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Controlling Greenhouse Gas Emissions From Mobile Sources—*Massachusetts v. EPA*

by Arnold W. Reitze Jr.

Editors' Summary: The recent Supreme Court decision in Massachusetts v. EPA *is predicted to have significant impacts on standing to sue, regulation pursuant to the CAA, and pending climate change cases. Arnold W. Reitze examines the* Massachusetts v. EPA *decision and its potential implications. In this Article, he describes the history of the litigation, the majority opinion and dissents from the Supreme Court Justices, and the decisions that EPA and Congress now face in light of this decision.*

Clean Air Act (CAA) §202(a)(1) grants the Administrator of the U.S. Environmental Protection Agency (EPA) the power to regulate "any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may be reasonably anticipated to endanger health or welfare."[1] Welfare is defined in CAA §302(h) to include effects on climate.[2] If greenhouse gases (GHGs) are pollutants and endanger health or welfare, they should be regulated after giving vehicle manufacturers the time to develop the requisite technology and after giving appropriate consideration of costs.[3] The legislative history indicates that when the 1990 CAA Amendments were enacted, GHGs still were not considered pollutants for the purposes of regulating new motor vehicles.[4]

On October 20, 1999, the International Center for Technology Assessment (ICTA) and about 20 other environmental and renewable energy industry organizations filed a Petition for Rule Making and Collateral Relief Seeking the Regulation of Greenhouse Gas Emissions From New Motor Vehicles Under Section 202 of the Clean Air Act. The crux of the petitioners' argument was that GHGs are pollutants under CAA §302(g)—materials that endanger public health or welfare—therefore, they must be regulated under CAA §202(a)(1). The remainder of the petition alleged the harm caused by GHGs in an effort to show that a finding of endangerment to public health or welfare must be made because the §202(a)(1) requirements have been met.

More than 20 industry associations filed a counterpetition challenging the legal and scientific bases for EPA's proposed regulation of GHGs under the CAA. The petitioners claimed that a memorandum written by EPA General Counsel Jonathan Z. Cannon on April 10, 1998, was a legal determination that carbon dioxide (CO_2) met the definition of air pollutant as set forth in §302(g), although the opinion recognized that EPA had declined to exercise its authority. It also claimed that the U.S. Congress explicitly recognized CO_2 as an air pollutant under CAA §103(g) by citing, again, to the Cannon memorandum.[5] In 1999, Cannon's successor, Gary S. Guzy, expressed his opinion that EPA had the authority under the CAA to regulate GHGs.

On August 8, 2003, EPA issued a notice of denial of the petition for rulemaking that concluded the Agency did not have authority to regulate GHGs, including CO_2, under the CAA, and that even if the Agency did have the authority to set GHG emission standards, it would be unwise to do so at this time.[6] On the same day, EPA General Counsel Robert Fabricant formally withdrew the Cannon memorandum issued in 1998 and concluded that the CAA does not authorize EPA to regulate for global climate change purposes. Three grounds were provided to support EPA's decision to deny the petition: (1) the CAA does not authorize agency action to address climate change; (2) regulation of CO_2 emitted from light-duty vehicles would conflict with the fuel economy provisions of the Energy Policy and Conservation Act; and (3) regulation of climate change using the CAA would not be appropriate given the president's comprehensive climate change policies and the implications for foreign policy, which the president directs.

EPA's administrative denial of the ICTA petition was challenged in a lawsuit filed in the U.S. Court of Appeals for

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1. 42 U.S.C. §7521(a)(1), ELR STAT. CAA §202(a)(1).
2. *Id.* §7602(h).
3. *Id.* §7521(a)(2).
4. *See* Arnold W. Reitze Jr., *Global Warming*, 31 ELR 10253 (Mar. 2001).
5. CAA §103(g) provides EPA with authority to research and develop nonregulatory strategies to prevent pollution. CO_2 from stationary sources is a substance listed for this effort.
6. 68 Fed. Reg. 52922, 52929-31 (Sept. 8, 2003).

