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SUPREME COURT RULES THAT EPA CAN REGULATE GREENHOUSE GASES *(Massachusetts v. EPA)*

In a 5-4 decision, the U.S. Supreme Court earlier this week ruled that the Environmental Protection Agency (EPA) is authorized under the Clean Air Act (CAA) to regulate so-called greenhouse gases, particularly carbon dioxide, which is claimed to be causing global warming and harming the environment. In reaching its decision, the Court ruled that Massachusetts and the other states had legal standing to bring the case. The EPA is now required to act on the petition to regulate greenhouse gases, but could decline to do so only if it articulates sufficient reasons under the CAA why it should not proceed. However, if EPA declines to regulate greenhouse gases, another suit could be filed challenging that decision or EPA could reverse itself under a new Administration.

In *Massachusetts v. EPA*, the plaintiffs alleged that the EPA had the authority and duty under the CAA to regulate carbon dioxide emissions from automobiles, and presumably from other sources as well, despite the lack of Congressional intent to list carbon dioxide as a pollutant under the CAA as WLF had argued in its brief. Under the new ruling, EPA could regulate greenhouse gases produced by automobiles, manufacturing facilities, and many other sources of carbon dioxide that petitioners claim are causing global warming. Such regulations would, in effect, constitute a "back door" method of implementing the unratified Kyoto Treaty regulating greenhouse gases, and cause severe harm to our economy. Environmental groups have been unsuccessful in urging the Senate to ratify the treaty over the last decade. Any regulation of greenhouse gases by EPA, however, could take several years to propose and implement.

Chief Justice Roberts, joined by Justices Scalia, Alito, and Thomas, dissented on the grounds that the states did not have the legal standing under the constitution to bring the case. In a separate dissent, Justice Scalia further argued that, in any event, the EPA articulated sufficient reasons explaining its decision not to regulate greenhouse gases.

WLF's brief was drafted with the *pro bono* assistance of Peter Glaser, a partner, in the Washington, D.C., office of Troutman Sanders LLP, along with associates Christine J. Sommer and Lynne C. Rhode, and Douglas A. Henderson, a partner in the firm's Atlanta office.

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