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Case Summary: *Massachusetts v. Environmental Protection Agency*

Bruce Barze and Thomas L. Casey, III summarize the United States Supreme Court's recent decision in *Massachusetts v. EPA* holding that EPA has the statutory authority under the Clean Air Act to regulate "greenhouse gas" emissions."

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I. Introduction

On April 2, 2007, the United States Supreme Court rendered its decision in *Massachusetts v. EPA*, No. 05-1120, holding that the U.S. Environmental Protection Agency ("EPA" or "Agency") has the statutory authority under the Clean Air Act (the "Act" or "CAA") to regulate "greenhouse gas" emissions (including CO_2 emissions) from new motor vehicles and that the Agency had failed to establish a sufficient reason for failing to do so. Four justices dissented from the majority opinion. In dissent, Chief Justice Roberts expressed his opinion that Massachusetts had failed to establish its standing to bring suit against the Agency. In a separate dissent, Justice Scalia concluded that the EPA was not required to regulate greenhouse gases under the Act and that the Agency had otherwise sufficiently explained its reasoning for not doing so. This article summarizes the majority opinion and the two dissents.

II. Discussion

Background

On October 20, 1999, a group of private organizations filed a rulemaking petition with the EPA requesting regulation of greenhouse gas emissions from new motor vehicles under Section 202 of the Clean Air Act. That Section provides as follows:

> The [EPA] 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 . . . .

42 U.S.C. § 7521(a)(1). The Act defines an "air pollutant" as "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive . . . substance or matter which is emitted into or otherwise enters the ambient air." *Id*. § 7602(g). On September 8, 2003, EPA issued an order denying the rulemaking petition, explaining that: (1) the CAA does not authorize EPA to issue mandatory regulations to address global climate change; and (2) even if the Agency had the authority to set greenhouse gas emissions standards, it would be unwise to do so. *See* 68 Fed. Reg. 52,922 (Sept. 8, 2003).

The original petitioners joined by intervenor state and local governments (collectively "Petitioners") sought review of EPA's order in the U.S. Court of Appeals for the D.C. Circuit. Although each of the three judges on the D.C. Circuit panel wrote a separate opinion, two judges agreed "that the EPA Administrator properly exercised his discretion under § 202(a)(1) in denying the petition for rule making." 415 F.3d 50, 58 (D.C. Cir. 2005). The Petitioners sought review of the D.C. Circuit's opinion by the U.S. Supreme Court.

Standing

In a 5-4 opinion authored by Justice Stevens, the United States Supreme Court agreed with the Petitioners and remanded the case with instructions for EPA to take a second look at the rulemaking petition. The first issue addressed by the Court was whether the Petitioners had

established standing to bring suit. EPA took the position that the Petitioners had not adequately pleaded a redressable injury sufficient to invoke the jurisdiction of the federal courts. Noting that "[o]nly one of the petitioners needs to have standing to permit us to consider the petition for review," the Court focused on the unique interests of the Commonwealth of Massachusetts. *See Mass. v. EPA*, slip op. at 15. Given Massachusetts' procedural right to challenge the rejection of the rulemaking petition and its "quasi-sovereign" interests, the Court concluded that it was "entitled to special solicitude" in the Court's standing analysis. *Id*. at 17. Additionally, the Court concluded that "the harms associated with climate change are serious and well recognized," and that EPA itself had conceded the causal link between man-made greenhouse gas emissions and global warming. *Id*. at 18-20. Lastly, the Court concluded that the risks associated with global warming would be reduced if Petitioners received the relief they requested—even though new motor vehicles contributed only a very small fraction of total global greenhouse gas emissions. *Id*. at 22-24.

The Merits

Having decided that Petitioners had standing to bring suit—based primarily on Massachusetts' unique interests in the subject of the litigation—the Court turned to the merits. Although recognizing the "broad discretion" afforded government agencies in carrying out their delegated responsibilities, the Court nevertheless concluded that an agency's refusal to promulgate rules is susceptible to judicial review and may be reversed where found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id*. at 25 (quoting 42 U.S.C. § 7607(d)(9)).

The first question addressed by the Court was whether CAA Section 202 authorized EPA to regulate greenhouse gas emissions from new motor vehicles. The Court found that it "had little trouble concluding that it does." *Id*. This conclusion turned on the interpretation of the Act's definition of "air pollutant," which defines it as "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive . . . substance or matter which is emitted into or otherwise enters the ambient air." 42 U.S.C. § 7602(g). According to the Court, "On its face, the definition embraces all airborne compounds of whatever stripe, and underscores that intent through the repeated use of the word 'any.' Carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons are without a doubt 'physical [and] chemical . . . substance[s] which [are] emitted into . . . the ambient air.'" *Id*. at 26. Therefore, "[b]ecause greenhouse gases fit well within the Clean Air Act's capacious definition of 'air pollutant,'" the Court held that that EPA had the statutory authority to regulate the emission of such gases from new motor vehicles. *Id*. at 30.