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the District of Columbia (D.C.) Circuit on October 23, 2003. The case, *Massachusetts v. U.S. Environmental Protection Agency (Massachusetts v. EPA)*,[7] involved 12 states, a U.S. territory, the District of Columbia, 2 cities (New York City and Baltimore), and at least 12 environmental organizations.[8] The plaintiffs were opposed by EPA, 10 states, and several trade associations as intervenors. On October 12, 2004, the U.S. Department of Justice filed a brief in support of EPA's position that the CAA does not obligate EPA to regulate GHG emissions including CO_2.[9] The case was argued April 8, 2005[10] and decided July 15, 2005.[11]

The D.C. Circuit elected to address the merits despite standing issues concerning causation and whether injuries were redressable by a decision of the court. The court assumed, arguendo, that EPA has statutory authority to regulate GHGs from motor vehicles and addressed whether EPA properly declined to exercise its authority. EPA's decision involved reliance on a National Research Council report that concluded that "a causal linkage" between GHG emissions and global warming "cannot be unequivocally established."[12] The court recognized that EPA is given considerable discretion in making a decision to regulate.[13] The court therefore upheld EPA's exercise of its discretion under §202(a)(1) in denying the petition for rulemaking. Judge A. Raymond Randolph did not rule on standing but proceeded to the merits. He held that it was reasonable for EPA to base its decision on policy considerations such as scientific uncertainty and the concern that unilateral action could weaken efforts to reduce GHGs from other countries. Judge David B. Sentelle dissented in part because he concluded the petitioners had not demonstrated an injury necessary to have Article III standing, but he joined Judge Randolph in his judgment on the merits. Judge David S. Tatel dissented based on the CAA's statutory language, which he viewed as mandating the control of CO_2 in §202(a)(1), even though the provision overlaps responsibilities given to other agencies under other acts. EPA's only discretion under the section is to judge, within the bounds of substantial evidence, whether GHGs may reasonably be anticipated to endanger public health or welfare. Judge Tatel's position was that EPA must regulate GHGs if they endanger human health or welfare, and the Agency had failed to provide a statute-based justification for refusing to make an endangerment finding.

The U.S. Supreme Court granted a writ of certiorari to address two questions concerning the meaning of CAA §202(a)(1): whether EPA has the statutory authority to regulate GHG emissions from new motor vehicles, and if so, whether its stated reasons for refusing to do so were consistent with the statute. However, the issue that first needed to be addressed was whether the petitioners had standing.

Article III, §2 of the Constitution limits the federal judicial power to adjudication of cases and controversies. "The constitutional role of courts is to decide concrete cases—not to serve as a convenient forum for policy debates."[14] Thus, petitioners may not seek adjudication of political questions, for they are not justiciable. Standing to sue is part of what is required to make a justiciable case. Basic standing requirements include the need for a concrete personal injury that is actual or imminent, traceable to the defendant's conduct, and redressable by the requested relief. In this case, the petitioners bore the burden of showing injury due to EPA's failure to promulgate new motor vehicle GHG emission standards that would be redressed if such standards were promulgated.

A significant initial obstacle for the plaintiffs was avoiding dismissal as a nonjusticiable case involving a political question. Proponents of GHG regulation had been seeking support from Congress and the Administration for legislation at least since the United Nations Conference on Environment and Development in 1992. Since 1999, more than 200 bills had been introduced in Congress to regulate GHGs, but none were enacted. Moreover, the George W. Bush Administration had consistently opposed any mandatory controls on GHGs. The issue of whether and how to regulate GHGs continues to be a "hot button" political issue at both federal and state levels of government. But, the Supreme Court's majority simply ignored the political question issue.

