

CLIMATE: Bush urges Supreme Court to kill global warming case over legal standing

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The Bush administration, nine states and a collection of industry, legal and scientific interests urged the Supreme Court yesterday to reject a lawsuit designed to force the first-ever nationwide regulations addressing global warming.

In a 49-page brief, U.S. Solicitor General Paul Clement said the Constitution should not even allow the climate change case poised before the Supreme Court to go forward. Clement insisted there is no way to prove a new U.S. rule to limit heat-trapping greenhouse gas emissions that come from automobiles would do anything to stem the effects of man-made climate change.

Too many other factors are in play, Clement said, including the emissions from cars in other countries.

"As ongoing scientific studies provide additional information about the problem and potential solutions, the United States stands ready to take further measures and to work with the rest of the world to address the phenomenon of climate change," Clement wrote. "This case, however, does not address the adequacy of those broader efforts."

A coalition of 11 states, including Massachusetts and California, Washington, D.C., and environmental groups successfully convinced the Supreme Court earlier this year to hear the case. The group wants the Supreme Court to overturn a split decision from a lower federal appeals court and order U.S. EPA to begin a study and rulemaking that leads to lower carbon dioxide emissions from automobiles.

Oral arguments in the case are set for Nov. 29.

Standing's importance

The constitutional debate over whether the states have standing to bring their case is likely to be a pivotal point in the Supreme Court hearing. If the Supreme Court agrees with the United States, the rest of the case would then be moot.

Massachusetts argues that it has standing because global warming will lead to permanent loss of coastline and more frequent and severe floods from storm surges. Judge David Tatel of the U.S. Circuit Court of Appeals for the District of Columbia agreed with the state's claims in the lower court, but he was on the losing end of a 2-1 opinion.

The Bush administration counters that an EPA rule would do little to stem any effects from climate change on Massachusetts or the other petitioners given that U.S. auto emissions only account for about 7 percent of global fossil fuel emissions and about 30 percent of domestic emissions.

"The requested EPA rulemaking would therefore result in, at most, a tiny percentage reduction in worldwide greenhouse gas emissions," Clement wrote.

At a briefing earlier this week on the Supreme Court case, Georgetown University law professor Richard Lazarus said the standing issue could have significant consequences for more than a dozen other global warming cases in other courts.

"If the court decides that, that's really a big deal," Lazarus said. "That was the danger in filing cert on this."

Justice Anthony Kennedy is also expected to be the pivotal swing vote on the standing question because other members of the court have in the past given strong indications they are evenly split on the issue, Lazarus said.

States, science skeptics question lawsuit

Michigan Attorney General Michael Cox (R) led the nine-state coalition before the Supreme Court that also opposes new EPA rules for autos. The states cautioned the Supreme Court to keep in mind that the existing Clean Air Act framework is not set up for a global source of emissions like CO₂.

"Effectively addressing an international issue like global climate change requires world-wide reductions, not simply reductions from U.S. sources alone," the states wrote. Alaska, Kansas, Nebraska, North Dakota, Ohio, South Dakota, Texas and Utah also signed on to Michigan's brief.

A collection of scientists known for taking a contrary perspective on global warming also chimed in with a legal brief. Writing for the Competitive Enterprise Institute, the scientists said the underlying case is "founded on the unsupported notion that the net effect of increasing greenhouse gases on human health and welfare is negative."

The scientists, including Harvard University astrophysicist Sallie Baliunas and Cato Institute senior fellow Patrick Michaels, said there is "no comprehensive scientific or economic study in the professional literature that has come to this conclusion, factoring in the risks, costs, and benefits of regulation."

Several industry and labor groups also raised doubts about the case before the Supreme Court. The U.S. Chamber of Commerce and National Association of Manufacturers, in a filing from the CO₂ Litigation Group, said arguments about global warming to support a new EPA regulation are "oversimplified and overstate the certainty of its potential future course and effects."

And the Union for Jobs and the Environment, representing 10 labor groups including the International Brotherhood of Teamsters and United Mine Workers of America, ticked through four key arguments. Among them, the labor coalition recalled two recent Senate floor votes against mandatory limits on U.S. emissions.