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Bush EPA's Refusal to Follow Law on Trial at Supreme Court

Case Could Have Far-reaching Impact on

State and Federal Actions to Fight Global Warming

(WASHINGTON D.C.) -- Today the Supreme Court heard oral arguments in *Massachusetts v. EPA*, a landmark global warming case. The High Court's decision is likely to have a far-reaching impact on future action to fight global warming at both the state and federal levels. James Milkey, Assistant Attorney General for Massachusetts, argued for the petitioners, which include the Sierra Club, Natural Resources Defense Council, twelve states, three major cities, and numerous other environmental groups.

The Questions Before the Court

Petitioners in this case are asking the Court to determine that the Clean Air Act authorizes the Environmental Protection Agency (EPA) to regulate carbon dioxide (CO₂) and other greenhouse gases as air pollutants. The Clean Air Act defines an "air pollutant" to include any chemical or physical substance emitted into the air from vehicles, power plants, or other man-made sources. The Act directs EPA to protect "public health and welfare," specifically defining "welfare" to include adverse effects on "weather" or "climate." In 1998, the EPA's general counsel ruled that CO₂ and other greenhouse gases are air pollutants subject to regulation under the Clean Air Act. In 2003, under the Bush administration, EPA reversed itself and has since steadfastly denied it has such authority.

"Since CO₂ is the main culprit behind global warming, something which undoubtedly will negatively effect both *our weather and climate*, it seems quite clear that the plain language of the statute grants EPA this authority," said Sierra Club Senior Attorney David Bookbinder. "It's not every day that a group of states comes to the Supreme Court begging it to grant a federal agency more authority. That alone should demonstrate the magnitude of this problem and the need for action by the federal government."

EPA also decided that even if it had the authority to regulate global warming pollution, it would not use it. While the Clean Air Act tells EPA to base its decisions on science, EPA cited a raft of extraneous policy arguments, including a preference for voluntary action and claims that standards would interfere with foreign policy imperatives. EPA also claimed the science was too uncertain to justify action.

In response, prominent climate scientists--including two Nobel laureates--filed a friend-of-the-court brief setting forth the scientific consensus that global warming is happening and is caused by human action. Four former EPA administrators filed a brief noting that under EPA's current do-nothing approach to scientific uncertainty, we would never have taken lead out of gasoline, phased out ozone-destroying CFCs, or cut other dangerous pollutants. Two of the nation's largest electric utilities weighed in to say that businesses need certainty about future carbon limits in order to guide their multi-billion dollar investments in new power plants. In her *amicus* brief, Former Secretary of State Madeleine Albright noted that holding back domestic action makes no sense when the administration is pursuing only voluntary agreements with other countries. Aspen Ski Company's brief cited an immediate threat to their business; Alaska native groups discussed the threat global warming poses to their very survival.

"We are confident that if the Court requires EPA to stick to the science, the agency will conclude these pollutants contribute to the grave dangers of global warming," said David Doniger, Senior Attorney for

the Natural Resource Defense Council (NRDC) Climate Center. "Then EPA will have to set feasible standards for motor vehicles, power plants, and other sources of global warming pollution."

A third legal issue is standing. The government and industry parties argue that global warming is such a big problem that no state or individual can demonstrate that controlling vehicle emissions will make a difference. The state and environmental petitioners have shown, however, that curbing vehicle emissions will contribute to solving global warming, and that is enough to establish their standing to sue.

Implications

The outcome in this case is likely to have a direct bearing on the eleven states that have adopted global warming emissions standards for cars and trucks. Under the Clean Air Act, California can set its own motor vehicle standards, and other states can elect either California or federal standards. California has adopted standards to cut global warming emissions from new vehicles starting in model year 2009 and ramping up to a nearly 30 percent reduction in model year 2016. A finding by the Supreme Court that the Clean Air Act doesn't cover global warming pollution could imperil the California vehicle emissions law. (In contrast, action by California and other states to curb global warming pollution from power plants, refineries, and other factory sources will not be affected by the outcome of this case.)

"As this case demonstrates, the Bush administration has fought tooth and nail to prevent meaningful action on global warming," said Dan Becker, Director of Sierra Club's Global Warming Program. "Nevertheless, states like California have taken the initiative and are attempting to do what scientists tell us is absolutely necessary if we are to prevent the most catastrophic effects of global warming from happening. It would be very unfortunate to see some of their hard work undone, but that would only increase the pressure on Congress to take meaningful action at the national level."

"Either way the Court rules, support is building in Congress for new legislation to curb global warming," added NRDC's David Doniger. "In the meantime, we are making every possible effort to get the Bush administration to follow the laws we have today, and to start cutting global warming pollution without further delay."

Chronology-

1998- EPA General Counsel Jonathan Cannon issues legal opinion agreeing that EPA has the authority under the CAA to regulate global warming pollution.

1999- The International Center for Technology Assessment petitions the EPA to act on its authority to regulate global warming pollution.

2002- After three years of deafening silence and inaction, the ICTA, Sierra Club, NRDC, and others bring suit against the EPA for failing to act on its authority. EPA then responded by reversing its previous position, asserting it had no authority to regulate greenhouse gases and, even if it did, it would not do so. The petitioners challenged EPA's decision in the District of Columbia Circuit.

2005- In a muddled 2-1 ruling, the D.C. Circuit upheld EPA's decision.

June 2006- Supreme Court grants writ of certiorari.

August 2006- Petitioners file initial written briefs.

Parties to the Case

Petitioners: Massachusetts, California, Connecticut, Illinois, Maine, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington, the District of Columbia, American Samoa

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

Filing as amici for the petitioners: Fourteen prominent climate scientists, two electric power companies (Entergy and Calpine), four former EPA administrators, former Secretary of State Madeleine Albright, six states (Arizona, Delaware, Iowa, Maryland, Minnesota, and Wisconsin), the U.S. Conference of Mayors, the National Council of Churches, Aspen Ski Company, North Coast Rivers Alliance, National Wildlife Federation, Alaska Natives, and ocean and coastal groups.

Key Provisions of the Clean Air Act

Section 202(a)(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.**

Section 302(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 by-product material) **substance or matter which is emitted into or otherwise enters the ambient air.**

Section 302(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 pollutants.

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