In a 5-4 decision, written by Justice John Paul Stevens, in which Justices Anthony Kennedy, David Souter, Ruth Bader Ginsburg, and Stephen Breyer joined, the Court ruled that petitioners did indeed have standing. First, the Court held that a litigant challenging Agency action under CAA §307(b)(1)[15] need not meet the normal standards for showing imminent harm and redressability.[16] If there is some possibility that the requested relief will prompt the party causing the injury to reconsider its decision, which allegedly harms a litigant, then there is standing. Moreover, only one of the petitioners needs to satisfy the standing requirement.

Second, the Court recognized that states are not normal litigants for the purpose of invoking federal jurisdiction. The Court used *Georgia v. Tennessee Copper Co.*,[17] a 1907 case involving interstate air pollution, as its authority. The Court's majority position is that a state in its quasi-sovereign capacity is "entitled to special solicitude in our standing analysis."[18] The Court went on to uphold standing for Massachusetts, and determined that the redressability requirement is satisfied if EPA can take steps to reduce the risk. The

7. 415 F. 3d 50, 35 ELR 20148 (D.C. Cir. 2005), *rev'd & remanded*, 127 S. Ct. 1438 (2007).

8. Pamela Najor, *States, Cities, Advocacy Groups File Lawsuit Saying EPA Has Authority to Regulate Gases*, 34 Env't Rep. (BNA) 2381 (Oct. 31, 2003). The states are California, Connecticut, Illinois, Maine, Massachusetts, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington. Attorneys general from Alaska, Idaho, Indiana, Kansas, Michigan, Nebraska, North Dakota, Ohio, South Dakota, Texas, and Utah challenged the lawsuit and supported the George W. Bush Administration's position.

9. *EPA Denies CO_2 Authority to Court as Air Chief Hints at Future Controls*, Clean Air Rep. (Inside EPA), Oct. 21, 2004, at 10.

10. Pamela Najor, *12 States Seek Remand of EPA Decision on Controlling Carbon Dioxide From Vehicles*, 36 Env't Rep. (BNA) 741 (Apr. 15, 2005).

11. 415 F.3d at 50.

12. National Research Council, Climate Change Science: An Analysis of Some of the Key Questions (2001).

13. *See* Ethyl Corp. v. EPA, 541 F.2d 1, 6 ELR 20267 (D.C. Cir. 1976) (en banc); Environmental Defense Fund v. EPA, 598 F.2d 62, 8 ELR 20765 (D.C. Cir. 1978).

14. *See* Chief Justice John Roberts' dissent in *Massachusetts v. EPA* (citing Valley Forge Christian Coll. v. Americans United for Separation of Church & State, 454 U.S. 464, 472 (1982)).

15. 42 U.S.C. §7607(b)(1).

16. Citing Lujan v. Defenders of Wildlife, 504 U.S. 552, 581, 22 ELR 20913 (1992).

17. 206 U.S. 230 (1907).

18. *Massachusetts v. EPA*, 127 S. Ct. at 1455.

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Court opined: "A reduction in domestic emissions would slow the pace of global emission increases, no matter what happens elsewhere."[19]

Chief Justice John Roberts, joined by Justices Antonin Scalia, Clarence Thomas, and Samuel Alito authored a 15-page dissent dealing with standing. These four Justices would have rejected the challenges as nonjusticiable. "[R]edress of grievances of the sort at issue here 'is the function of Congress and the Chief Executive,' not the federal courts."[20] Chief Justice Roberts' position was that states have no special rights or status to obtain judicial review. "Under the law on which petitioners rely, Congress treated the public and private litigants exactly the same."[21] The Chief Justice also challenged the majority's analysis of the *Tennessee Copper* case. This case allowed a state, in an original jurisdiction action, to sue in a representative capacity as *parens patriae*. According to the Chief Justice: "Nothing about a State's ability to sue in that capacity dilutes the bedrock requirement of showing injury, causation, and redressability to satisfy Article III."[22] Moreover, under this doctrine, a state suing under *parens patriae* cannot enforce its citizens' rights against the federal government. Chief Justice Roberts went on to observe that the petitioners had not shown an actual loss and allegations of possible future injury did not satisfy Article III requirements. The role of new automobile emissions in creating the alleged injury was "far too speculative to establish causation."[23]

