



International Center for Technology Assessment

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Massachusetts, et al v. EPA (No. 05-1120) **A Guide to the Supreme Court's Case on Global Warming** November 27, 2006

Introduction

With the evidence of global warming becoming ever more apparent and scientifically verified, the United States has abdicated a leadership role in controlling greenhouse gas emissions. The Bush Administration has dismissed the Kyoto Protocol and even questioned the existence of global warming. The scope and focus of the U.S. policies on global warming, however, may soon change forever. On November 29, 2006, the Supreme Court will hear oral argument in the case of Massachusetts, et al. v. EPA. This case focuses directly on the ability of the Environmental Protection Agency (EPA) to regulate the domestic release of global warming gases under the authority of the Clean Air Act.

Oral argument in the case on Wednesday, November 29, 2006, will occur at 10 a.m. EST. The Court is located at the corner of First Street and Maryland Avenue, NE directly across from the U.S. Capitol. For more information on the Supreme Court visit www.supremecourtus.gov. The Supreme Court's public information phone number is (202) 479-3211 (Reporters press 1).

History of the Case

The case began on October 20, 1999, when the International Center for Technology Assessment (CTA) led a coalition of environmental organizations in petitioning the EPA to set emission standards for carbon dioxide (CO₂) and other motor vehicle greenhouse gas emissions under section 202 of the Clean Air Act. The petition asserted that such emissions should be regulated according to the Act's statutory language because they are "air pollutants" reasonably anticipated to harm public health and welfare. Under the Act, welfare is defined specifically to include "climate."

After more than three years without a response, CTA and Sierra Club successfully sued EPA for unreasonable delay and compelled an answer to the petition. As a result, in August 2003, the EPA reversed a long-standing legal opinion and issued an administrative ruling denying the CTA legal petition. In its denial, the EPA stated that the agency had no legal authority to control global warming pollution under the Clean Air Act, and, even if it did have such authority, it would still choose not to regulate it based upon "different policy approaches" (including a belief that there is still uncertainty in the science, a preference for the use of voluntary reductions, and claims that it would affect the foreign policy powers of the President).

In response to the petition's denial, in the fall of 2003, Petitioners (twelve states, several cities and over a dozen environmental organizations) challenged EPA's denial of the original CTA legal petition and filed suit in the U.S. Court of Appeals for the D.C. Circuit. On July 15, 2005, a three judge panel at the D.C. Circuit issued a splintered decision that failed to decide the core legal question of whether EPA

has the authority to regulate global warming pollution under the Clean Air Act. Judge Randolph upheld the EPA's decision based upon "policy consideration." Judge Sentelle thought Petitioners could not establish standing to adjudicate their legal claims because the injuries from global warming were too generalized. Despite their differences, Judges Randolph and Sentelle joined to form a majority supporting EPA's denial of the petition. Judge Tatel dissented finding that Petitioners had standing. On the merits of the case, he concluded that EPA had plain statutory authority to regulate air pollutants associate with global warming and that EPA's decision denying the CTA petition was contrary to law.

The D.C. Circuit opinion is reported at 415 F.3d 50 (DC Cir. 2005). The D.C. Circuit's denial of a petition for rehearing en banc is reported at 433 F.3d 66. These lower court decisions and a detailed chronology of the case are available at: <http://www.icta.org/global/war.cfm> (Click on "Legal Actions")

Frequently Asked Questions

Q: What Legal Questions Will Be Argued at the Supreme Court?

A: The Supreme Court has asked to hear two questions:

Does the Administrator of the Environmental Protection Agency have authority to regulate carbon dioxide and greenhouse gases emitted from motor vehicles under the Clean Air Act?

Did the Administrator of the Environmental Protection Agency illegally deny the legal petition filed by the International Center for Technology Assessment and others seeking such regulation?

Q: What Provisions of the Clean Air Act Are at Issue in the Case?

A: The text, scope and intent of two sections of the Clean Air Act are central to the case:

Clean Air Act § 202, 42 U.S.C. § 7521. Emission standards for new motor vehicles or new motor vehicle engines.

(a) Authority of Administrator to prescribe by regulation

Except as otherwise provided in subsection (b) of this section--

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d) of this section, relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

Clean Air Act § 302, 42 U.S.C § 7602. Definitions

When used in this chapter--

(g) The term "air pollutant" means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used.

(h) All language referring to effects on **welfare includes**, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and **climate**, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.

Q: Who Are the Petitioners Seeking EPA Action on Global Warming?

A: The petitioners are 12 states, 2 cities, 1 U.S. territory, and 13 environmental organizations.

Petitioner States & Municipalities: Massachusetts, California, New York, American Samoa, Connecticut, Illinois, Maine, New Jersey, New Mexico, Oregon, Rhode Island, Vermont and Washington. New York City and Baltimore.

Petitioner Environmental Organizations

International Center for Technology Assessment, Sierra Club, Center for Biological Diversity, Center for Food Safety, Conservation Law Foundation, Environmental Advocates of New York, Environmental Defense, Friends of the Earth, Greenpeace, National Environmental Trust, Natural Resources Defense Council, Union of Concerned Scientists and United States Public Interest Research Group

Q: Are There Amici (Friends of the Court) Briefs Filed in Support of the Petitioners?

A: Yes, there were 14 separate amicus briefs filed in support of the Petitioners. The Amici in support of the Petitioners include a group of prominent climate scientists, former EPA Administrators Browner, Reilly, Costle and Train, former Secretary of State Albright, the states of Arizona, Delaware, Iowa, Maryland, Minnesota and Wisconsin, numerous cities, major utility companies, and religious and environmental organizations.

