A Breathtaking Result for Greens

Stunning. That is the adjective that comes immediately to mind in describing the Supreme Court’s ruling in *Massachusetts v. EPA* that EPA must reconsider its earlier decision not to regulate greenhouse gas emissions from new motor vehicles under the Clean Air Act. The 5–4 vote margin was as thin as it comes, but there is nothing thin about the sweeping nature of the ruling.

In its opening paragraph, Justice Stevens’s majority opinion makes clear that this is not a routine administrative law case. The Court uncharacteristically takes sides in the scientific debate about climate change, strongly suggesting that there is no debate at all. According to the Court, “respected scientists” agree that there is a relationship between a “well-documented rise in global temperatures” and “a significant increase in the concentration of carbon dioxide in the atmosphere.”

Ruling in petitioners’ favor on all three legal issues, the majority not only repeats petitioners’ contention that global warming is “the most pressing environmental challenge of our time,” but also embraces the judicial role required to ensure its meaningful consideration by the executive branch. While the Court’s opinion lacks the stirring rhetoric of Judge Skelly Wright’s 1971 declaration of a judicial “duty” in *Calvert Cliffs*, the majority opinion is the modern progeny of Wright’s exhortation that the judiciary must ensure that the nation’s important new environmental protection policies “are not lost or misdirected in the vast hallways of the federal bureaucracy.”

First, the majority rejects the contention that petitioners lack Article III standing. The Court relies both on the fact that petitioners include states, which are “not normal litigants,” and that Congress has conferred on the states and the other petitioners a “procedural right” to challenge EPA’s rejection of their rulemaking petition, which reduces the showing of immediacy and redressability required by Article III. The Court then holds that the widespread nature of the injury allegedly caused by climate change does not undermine the conclusion that its impact on petitioners is sufficiently “concrete.” The requisite causal nexus is established here, the Court reasons, even if the challenged action represents only a small part of the problem. And, finally, redressability is satisfied because the risk would be reduced “to some extent” by the relief petitioners seek.

The majority wastes little time on the second issue, easily concluding that the plain meaning of the statutory language forecloses EPA’s contention that CO₂ is not an “air pollutant.” Although Congress may not have appreciated climate change upon the law’s enactment in 1970, Congress “did understand that without regulatory flexibility, changing circumstances and scientific developments would soon render the Clean Air Act obsolete.”

Most remarkable, however, is the Court’s disposition of the third issue, rejecting EPA’s claim that it has discretion simply to decline to decide whether greenhouse gas emissions from new motor vehicles endanger public health and welfare. There is in fact considerable force to the dissent’s complaint that the federal judiciary is normally deferential to an agency decision to postpone to another time a decision whether to regulate. Indeed, that deference is typically greatest when, as is the case for the relevant provision under the act, Congress has imposed no timetable for such an agency decision, while imposing strict deadlines on a host of other agency decisions under that same law.

But that background principle of heightened judicial deference is what makes the Court’s ruling all the more telling. Norwithstanding a wide playing field, EPA still managed to exceed proper bounds by relying on a “laundry list” of impermissible factors that “have nothing to do with whether greenhouse gas emissions contribute to climate change” and that otherwise fail to provide “some reasoned explanation as to why it cannot or will not exercise its discretion to determine why they do.” Nor does the president’s “broad authority in foreign affairs” extend to the refusal to execute domestic laws.

A breathtaking result for environmentalists. The first time that environmentalists have both persuaded the Supreme Court to grant review over the federal government’s opposition and then won on the merits. Nor is the impact limited to this particular case. The Court’s ruling immediately bolsters the Article III standing of plaintiffs in a host of climate change cases now pending in federal court. And, no less significantly, it also undermines preemption challenges raised against the efforts of California and other states (adopting California’s standards) to regulate greenhouse gas emissions from new motor vehicles. The majority’s reasoning rejects any facial inconsistency between federal fuel economy standards and control of greenhouse gases.

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