The majority opinion changes the law on standing in the following ways: (1) political issues are justiciable; and (2) a state petitioner does not have to meet traditional standing requirements of a concrete injury, causation, or redressability. This decision may have ramifications in areas of the law far removed from the environmental field. Under *Massachusetts v. EPA*, states appear to be able to use the courts without much concern for proving the elements of standing. Moreover, this decision may encourage a state that cannot get Congress to legislate in a manner it desires to go to the courts, where legislation can be created through statutory interpretation supported by five Justices.

The decision that the petitioners had standing allowed the Court to proceed to its review on the merits. EPA had refused to promulgate rules because it claimed it lacked authority under CAA §202(a)(1) to regulate new vehicle emissions because CO_2 is not an air pollutant as defined by §302. Review is based on the "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law" test found in CAA §307(d)(9)(A). The Court found that GHGs are physical and chemical substances that are emitted into the air. The Court rejected the use of post-enactment legislative history (and ignored contemporaneous legislative history) to explain the meaning of §202(a)(1). However, the Court recognized that if EPA regulates, it would have to conform to §202(a)(2) and delay any action "to permit the development and application of the requisite technology, giving appropriate consideration of the cost of compliance."[24] The Court did address the overlap with the U.S. Department of Transportation's (DOT) statutory mandate to promote mobile source energy efficiency by holding that both EPA and the DOT could administer their obligations and yet avoid inconsistency. The Court concluded that under the CAA's definition of air pollutant, EPA has the statutory authority to regulate GHG emissions from new motor vehicles.

The dissent dealing with the case's merits was written by Justice Scalia and joined by Chief Justice Roberts, Justice Thomas, and Justice Alito, but it did not address the issue of whether EPA has authority under the CAA to regulate GHG emissions as a pollutant. This may be due to the clear and broad language of §302(g)'s definition of air pollutant. The more significant issue before the Court concerned whether EPA can be forced to regulate GHGs as pollutants under §202(a)(1), which requires the Administrator to regulate a pollutant which "in his judgment cause, or contributes to air pollution which may reasonably be anticipated to endanger health or welfare."

The majority opinion addressed the issue of whether EPA properly refused to exercise its authority to regulate GHGs under CAA §202(a)(1). The Court held that "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 to determine whether they do."[25] The Court went on to say that EPA had refused to comply with this clear statutory mandate. "Instead, it has offered a laundry list of reasons not to regulate."[26] EPA cannot refuse to regulate because of concerns over scientific uncertainty or because of the implications concerning foreign affairs. "The statutory question is whether sufficient information exists to make an endangerment finding."[27] The Supreme Court reversed the D.C. Circuit decision and remanded the case to EPA for further proceedings. The Court did not reach "the question whether on remand EPA must make an endangerment finding, or whether policy concerns can inform EPA's actions in the event that it makes such a finding."[28]

Justice Scalia's dissent made the observation that no EPA Administrator has ever made a decision that CO_2 meets the CAA's criteria for regulation.[29] Moreover, nothing in the CAA requires the Administrator to make a decision simply because a petition for rulemaking is filed. While the statute allows EPA to regulate air pollutants that endanger public health or welfare, there is no requirement that EPA must act, and the Agency is free to defer making a judgment based on policy considerations. Justice Scalia also would allow EPA to determine that the science is too uncertain to allow the Agency to form a judgment, and he referred, for support, to a 2001 report of the National Research Council.[30] However, the information available after 2001 makes it exceedingly difficult to base inaction on arguments of scientific uncertainty.[31]