The second issue addressed by the Court was whether the EPA had provided a sufficient basis for refraining from regulating greenhouse gases under Section 202 of the Act. Section 202 specifically provides that EPA Administrator "shall by regulation prescribe . . . 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." 42 U.S.C. § 7521(a)(1). According to the Court, under this Section, "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." *Mass. v. EPA*, slip op. at 30. Because EPA had already conceded that greenhouse gases contribute to climate change, the Agency must provide "some reasonable explanation as to why it cannot or will not exercise its discretion." EPA had provided a number of reasons why it believed regulating greenhouse gas emissions from new vehicles was imprudent—*e.g.*, the executive branch was already working on voluntary limitations on greenhouse gas emission; regulating greenhouse gases might impair the President's ability to negotiate with developing nations regarding emissions; curtailing new motor-vehicle emissions would reflect an inefficient piecemeal approach to global warranting. However, the Court rejected all of these justifications, concluding that they were insufficient to avoid the mandate of Section 202. "The statutory question is whether sufficient information exists to make an endangerment finding." *Id*. at 32. "If the scientific uncertainly is so profound that it precludes EPA from making a reasoned judgment . . . EPA must say so." *Id*. at 31. Thus, the Court directed EPA on remand to reconsider its decision and to provide an appropriate scientific basis if it should again decide not to regulate greenhouse gas emissions for new motor vehicles.[i] *Id*. at 32.

Chief Justice Roberts' Dissent

Chief Justice Roberts, joined by Justices Scalia, Thomas, and Alito, dissented from the majority's opinion. In his opinion, the Petitioners had not established their standing to bring suit against EPA under the facts of the case. Under the Court's framework for addressing standing, "[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Id*. at 2 (Roberts, C.J., dissenting). Before even addressing this test, however, the majority "chang[ed] the rules." According to Roberts, the majority's relaxation of the standing requirement for State litigants "has no basis in our jurisprudence." *Id*. at 3. Moreover, "When the Court actually applies the three-part test, it focuses . . . on the State's asserted loss of coastal land as the injury in fact." *Id*. at 6-7. However, the majority never sufficiently explained how EPA's failure to regulate greenhouse gas emissions from new motor vehicles *caused* loss of coastal land, nor how any such regulation would *redress* this alleged injury. According to the Chief Justice, "Petitioners are never able to trace their alleged injuries . . . to the fractional amount of global emissions that might have been limited with EPA standards." *Id*. at 11. Moreover, "[i]n light of the bit-part domestic new motor vehicle greenhouse gas emissions have played in what petitioners describe as a 150-year global phenomenon, and the myriad additional factors bearing on petitioners' alleged injury—the loss of Massachusetts coastal land—the connection is far too speculative to establish causation." *Id*. For much the same reason, the relief requested by Petitioners could not be shown to "likely" redress this alleged injury. *Id*. at 12-13. In conclusion, Chief Justice Roberts observed that "petitioners' true goal for this litigation may be more symbolic than anything else. The constitutional role of the courts, however, is to decide concrete cases—not to serve as a convenient forum for policy debates." *Id*. at 13.

Justice Scalia's Dissent

In a separate dissent authored by Justice Scalia, joined by Chief Justice Roberts and Justices Thomas and Alito, Justice Scalia addressed the merits of the case. First, Justice Scalia took issue

with the majority's conclusion that greenhouse gas emissions qualify as "air pollutants" under the Clean Air Act. Justice Scalia agreed with the majority that "[c]arbon dioxide, methane, nitrous oxide, and hydrofluorocarbons . . . are 'physical, chemical, . . . substance[s] or matter which [are]emitted into or otherwise ente[r] the ambient air.'" *Id*. at 8 (Scalia, J., dissenting). However, "The Court mistakenly believes this to be the end of the analysis. In order to be an 'air pollutant' . . . the "substance or matter [being] emitted into . . . the ambient air' must also meet the *first* half of the definition—namely, it must be an 'air pollution agent or combination of such agents.'" *Id*. at 8-9. By eliminating this part of the definition, the majority mandated an over-broad definition of "air pollutant." As explained by Justice Scalia, "[i]t follows that everything airborne, from Frisbees to flatulence, qualifies as an 'air pollutant.' This reading of the statute defies common sense." *Id*. at 10 n.2. And, it was properly within EPA's discretion to determine, as it did, that greenhouse gases are not "air pollution agents." "EPA's conception of 'air pollution'—focusing on impurities in the 'ambient air' 'at ground level or near the surface of the earth'— is perfectly consistent with the natural meaning of that term." *Id*. at 12.

Secondly, Justice Scalia disagreed with the majority's conclusion that EPA failed to provide a sufficient justification for its decision not to regulate greenhouse gas emission from new motor vehicles. "The reasons the EPA gave are surely considerations executive agencies regularly take into account (and ought to take into account) when deciding whether to consider entering a new field: the impact such entry would have on other Executive Branch programs and on foreign policy." *Id*. at 5. Moreover, Justice Scalia concluded that EPA *had* also determined that "the scientific uncertainty is so profound that it precludes EPA from making a reasoned judgment as to whether greenhouse gases contribute to global warming." *Id*. "EPA *has* said precisely that—and at great length . . . . I simply cannot conceive of what else the Court would like EPA to say." *Id*. at 5, 8.

Like Chief Justice Roberts, Justice Scalia also suggests, in conclusion, that the majority's opinion may have been more political than judicial. "This is a straightforward administrative-law case . . . . No matter how important the underlying policy issues at stake, this Court has no business substituting its own desired outcome for the reasoned judgment of the responsible agency." *Id*. at 13.

III. Conclusion

The Supreme Court's decision in *Massachusetts v. EPA* reversed the D.C. Circuit's opinion and directed the lower court to remand EPA's order to the Agency for reconsideration. On remand, EPA is not *required* to regulate greenhouse gas emissions from new motor vehicles. However, it may refrain from doing so only if "the scientific uncertainly is so profound that it precludes EPA from making a reasoned judgment." If EPA chooses to regulate greenhouse gas emissions from new motor vehicles, it does retain "significant latitude as to manner, timing, [and] content" of any such regulation.

[i] The majority also recognized that EPA still has "significant latitude as to manner, timing, content, and coordination of its regulations with those of other agencies." *Id.* at 30.