Q: Who Are the Respondents Supporting the Denial to Regulate Greenhouse Gas Pollutants?

A: The Respondents include the U.S. Government, 10 states, and a host of industry interests.

Respondent

United States Environmental Protection Agency (EPA)

Intervening States Supporting EPA

Michigan, Texas, Idaho, North Dakota, Utah, South Dakota, Alaska, Kansas, Nebraska, and Ohio.

Intervening Industry Organizations Supporting EPA

Alliance for Automobile Manufacturers, National Automobile Dealers Association, Engine Manufacturers Association, Truck Manufacturers Association, Utility Air Regulatory Group (includes Edison Electric Institute, National Mining Association, and National Rural Electric Cooperative Association) and the CO₂ Litigation Group (includes American Petroleum Institute, the U.S. Chamber of Commerce, and National Association of Manufacturers).

Q: What Are the Potential Outcomes in the Case?

A. There are three possible outcomes.

(1). A victory for the Petitioners would include a ruling that EPA has authority to regulate greenhouse gas emission under the Clean Air Act, coupled with a remand of the original CTA petition back to the EPA so that the agency can reconsider whether to regulate greenhouse gas emission from motor vehicles based upon only the statutory criteria (“reasonably anticipated to endanger public health and welfare”) of Clean Air Act section 202;

(2) A ruling finding that the EPA has authority to regulate greenhouse gases, but that it did not abuse its discretion when the agency denied the CTA petition and refused to exercise its regulatory authority over greenhouse gas emissions. This would still be considered a big victory for the Petitioners because EPA will no longer be able to hide behind its assertion that it lacks legal authority to address global warming; or

(3) A ruling which upholds EPA’s interpretation of the Clean Air Act that it lacks any regulatory authority over greenhouse gas emissions. This would be a loss for the Petitioners

Q: Would a Victory for the Petitioners Create Mandatory Regulations of Greenhouse Gas Emissions.

A. Not exactly. If Petitioners are successful the Court would vacate the original EPA reasons for denying the CTA petition. It would send the petition back to EPA for the agency to again answer but this time using only the analysis allowed by law - whether greenhouse gas emissions from motor vehicles are reasonably anticipated to endanger public health and welfare. While EPA could again deny the petition, the Petitioners believe that the consensus scientific evidence concerning the reasonably foreseeable impacts of global warming is so great that any such agency denial would be again struck down in a subsequent lawsuit.

Q: How Much Do U.S. Motor Vehicle Contribute to Global Warming?

A: U.S. motor vehicles are responsible for 23% of the country's carbon dioxide emissions and 6% of the entire world's carbon dioxide emissions.

Q: How Will the Case Affect California's (and Other States') New Automobile Emission Standards Designed to Combat Global Warming?

A. Under a section 209 of the Clean Air Act, the state of California is permitted to set emission standards for motor vehicles. California may adopt its own standards so long as those standards are no less protective of public health and welfare than the federal standards. In establishing such standards California must seek a waiver to enact such a standard from the EPA.

In September 2004, California approved regulations that set limits on the emission of climate change pollutants from new motor vehicles sold in California beginning with the 2009 model year. On December 21, 2005, California requested a waiver from the EPA as required under Section 209. To date, the EPA has not ruled on California's waiver request.

Section 177 of the Clean Air Act allows other States to adopt California motor vehicle standards so long as those standards are identical to California's. After California adopted its emissions standards, ten States adopted California's standards: Connecticut, Maine, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington.

In December 2004, a group of car manufacturers sued California, arguing that its climate change emissions regulations were preempted on a variety of grounds, including the EPA's decision at issue in this case. Similar cases have also been filed in Vermont and Rhode Island. If Petitioners are successful in establishing that the Clean Air Act provides authority to regulate the emission of greenhouse gases from motor vehicles, this legal argument will be removed from any attempt to stop California and other states' attempts to adopt new auto emission regulations.

Q: Could the Ruling Affect Emission Sources Other than Motor Vehicles?

A: Yes. Regulation of air pollutant emissions under other provisions of the Clean Air Act, such as Section 111 regulating emissions from stationary sources (such as power plants), are triggered by the same "reasonable anticipated to endanger public health and welfare" standard that is at issue in this case. Should the Supreme Court rule in Petitioners' favor, the ruling will likely extend the Clean Air Act's legal authority to control greenhouse gas emissions beyond automobiles and include power plants. Stationary and mobile sources combine for over 60% of all U.S. carbon dioxide emissions.

Important Contact Information

The legal pleadings and oral argument for the petitioners have been handled by a group of attorneys representing both the state and organizational petitioners. The oral argument is being handled by James Milkey, Assistant Attorney General from Massachusetts. The lead author of the written briefs is Lisa Heinzerling from the Georgetown University Law Center.

State Petitioners

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Environmental Petitioners

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Important Information Sources

Court Briefs, Pleadings and Case History

All legal pleadings and details on the history of the case can be found at www.icta.org. (Click on global warming and then legal actions)

Recent Developments Concerning Global Warming Policies

Visit www.sierraclub.org and www.nrdc.org

Science of Climate Change

National Academy of Science, Understanding and Responding to Climate Change, 2005
<http://dels.nas.edu/basc/Climate-HIGH.pdf>

U.S. Climate Action Report of 2002
<http://yosemite.epa.gov/oar/globalwarming.nsf/content/ResourceCenterPublicationsUSClimateActionReport.html>

Intergovernmental Panel on Climate Change, Science and Technical Assessments www.ipcc.ch