19. *Id*. at 1458.
20. *Id*. at 1464 (Roberts, C.J., dissenting).
21. *Id*. at 1465 (Roberts, C.J., dissenting).
22. *Id.* (Roberts, C.J., dissenting)
23. *Id*. at 1469 (Roberts, C.J., dissenting).
24. *Id*. at 1461.
25. *Id.* at 1462.
26. *Id.*
27. *Id.* at 1463.
28. *Id.*
29. *Id.* at 1472 (Scalia, J., dissenting).
30. *Id.* at 1474 (Scalia, J., dissenting).
31. *See*, *e.g.*, Intergovernmental Panel on Climate Change (IPCC), UNEP, *Climate Change 2007: Impact Adaptation and Vulnerability* (Apr. 13, 2007); IPCC, UNEP, *Climate Change 2007: The Physical Science Basis* (Feb. 2, 2007).

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Justice Scalia next got involved in a semantic analysis of the statutory definition of air pollutant. An air pollutant is "any air pollution agent or combination of such agents, including any physical, chemical, . . . substance or matter which is emitted into or otherwise enters the ambient air,"[32] which then provided the Justice with the opportunity of exploring the meaning of the word "including," which is found in the statute. Since the term "air pollution agent" is not defined, the Court, he believed, should give *Chevron* deference to EPA. Since EPA had interpreted "air pollution" as not encompassing global climate change, "this Court has no business substituting its own desired outcome for the reasoned judgment of the responsible agency."[33]

While both sides of this argument excel at splitting semantic hairs, the Court, in making its decision, ignored the complex policy issues that ought to be decided by elected officials. The Court applied its considerable intellectual power to decide whether the CAA regulates GHGs, but when the 1970 and 1977 CAA Amendments were enacted, global warming was not an issue of concern to the Congress. Thus, the Court made a decision designed to force EPA to regulate GHGs after a 15-year push from environmentalists and others for such regulation. President William J. Clinton did not seek U.S. Senate approval of the Kyoto Protocol because he knew that approval would never come. President George W. Bush has resisted efforts to impose mandatory controls on GHGs. Congress has rejected many efforts to enact domestic legislation to control GHGs. Having lost repeatedly in the political arena, the supporters of GHG control turned to the courts. Amazingly, it turns out that GHGs, which have not been regulated by EPA in the 37 years of the Act's implementation, have been subject to the Agency's regulatory power all along, making the efforts to enact GHG legislation unnecessary.

What then does this decision mean? EPA must now decide whether GHGs are air pollutants that endanger public welfare; however, the Court's opinion pushes EPA to find that GHGs need to be regulated. When EPA finally makes this determination, the difficult task will begin.

Section 202(a)(2) says that regulations "shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period." The GHG of primary concern, CO_2, is the product of even perfect combustion of any fossil fuel. It cannot be prevented from forming. There is no technology that will prevent its release from motor vehicles, nor is there any expectation that any control technology will be developed in the foreseeable future. The only way to reduce CO_2 emissions from mobile sources is to have the nation's vehicle fleet use less fossil fuel. Even improved vehicle fuel efficiency, while helpful, will not reduce CO_2 if more vehicles are driven more miles. For EPA to meet the Court's expectations, it will have to restrict the use of fuel.

EPA could try to reduce CO_2 emissions by imposing a more stringent fuel-efficiency standard than is required by the existing Corporate Average Fuel Economy (CAFE) standards administered by the DOT.[34] These standards have not changed for passenger cars since model year (MY) 1985, when they were set at 27.5 miles per gallon (mpg). Light-duty trucks have had a 21.0 mpg standard since MY2005, but that standard recently changed to require modest fuel efficiency improvements in MY2008 and thereafter light-duty trucks. While Congress has blocked efforts to impose more stringent fuel economy standards, U.S. buyers have continued to purchase light-duty trucks and sport utility vehicles (SUVs), which now make up 55% of the vehicle fleet. Thus, since 1990, CO_2 emissions have averaged a 1.4% annual increase. Even if fuel economy improves, it will be nullified if people drive more miles or if more people drive. Many vehicles are now marketed that provide fuel economy far above CAFE requirements, but consumers do not purchase them in sufficient numbers to stabilize the nation's petroleum consumption. EPA would probably find it politically difficult to strengthen CAFE standards by imposing more stringent requirements unless Congress explicitly requires such action. The alternative, two agencies with overlapping fuel economy standards, seems absurd, but it would be consistent with the Court's holding.

