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High Court Rules Against Bush Administration in Sweeping Victory in Fight Against Global Warming

5-4 Ruling Stops EPA from Putting Politics Ahead of Science

(Washington, DC) -- In a huge victory in the fight against global warming the Supreme Court today issued a ruling in the case of Massachusetts v. EPA decisively rejecting the Bush administration's inaction on global warming. In a 5-4 vote, the High Court sided with the Sierra Club, 12 states, 3 cities, and the other petitioners in the case by agreeing that carbon dioxide and other global warming pollutants can be regulated under the Clean Air Act (CAA). Additionally, in a separate 5-4 ruling, the Justices wrote that the EPA cannot refuse to regulate these pollutants for political reasons. The Court gave its overwhelming stamp of approval to states that are taking action to fight global warming. At a time when automakers are suing states for taking this step forward, the Supreme Court stated clearly that states have the right to protect their citizens and the environment. It also provides momentum for efforts in Congress to reduce vehicle emissions.

"Today's ruling is a watershed moment in the fight against global warming," said Carl Pope, Sierra Club Executive Director. "The ruling is a total rejection of the Bush administration's refusal to use its existing authority to meet the challenge posed by global warming. It also sends a clear signal to the markets that the future lies not in the dirty, outdated technologies of yesterday, but in the clean energy solutions that will fuel the economy of tomorrow. It also vindicates the leadership that California and other states have taken on this issue."

In the majority opinion, the Court ruled that carbon dioxide and other global warming pollutants meet the definition of "air pollutant[s]" under the plain language of the CAA. This ruling, in and of itself, does not compel EPA to issue regulations limiting the emissions of global warming pollutants. However, the CAA states that EPA "shall regulate" any air pollutant "reasonably anticipated" to endanger "public health or welfare," which includes effects upon "climate or weather." Since EPA incorrectly argued that carbon dioxide was not an air pollutant under the CAA, it refused to even issue an endangerment determination. Today's ruling compels EPA to issue such a determination.

"It's unfortunate--but not surprising--that it took a Supreme Court case to clarify the meaning of words such as 'pollutant,' 'endanger,' 'weather,' and 'climate' for the Bush administration," commented David Bookbinder, Sierra Club's Director of Climate Litigation. "The only way EPA can continue to refuse to do its job and not regulate global warming pollutants is by claiming that the effects of global warming pose no danger to the public. Bush's EPA may try to do so, but I suspect they'd be laughed out of court."

The Court's secondary ruling compels EPA to follow the CAA provision that states that EPA "shall regulate" any air pollutant that it determines is reasonably anticipated to pose a danger to public health or welfare. EPA had made a wide variety of specious arguments claiming why, even if they had the authority to regulate global warming pollutants, it could simply choose not to do so. Today's ruling compels EPA to adhere to the unambiguous language found in the CAA. The CAA already affords the agency wide latitude in its rulemaking process--specifically stating that any potential regulations must

meet tests for economic and technological feasibility.

"EPA pursued a kitchen sink strategy by throwing a variety of arguments at the Court about why it could simply choose to ignore the law and come up with its own political criteria for deciding what is a pollutant and whether or not to regulate it," said Bookbinder. "This ruling simply sets into motion the process to establish the kind of regulations for global warming pollutants that have successfully regulated other pollutants for decades without the kind of dire economic effects predicted by industry."

Today's decision will impact numerous other cases currently working their way through the courts. It will most directly affect the *Coke Oven Task Force v. EPA* case currently pending in the Federal Court of Appeals for the District of Columbia Circuit. Both that case and *Mass. v. EPA* hinge on the same question of EPA's authority under the CAA. The ruling will also affect challenges brought by the auto industry against the Clean Car Laws enacted by California and 13 other states. California and the other states derive their authority to enact stricter standards from the same passage of the Clean Air Act at issue in *Mass. v. EPA*, so the High Court's ruling should strengthen the states' hand in cases pending in California and Vermont.

"Cities and states have been taking the lead on global warming action for the past years," said Carl Pope, Sierra Club Executive Director. "Today's decision will help protect those hard-fought victories from spurious attacks by polluters and other special interests."

Today's ruling does not affect the ability of Congress to address global warming through new legislation. Congress remains free to amend the Clean Air Act or pursue alternative legislation to limit global warming emissions.

"Considering the often glacial pace of rule making at EPA and the Bush administration's long-professed opposition to mandatory carbon limits, any new regulation coming out of EPA is likely to be years in the making unless the administration moves quickly to establish a weak regulation favorable to the biggest polluters," said Bookbinder. "The next administration will probably be largely responsible for implementing the Court's decision."

Environmental Defense v. Duke

The second decision issue today, also in an environmental case, upheld EPA's view that changes in power plants that may contribute to air pollution must be done only with a permit if there is an annual increase in emissions. The Court rejected the Fourth Circuit Court's view that the permit requirement applied only if there is an hourly increase in emissions. The case was *Environmental Defense Fund v. Duke Energy Corp.* (05-848). The decision was written by Justice Souter. The vote was unanimous, although Justice Clarence Thomas filed a separate concurring opinion.

For a complete set of documents related to *Mass v. EPA*, see:
<http://www.sierraclub.org/environmentallaw/lawsuits/0316.asp>

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