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Supreme Court Rules EPA Has Statutory Authority To Regulate Greenhouse Gases

By Sanjay Ranchod

On April 2, 2007, the U.S. Supreme Court issued a landmark decision that may lead to the first national rules to limit emissions of greenhouse gases from vehicles. In *Massachusetts v. EPA*, No. 05-1120, the Court held that EPA has authority to regulate greenhouse gas emissions from new vehicles under the Clean Air Act, and that it must regulate them if it finds greenhouse gases cause or contribute to climate change.

The decision does not require the federal government to regulate greenhouse gases, but it has important implications for regulated industries. In addition to increasing the likelihood that EPA will regulate greenhouse gas emissions from new vehicles, the decision will increase pressure on the Congress to enact climate change legislation and may lead to state regulation of greenhouse gas emissions from stationary sources under the Clean Air Act. It also may encourage more states to adopt California's "clean car" rules limiting tailpipe emissions of greenhouse gases.

BACKGROUND

In 1999, a group of environmental organizations petitioned EPA to regulate carbon dioxide and other greenhouse gas emissions from new vehicles. EPA denied the petition four years later on the grounds that it lacked statutory authority to do so because greenhouse gases are not "air pollutants" within the meaning of the Clean Air Act and that even if it had such authority, it would decline to exercise that authority because it would conflict with other priorities of the current administration. EPA refused even to issue an "endangerment determination" as to whether greenhouse gases cause or contribute to climate change.

The environmental organizations, joined by Massachusetts and eleven other states, sued to overturn EPA's denial of the rulemaking petition. A divided panel of the U.S. Court of Appeals for the D.C. Circuit dismissed the challenge, ruling that EPA properly exercised its discretion in denying the rulemaking petition. The U.S. Supreme Court took the case and reversed the D.C. Circuit in a 5-4 decision, finding that EPA acted arbitrarily in deciding not to regulate greenhouse gas emissions from new vehicles.

THE OPINION

In the first part of the majority opinion, the Court rejected EPA's argument that the petitioners lacked standing to bring the lawsuit because they could not show they would be harmed by EPA's failure to regulate greenhouse gas emissions. Finding that "the harms associated with climate change are serious and well recognized," the Court held that Massachusetts possesses standing because the state's coastal lands will continue to be harmed by global warming.¹

On the first issue of statutory interpretation, the Court concluded that EPA has authority to regulate greenhouse gas emissions from new vehicles, making clear that the capacious definition of "air pollutant" in the Clean Air Act is unambiguous and includes greenhouse gases. The Court found no congressional action that indicated the Congress meant to curtail EPA's power to treat greenhouse gases as air pollutants.

The Court also found no conflict between existing statutory schemes and EPA controlling automotive emissions of greenhouse gases. The Court brushed aside EPA's argument that regulating tailpipe emissions of greenhouse gases would constitute fuel economy

regulation, a task that the Congress has assigned to the Department of Transportation. The Court found that both agencies can administer their obligations and avoid inconsistency, effectively side-stepping the complex issue of whether federal law pre-empts states from setting vehicle emission standards.

On the second issue before the Court, it rejected EPA's argument that even if the agency possessed the statutory authority in question, it would be unwise to regulate tailpipe emissions of greenhouse gases for policy reasons. The Court found that EPA offered an unpersuasive "laundry list of reasons not to regulate" and that the agency "has offered no reasoned explanation for its refusal to decide whether greenhouse gas emissions cause or contribute to climate change." In limiting EPA's discretion under the Clean Air Act not to act, the Court found that "EPA can avoid taking further action only if it determines 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."

In remanding the case, the Court required EPA to decide whether greenhouse gases cause or contribute to global warming. While the ruling does not require EPA to make an endangerment finding, the majority opinion leaves the agency little discretion not to regulate carbon dioxide and other greenhouse gases. If EPA does make an endangerment finding, the decision requires it to promulgate regulations to control emissions of greenhouse gases from new vehicles. If EPA does not make an endangerment finding, the agency "must ground its reasons for action or inaction in the statute."

KEY IMPLICATIONS

The Court observed that regulating emissions from new vehicles is only an incremental step to reversing global warming. The decision may lead to other steps by the federal and state governments, and has the following regulatory and policy implications.

Federal Regulation of Greenhouse Gas Emissions

- The decision increases the likelihood that EPA will regulate greenhouse gas emissions from mobile sources, and it may lead states and EPA to regulate greenhouse gas emissions from power plants and other stationary sources under the Clean Air Act.
- The decision will fuel the growing momentum in the Congress to enact comprehensive climate change legislation, which could include creation of a national "cap and trade" scheme with an emissions trading system.

State Regulation of Tailpipe Emissions of Greenhouse Gases

- EPA will soon act on California's December 2005 request for a preemption waiver under the Clean Air Act to implement its 2004 "clean car" rules that require reductions in tailpipe emissions of carbon dioxide and other greenhouse gases from new vehicles sold in the state. EPA had not acted on the waiver request but indicated shortly after the *Massachusetts v. EPA* decision that it will seek public comments on California's waiver request.²
- The decision may encourage state efforts to adopt their own regulations limiting tailpipe emissions of greenhouse gases. More states are likely to join the eleven states that have sought to adopt California's "clean car" rules. Those states cannot implement California's "clean car" rules, however, until EPA approves California's preemption waiver request. (Except for California, states cannot develop their own rules limiting tailpipe emissions, but they can adopt California's rules if EPA grants California's waiver request.)

Environmental Review

- More private parties commenting on projects subject to the environmental review requirements of the National Environmental Policy Act (NEPA) or "Little NEPA" state counterparts such as the California Environmental Quality Act and New York's State Environmental Quality Review Act are expected to argue that greenhouse gas emissions associated with a project and their potential impact on global warming must be evaluated in an EIS or EIR. Agencies preparing or reviewing environmental impact assessments also may require evaluation of greenhouse gas emissions associated with a project.
- The decision may encourage environmental groups to push for quantification of greenhouse gas emissions and mitigation in residential and other private development projects. On the other hand, the decision can be interpreted as encouraging regulation at the federal and state levels, rather than the local level.

Standing

- By lowering the bar for standing by states, the decision is expected to make it easier for states to sue the federal government when EPA or another agency fails to issue regulations that it has authority to promulgate.
- Environmental organizations and other private parties are expected to use the decision to attempt to expand standing in environmental cases.

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¹ The majority opinion emphasized that Massachusetts was entitled to “special solicitude” to claim standing as a sovereign entity seeking to assert its rights under federal law, but does not address whether any other petitioner possesses standing. The Court proceeded to the merits of the statutory issues because one of the petitioners possesses standing. By granting standing, the Court’s decision blurs what had otherwise developed into a fairly bright-line rule on standing in environmental cases.

² Even if EPA grants California’s waiver request, implementation of California’s 2004 “clean car” rules will be on hold pending resolution of a closely watched lawsuit challenging the rules. That case, *Central Valley Chrysler Jeep, Inc. v. Witherspoon*, No. F-04-cv-06663 (E.D. Cal. filed Sept. 26, 2006), had been stayed pending the *Massachusetts v. EPA* decision.