EPA could choose to use economic approaches to reduce fuel use. Such an approach could include the use of a gasoline/diesel tax, a carbon tax, a tradable permit system with a national CO_2 cap, or a rationing system such as the one used in World War II. Any of these approaches will require EPA to make important policy decisions without guidance in the CAA or anywhere else. EPA must do this without strong political support and will have to deal with the hostility of many members of Congress. It is also unlikely that EPA could legally institute a tax-based program. If EPA is going to regulate GHGs, it probably will be forced to use a tradable allowance system with caps that is similar to the program under the CAA subchapter IV for controlling SO_2 emission. Whatever EPA decides to do, by requiring GHGs to be regulated under the CAA, the Court has greatly restricted the government's control options. Moreover, if EPA only regulates emissions from mobile sources—the focus of the Court's opinion—it would still leave the majority of CO_2 emissions unregulated.

The *Massachusetts v. EPA* case also will impact the efforts of states, led by California, to impose CO_2 controls on motor vehicles. California submitted a waiver request to EPA in 2005 to allow the state to set mobile source CO_2 emission standards. EPA was concerned over its authority to issue a waiver because such standards are actually fuel-economy standards regulated by DOT but said that it would wait until the Supreme Court decided *Massachusetts v. EPA*.[35] The Supreme Court has rejected EPA's argument, increasing the pressure on EPA to issue a waiver to California. The Agency plans to seek public comments on whether it should approve or disapprove California's clean vehicle standards during summer 2007.[36] Moreover, pursuant to CAA §177, states with nonattainment areas may adopt Cali-

32. 42 U.S.C. §7602(g).

33. *Massachusetts v. EPA*, 127 S. Ct. at 1478 (Scalia, J., dissenting). *See Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 14 ELR 20507 (1984).

34. 29 U.S.C. §32902.

35. Dean Scott, *EPA Readying Proposal on California Waiver After High Court's Climate Change Decision*, 38 Env't Rep. (BNA) 799 (Apr. 6, 2007). California's GHG rules were challenged by the automobile industry in *Central Valley Chrysler v. Witherspoon*, No. CV F 04-6663 (E.D. Cal.), but that case was placed on hold by the court on Jan. 16, 2007, until the Supreme Court could decide the *Massachusetts v. EPA* case. *See* Carolyn Whetzel, *Auto Industry Challenge to California Rules Stayed Pending Decision on EPA Authority*, 38 Env't Rep. (BNA) 134 (Jan. 19, 2007).

36. Scott, *supra* note 35.

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fornia's new motor vehicle emission standards. Nine northeastern states as well as Oregon and Washington have adopted California standards. Automobile manufacturers are suing the states of California, Rhode Island, and Vermont in an effort to prevent imposition of fuel-economy standards that are more stringent than federal requirements,[37] but the Court's decision has substantially weakened the automobile industry's position.

Massachusetts v. EPA is not the first time the Supreme Court judicially legislated to force EPA to develop a new CAA regulatory program that was not part of the statute as enacted by Congress. In 1972, the Sierra Club sued EPA to prevent the deterioration of clean air, basing its claim on CAA §101,[38] which includes as one of the Act's four objectives the need to "protect and enhance" the quality of the nation's air. Federal District Court Judge John Pratt issued a four-page opinion requiring EPA to prevent the air in attainment areas from deteriorating to bare compliance with the national ambient air quality standards.[39] The case was affirmed by both the D.C. Circuit and the Supreme Court, but neither decision included an opinion.[40] Thus, a new program was required to be developed based on a short federal district court opinion that provided little guidance to EPA.

