

# Supreme Court Holds EPA Must Consider States' Request for Climate Change Rule

April 2, 2007

On April 2<sup>nd</sup>, the Supreme Court decided its first climate change case, *Massachusetts v. EPA*, Case No. 05-1120. The Court held, 5-4, that: (1) a group of states have standing to challenge the Environmental Protection Agency's (EPA or the Agency) denial of their petition under the Clean Air Act (CAA) for a rule regulating greenhouse gas (GHG) emissions from new motor vehicles, (2) that the Agency has the statutory authority to issue such a rule, and (3) that EPA's rejection of the rulemaking petition was arbitrary and capricious. The Court reviewed a divided decision by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) holding that EPA reasonably exercised its discretion in refusing to regulate carbon dioxide (CO<sub>2</sub>) and other GHGs to address climate change. Justice Stevens wrote the Court's opinion, which was joined by Justices Breyer, Ginsburg, Kennedy, and Souter. Chief Justice Roberts dissented on the ground that the states lack constitutional standing; he was joined by Justices Scalia, Thomas, and Alito. Justice Scalia authored a separate dissenting opinion, which also was joined by the three other dissenters.

## Background

In July 2005, a divided panel of the D.C. Circuit denied a petition for review filed by 12 states and the District of Columbia concerning EPA's refusal to initiate a rulemaking proceeding for the imposition of mandatory controls on emissions of CO<sub>2</sub> and other GHGs from new cars and trucks. EPA had denied the states' rulemaking petition on two alternative grounds: (1) the CAA does not authorize EPA to regulate CO<sub>2</sub> and other GHGs for global climate change purposes; (2) that, even if the CAA grants such authority, there are significant reasons of public policy not to regulate GHGs at this time.

## The Decision

Turning first to the issue of standing, the Supreme Court ruled that the states present justiciable issues that are "eminently suitable" for federal court review. The Court found that Massachusetts, one of the state petitioners, has a special position and interest as a sovereign state that owns territory that will be affected by climate change, and that it has demonstrated the elements for constitutional standing under Article III: injury, caused by EPA's action (or inaction), that is judicially remediable. The Court found that the harms to Massachusetts' coast threatened by sea level rise attributable to climate change are serious and well recognized by EPA's own objective assessment of the relevant science, as well as a consensus among experts on climate science. EPA had not disputed the causal connection between human-caused GHG emissions and climate change. The Supreme Court acknowledged that regulating GHG emissions from motor vehicles would not, by itself, reverse climate change, but concluded that the federal judiciary has jurisdiction to decide whether EPA has a duty to slow or reduce global warming.

Turning to the merits, the Court stated that its review of the statutory issues is narrow. It distinguished between an agency's refusal to initiate an enforcement action, which is committed solely to agency discretion, and its refusal to consider a rulemaking petition, which is subject to judicial review, albeit "extremely limited" and "highly deferential." A court can reverse such a denial if it is found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

The Court held that EPA's rejection of the states' petition was deficient because, contrary to EPA's ruling, the Clean Air Act "authorizes EPA to regulate greenhouse gas emissions from new motor vehicles in the event that [the Agency] forms a 'judgment' that such emissions contribute to climate change." The Court rejected EPA's argument that CO<sub>2</sub> and other GHGs do not meet the Clean Air Act's definition of "air pollutant," asserting that these substances are "undoubtedly" well within the "capacious" definition. The Court also rejected EPA's claim that post-enactment actions by Congress were intended to prohibit the agency from regulating GHGs. Further, the Court found unpersuasive EPA's argument that the regulation of CO<sub>2</sub> emissions from motor vehicles necessarily would require it to strengthen Corporate Average Fuel Economy (CAFE) standards, which the Agency asserted is solely the responsibility of the Department of

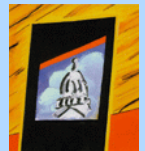
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(202) 338-2416

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Suite 1150  
Seattle, Washington  
98104  
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Transportation (DOT). The Court held that while DOT's mandate to set CAFE standards might overlap with EPA's responsibilities, it in no way limits EPA's duty to protect public health and welfare.

Finally, the Court addressed EPA's alternative ruling that, even if the Agency has the statutory authority to regulate GHG emissions, such regulation would be unwise at the present time for a variety of policy reasons, e.g., impairment of the President's ability to negotiate GHG reduction commitments from developing countries and that regulation of motor vehicles would make for an "inefficient, piecemeal" approach to address climate change. The Court held that EPA could not rely on these policy rationales to avoid its statutory duty to determine whether GHG emissions are air pollutants that "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." The Court held 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." Thus, EPA's policy judgments did not amount to a reasoned justification for failing to form a scientific opinion regarding whether CO<sub>2</sub> emissions contribute to climate change. Furthermore, EPA cannot avoid its statutory obligations by simply noting the scientific uncertainty. Rather, if EPA cannot make a reasoned decision because of such uncertainty, it must say so, which it did not. EPA's rejection of the states' rulemaking petition rested on impermissible grounds and was therefore "arbitrary, capricious, or otherwise not in accordance with law."

### **The Dissenting Opinions**

Chief Justice Roberts' dissent concluded that the state petitioners lack standing to bring their challenge and that the challenge raised issues that would be best addressed by Congress and the President. He disagreed that Massachusetts had any special interest as a sovereign state and also questioned the causal link between climate change and the harms alleged to be imminent by the state petitioners. In addition, he challenged the majority's finding that the regulation of CO<sub>2</sub> emissions from new motor vehicles would be likely to redress the injuries claimed by the states.

Justice Scalia's dissenting opinion focused on EPA's "policy" judgments. He disagreed with the majority's finding that the agency had not stated that it was incapable of making a reasoned judgment as to whether GHGs contribute to climate change. Justice Scalia also disagreed that GHGs necessarily fell within the CAA definition of an air pollutant, concluding that the Court should have deferred to EPA's interpretation of the statutory ambiguity.

### **Significance**

The Supreme Court's ruling will impact a number of pending cases challenging climate change initiatives by California and other states. It also will affect the ongoing debate in Congress and the Executive Branch concerning national law and policy respecting climate change, and the states' roles in addressing it. Finally, with respect to the specific regulation of GHG emissions from motor vehicles, the decision raises the problem of reconciling the dual regulatory paths laid down by the fuel efficiency standards administered by the National Highway Traffic Safety Administration under the Energy Conservation Policy Act, and EPA's authority over automobile emissions under the Clean Air Act. The decision leaves open EPA's authority to address GHG emissions from stationary sources under other provisions of the CAA.

### **For Additional Information**

If you would like more information on this case, please contact Dick Penna, Stephen Fotis, Kyle Danish, or any other member of the firm's Environmental practice at (202) 298-1800.

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