

Climate Change



EVSS-PUBA 534: Environmental Law and Regulatory Policy

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Climate change and the Clean Air Act

The Clean Air Act

Defines **air pollutant** as *any physical, chemical, biological, radioactive substance or material which is emitted into or otherwise enters the ambient air*

Section 108: Air quality criteria and control techniques

- Requires EPA to identify air pollutants that may "*reasonably be anticipated to **endanger** public health or welfare*"

Massachusetts v. Environmental Protection Agency (2007)

Standing

Must meet four requirements

- **Injury in fact:** *“an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.”* Lujan, 504 U.S. at 560
- **Injury can be traced to the challenged action**
- Redressability: courts can provide a remedy or redress
- Zone of Interests: Injury falls under the interests or concerns in which the law is intended to protect

Massachusetts v. EPA

Background

- **March 1998:** Carol Browner congressional testimony, and subsequent EPA legal opinion
- **Oct 20 1999:** Joe Mendelson from the International Center for Technology Assessment filed a petition with the EPA to regulate greenhouse gasses under the Clean Air Act, Section 202 standards for new motor vehicles
- **2000:** George W. Bush supported addressing climate change during the campaign

Massachusetts v. EPA

Background

- **Feb 26 2001:** Christine Todd Whitman appears on CNN
- **March 2001:** Bush letter to Republican senators
- **Dec 5 2002:** Mendelson, Sierra Club, and Greenpeace sue to compel EPA action on the petition

Massachusetts v. EPA

Background

August 28 2003: EPA releases two documents

- An opinion "formally withdrawing" the previous EPA general counsel opinion
 - CAA does not authorize EPA to regulate greenhouse gases
 - Greenhouse gases aren't an "air pollutant" *for climate change purposes*

Massachusetts v. EPA

Background

August 28 2003: EPA releases two documents

- A document formally denying the petition
 - The EPA has no "mandatory duty" to regulate
 - Now is not the "appropriate time" because more research is needed on *"the causes, extent and significance of climate change and the potential options for addressing it"*

Massachusetts v. EPA

Background

- **October 23 2003:** ~30 parties filed petitions with the DC Circuit Court challenging the EPA's denial of the petition, including twelve states, with Massachusetts being the lead state
- **April 8 2005:** oral argument begins in front of a three judge panel including Judges David Sentelle (Reagan appointee), Raymond Randolph (HW Bush appointee), and David Tatel (Clinton appointee)

Massachusetts v. EPA

Background

Issues before the DC Circuit

- Standing
- Are greenhouse gases pollutants under the Clean Air Act?
- Did the EPA have grounds to dismiss the petition?

Massachusetts v. EPA

Background

July 15 2005: The DC Circuit issues its opinion, 2-1 in favor of EPA

- Sentelle: Standing, no "imminent, concrete injury"
- Randolph: Petitioners had standing, but EPA had the discretion to wait
- Tatel: The petitioners had standing, greenhouses gasses are air pollutants under the CAA, and the EPA acted unlawfully in denying the petition

The future of the environmental movement is on your head

-Frances Beinecke president of the *Natural Resources Defense Council*

Massachusetts v. EPA

Background

- **March 7 2005:** Petition for a *writ of certiorari*, or cert petition filed with the Supreme Court
- **June 26 2006:** The Supreme Court grants review
- **November 29 2006:** Oral arguments before the Supreme Court

Massachusetts v. EPA

The questions the Court considered included:

- 1) May the EPA decline to issue emission standards for motor vehicles based on policy considerations not enumerated in the Clean Air Act?
- 2) Does the Clean Air Act give the EPA authority to regulate carbon dioxide and other greenhouse gases?

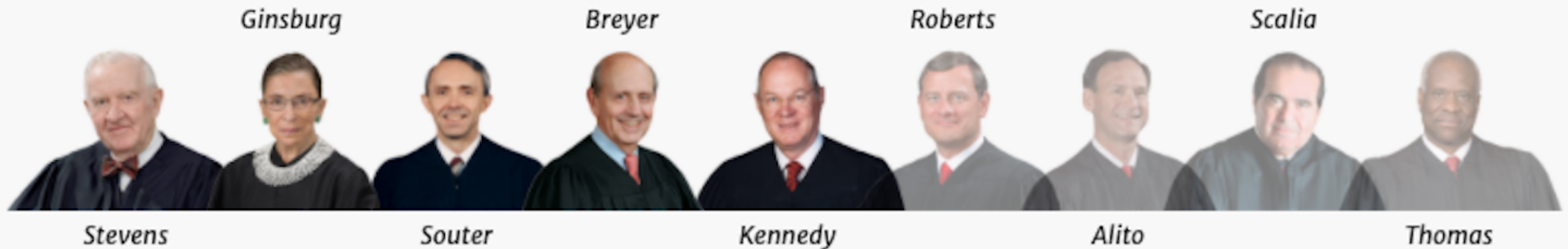
Massachusetts v. EPA

April 2 2007

Conclusion

Sort: [by seniority](#) [by ideology](#)

5-4 DECISION FOR MASSACHUSETTS
MAJORITY OPINION BY JOHN PAUL STEVENS



see: <https://supreme.justia.com/cases/federal/us/549/497/#tab-opinion-1962181>

Massachusetts v. EPA

The questions the Court considered included:

1) May the EPA decline to issue emission standards for motor vehicles based on policy considerations not enumerated in the Clean Air Act?

No

2) Does the Clean Air Act give the EPA authority to regulate carbon dioxide and other greenhouse gases?

Yes

Massachusetts v. EPA

Standing

- Justice Kennedy: states have an interest in protecting their sovereign territory from climate change
- Justice Roberts: Not really

Dissent

- Justice Roberts: Standing and climate policy is not for the courts to decide
- Justice Scalia: Standing and the merits

Endangerment Finding

December 7 2009: The EPA issued two distinct findings regarding greenhouse gases under section 202(a) of the Clean Air Act

- **Endangerment Finding:** *The Administrator finds that the current and projected concentrations of the six key well-mixed greenhouse gases—carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆)—in the atmosphere threaten the public health and welfare of current and future generations.*

Endangerment Finding

December 7 2009: The EPA issued two distinct findings regarding greenhouse gases under section 202(a) of the Clean Air Act

- **Cause or Contribute Finding:** *The Administrator finds that the combined emissions of these well-mixed greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas pollution that threatens public health and welfare.*

Briefly describe the Clean Power Plan

Briefly describe the Affordable Clean Energy Rule

West Virginia v. Environmental Protection Agency

For Next Time

Water Pollution

- *Readings:*
 - **Summary of the Clean Water Act**
 - **Bearden et al.**, *Clean Water Act*, pgs. 25-33, from Bearden, David M. et al. 2013. *Environmental Laws: Summaries of Major Statutes Administered by the Environmental Protection Agency*. Washington D.C.: Congressional Research Service.
 - **Salzman and Thompson**, Chapter 7: *Water Pollution*, from Salzman, James, and Barton H. Thompson Jr. 2014. *Environmental Law and Policy*. 4th ed. St. Paul, MN: Foundation Press.

In-Class Assignment

Topic selection paragraph

- Word doc on **OAKS**
- Submit in assignment folder
- Check-out with me before you leave