EPA responded to this judicial mandate by promulgating prevention of significant deterioration (PSD) regulations on December 5, 1974.[41] These regulations were challenged,[42] but the litigation eventually was mooted by the CAA Amendments of 1977, which provided a statutory basis for the PSD program by adding a new Part C, Prevention of Significant Deterioration of Air Quality, to Subchapter I of the Act.[43] In the best of worlds, Congress would now move quickly to enact new legislation that would give political legitimacy to EPA's efforts to control CO_2. Such legislation could provide structure and guidance to the Agency concerning how Congress expects the program to function.

There are numerous legislative proposals before Congress that deal with GHG emissions. Some legislative proposals deal with GHG issues in legislation concerned with petroleum independence, some are concerned with terrorism, and some are "pork" disguised as environmental legislation. The most common proposal is to increase the required CAFE mpg standards implemented by the DOT.[44] Other bills seek to establish a GHG tradable allowance system.[45] Some bills seek to nationalize the California mobile source standards.[46] Still another approach is to limit automobile CO_2 emissions on a gram-per-mile basis.[47] There are at least eight similar bills pending in the U.S. House of Representatives.[48] Whether any of these bills will be enacted into law is anyone's guess. But, the Supreme Court has given Congress a new reason to act or face the prospect of EPA as legislator.

An important issue to be faced by Congress involves the choice of the Agency to establish GHG emission standards for passenger vehicles. Some of the bills give the authority to EPA.[49] Other bills give the authority to the DOT, which presently has the authority to set CAFE standards.[50] There should be a comprehensive federal program designed to reduce GHG emissions, and Congress—not the Supreme Court—should designate the agency or agencies to implement the program. The mandate from the Supreme Court, while a poor way to deal with both standing and global warming, may turn out to be an appropriate stimulus for Congress to act responsibly to deal with a serious problem.

37. *Limits on Greenhouse Gases From Cars See First Court Test in Vermont*, Clean Air Rep. (Inside EPA), Mar. 28, 2007, at 6.
38. 42 U.S.C. §7401 (2000).
39. Sierra Club v. Ruckelshaus, 344 F. Supp. 253 (D.D.C.), *aff'd per curiam*, 4 ERC 1815, 2 ELR 20262 (D.C. Cir. 1972).
40. *Ruckelshaus*, 4 ERC at 1815, *aff'd per curiam sub nom.* Fri v. Sierra Club, 412 U.S. 541, 3 ELR 20684 (1973).
41. Air Quality Implementation Plans Prevention of Significant Air Quality Deterioration, 39 Fed. Reg. 42509 (Dec. 5, 1974).
42. Sierra Club v. EPA, 540 F.2d 1114, 6 ELR 20669 (D.C. Cir. 1976), *vacated & remanded sub nom.* Montana Power Co. v. EPA, 434 U.S. 809, 7 ELR 20496 (1977).
43. 42 U.S.C. §§7470-7491. The roots of the doctrine are explored in William Hines, *A Decade of Nondegradation Policy in Congress and the Courts: The Erratic Pursuit of Clean Air and Clean Water*, 62 Iowa L. Rev. 643 (1977).
44. *See*, *e.g.*, S. 183, 110th Cong. (2007), S. 357, 110th Cong. (2007).
45. *See*, *e.g.*, S. 280, 110th Cong. (2007).
46. *See*, *e.g.*, S. 485, 110th Cong. (2007).
47. *See*, *e.g.*, S. 309, 110th Cong. (2007).
48. *See*, *e.g.*, H.R. 1590, 110th Cong. (2007), H.R. 620, 110th Cong. (2007).
49. *See*, *e.g.*, S. 485, *supra* note 46; S. 309, *supra* note 47.
50. *See*, *e.g.*, S. 767/768, 110th Cong. (2007), S.183, *supra* note 44.