a “sweeping definition of air pollutant” that, on its face, includes GHGs. *Id.* at 26.

Finally, the Court addressed the third question of EPA’s regulatory responsibilities under the CAA and whether EPA has discretion to decide not to regulate GHG emissions. The Court stated that EPA’s argument that it would be “unwise” to regulate GHG emissions from automobiles, “rests on reasoning divorced from the statutory text.” *Id.* at 30.

According to the Court, the only discretion that EPA has in regard to regulating GHG emissions from automobiles, is in determining whether GHG emissions endanger human health or welfare. The Court explains the limitations of EPA’s discretion by stating that “[u]nder the clear terms of the Clean Air Act, EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate

change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do.” *Id.* at 30.

Although EPA gave many reasons why it chose not to regulate GHG emissions from automobiles, the Court held that none of the reasons has anything to do with whether GHG emissions contribute to climate change. *Id.* at 31. The Court determined that, in order for EPA to reasonably argue that it was not going to regulate GHG emissions, EPA must show that “scientific uncertainty is so profound that it precludes EPA from making a reasoned judgment as to whether greenhouse gases contribute to global warming...” *Id.* at 31. The Court remanded the case for further proceedings by EPA, ordering EPA to determine whether GHG emissions from automobiles endanger human health or welfare. Although EPA may still determine that scientific uncertainty is too great to make that determination, it must clearly state that as the reason for its decision.

This Supreme Court decision will have a variety of immediate effects, but is not likely to lead to

immediate regulatory decisions from EPA. Politically, this decision will provide further support to those in Congress who are promoting a federal response to GHG emission and climate change issues. Alternatively, those who wish to go slow on climate change regulation may insist that EPA be given a chance to address the matter before Congress takes action. California may be the most direct beneficiary of the Court’s decision, as it is a party in two major pieces of litigation against automotive manufacturers, concerning GHG emissions from their products. California’s litigation position is likely to be buttressed by the Supreme Court’s determination that carbon dioxide is a pollutant under the CAA.

EPA’s regulatory decision is not likely to come quickly. It will have to provide a reasoned determination in response to the Court’s decision, which could take years, and likely will not occur before the end of the current President’s term. In all likelihood, political decisions, in Congress, the White House, and the states, will be the ultimate driver for future determinations of the scope and timing of GHG emission and climate change regulation.

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