
June 26, 2006

Supreme Court to Hear Key Environment Case

By THE ASSOCIATED PRESS

Filed at 11:13 a.m. ET

WASHINGTON (AP) -- The Supreme Court agreed Monday to consider whether the Bush administration must regulate carbon dioxide to combat [global warming](#), setting up what could be one of the court's most important decisions on the environment.

The decision means the court will address whether the administration's decision to rely on voluntary measures to combat climate change are legal under federal clean air laws.

"This is the whole ball of wax. This will determine whether the [Environmental Protection Agency](#) is to regulate greenhouse gases from cars and whether EPA can regulate carbon dioxide from power plants," said David Bookbinder, an attorney for the [Sierra Club](#).

Bookbinder said if the court upholds the administration's argument it also could jeopardize plans by California and 10 other states, including most of the Northeast, to require reductions in carbon dioxide emissions from motor vehicles.

There was no immediate comment from either the EPA or White House on the court's action.

"Fundamentally, we don't think carbon dioxide is a pollutant, and so we don't think these attempts are a good idea," said John Felmy, chief economist of the [American Petroleum Institute](#), a trade group representing oil and gas producers.

A dozen states, a number of cities and various environmental groups asked the court to take up the case after a divided lower court ruled against them.

They argue that the Environmental Protection Agency is obligated to limit carbon dioxide emissions from motor vehicles under the federal Clean Air Act because as the primary "greenhouse" gas causing a warming of the earth, carbon dioxide is a pollutant.

The administration maintains that carbon dioxide -- unlike other chemicals that must be controlled to assure healthy air -- is not a pollutant under the federal clean air law, and that even if it were the EPA has discretion over whether to regulate it.

A federal appeals court sided with the administration in a sharply divided ruling.

One judge said the EPA's refusal to regulate carbon dioxide was contrary to the clean air law; another said that even if the Clean Air Act gave the EPA authority over the heat-trapping chemical, the agency could choose not to use that authority; a third judge ruled against the suit because, he said, the plaintiffs had no standing because they hadn't proven harm.

Carbon dioxide, which is released when burning fossil fuels such as coal or gasoline, is the leading so-called "greenhouse" gas because as it drifts into the atmosphere it traps the earth's heat -- much like a greenhouse. Many scientists cite growing evidence that this pollution is warming the earth to a point of beginning to change global climate.

At the heart of the climate debate is whether carbon dioxide releases should be controlled by emission caps on power plants and requiring motor vehicles to become more fuel efficient, therefore burning less fuel and producing less carbon dioxide.

President Bush, when first running for president, expressed support for regulating carbon dioxide, but he reversed himself shortly after getting into office -- saying he was convinced that voluntary plans to curtail carbon were a better way to go and mandatory regulation would be too expensive for business.

In 2003, the EPA's top lawyer concluded that the agency lacked the authority to regulate carbon dioxide under the Clean Air Act, reversing a legal opinion issued several years earlier by the Clinton administration and prompting the lawsuit.

"If ever there was a case that warranted Supreme Court review this is it," says Massachusetts Attorney General Tom Reilly, whose state is one of 12 involved in the lawsuit.

In their appeal, the states argued that the case "goes to the heart of the EPA's statutory responsibilities to deal with the most pressing environmental problem of our time" -- the threat of global warming.

The administration countered that the EPA should not be required to "embark on the extraordinarily complex and scientifically uncertain task of addressing the global issue of greenhouse gas emissions" when other, voluntary ways to address climate change are available.

In addition to Massachusetts, the states are California, Connecticut, Illinois, Maine, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont and Washington. They were joined by a number of cities including Baltimore, New York City and Washington D.C., the Pacific island of American Samoa, the [Union of Concerned Scientists](#), [Greenpeace](#), and Friends of the Earth.

The case is Massachusetts v. Environmental Protection Agency, 05-1120