

**The Supreme Court's Climate Change Decision:
Massachusetts, et al., v. EPA, et al. (U.S. Supreme Court, 2007)**

- ❖ **Procedure:** In 1999, Massachusetts and 18 other states and organizations petitioned EPA to regulate emissions of GHGs from new motor vehicles. The petition cited EPA's mandatory duty to do so under the CAA Section 202(a)(1):

The [EPA] Administrator shall...prescribe...standards applicable to the emission of any air pollutant from...new motor vehicles, which in his judgment cause...air pollution which may reasonably be anticipated to endanger public health or welfare..."

In 2003, EPA declined the petition on the basis that; 1) the CAA does not authorize EPA to issue mandatory regulations to address global climate change, and 2) even if the EPA had the authority to set GHG standards, it would be unwise to do so at this time.

The petitioners sought review of EPA's order in the United States Court of Appeals for the District of Columbia. The Court of Appeals upheld the EPA's decision stating "that the EPA Administrator properly exercised his discretion under §202(a)(1) in denying the petition for rule making". One judge also raised the issue of petitioner's lack of standing. Petitioners appealed to the U.S. Supreme Court and the Court granted certiorari.

- ❖ **Issues.** The three issues before the Supreme Court were: 1) whether the petitioners had standing; 2) whether EPA has the statutory authority to regulate GHGs from new motor vehicles, i.e., whether the term "air pollutant" in the CAA includes GHG emissions (the authority question), and if so; 3) whether EPA's reasons for refusing to do so are consistent with the CAA (the discretion issue).
- ❖ **Holding:** In a 5-4 decision, the Supreme Court ruled in favor of the petitioners on all three issues.

Regarding **standing**, the Court first held that the CAA specifically authorizes challenges to agency action unlawfully withheld, such as this one. Therefore, the petitioners could assert that right without meeting the normal standards for standing. Second, the court found that Massachusetts, as a sovereign state, had a duty to preserve their territory, i.e., the loss of shore land resulting from global warming.

Finally, the court went into a traditional standing analysis – injury, causation, and redressability. **Injury:** The Court held that GHGs present a risk of harm that is both actual and imminent. **Causation:** EPA did not dispute causation, but they argued that any reduction in GHGs would be too small to make any difference in

climate change. The Court held, however slight the cause, regulations to alleviate harm typically occur in *small incremental steps*, and that is enough for standing purposes. **Redressability:** (the remedy sought must be one that is likely to redress the injury), the Court held that the remedy (regulating GHG emissions) would slow or reduce climate change. All of the elements of traditional standing are present.

Regarding the **authority question** (Issue 2), the Court stated that the statute is unambiguous in that the CAA's definition of "air pollutant" includes, "any air pollution agent...which is emitted into or otherwise enters the ambient air." This definition could not be squared with EPA's position that GHGs are not included in the definition. Therefore, the EPA has the authority to regulate GHG emissions.

Regarding the **discretion issue** (Issue 3), the court concluded that "in his judgment" allows the Administrator to consider only whether an air pollutant "may reasonably be anticipated to endanger public health or welfare." They held the EPA can avoid taking further action "only if it determines that GHGs do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion." Here, the EPA's rationale for not regulating GHGs was found to be inadequate.

Take home message:

1. States have standing to bring actions against EPA for not regulating GHGs.
2. GHGs are "air pollutants" under the CAA.
3. If the EPA chooses not to regulate GHGs, they must provide a reasonable explanation.