

Casenote

New Car Emissions Feared to Increase Global Temperatures, State Standing: *Massachusetts v. EPA*

I. INTRODUCTION

As debate over global warming continues to intensify, the United States Supreme Court has taken steps to begin addressing the many interests asserted by private and public parties. In *Massachusetts v. EPA*,¹ the Court issued a landmark opinion that gives states the power to assert their rights under the Clean Air Act² in federal court.³ The Court also ruled that the Environmental Protection Agency (“EPA”) acted arbitrarily and capriciously in denying a petition to promulgate a rule establishing limits on new motor vehicle emissions of carbon dioxide and other greenhouse gases (“GHGs”) under the Clean Air Act.⁴ This decision has centered the spotlight of the global warming debate on the EPA and may result in the regulation of GHG emissions from many sources other than just new cars.

1. 127 S. Ct. 1438 (2007).

2. 42 U.S.C. §§ 7401-7671q (2000 & Supp. IV 2004).

3. 127 S. Ct. 1438.

4. *Id.* at 1463.

II. FACTUAL BACKGROUND

The Court began by noting, “A well-documented rise in global temperatures has coincided with a significant increase in the concentration of carbon dioxide in the atmosphere. Respected scientists believe the two trends are related.”⁵ This phenomenon, known as global warming, begins when carbon dioxide that has been released into the atmosphere traps solar energy, resulting in a slower release of reflected heat. This is similar to how the ceiling of a greenhouse functions, which is why carbon dioxide is known as a “greenhouse gas” or “GHG.”⁶

On October 20, 1999, a collection of nineteen private organizations filed a rulemaking petition with the EPA requesting the organization to regulate emissions from new motor vehicles pursuant to section 202 of the Clean Air Act.⁷ The group alleged that: (1) “1998 was the warmest year on record”; (2) “carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons” are GHGs; (3) “greenhouse gas emissions have significantly accelerated climate change”; (4) “carbon dioxide remains the most important contributor to [man-made] forcing of climate change”; and (5) “climate change will have serious adverse effects on human health and the environment.”⁸ The group also pointed out in the petition that one EPA general counsel, prior to the time of the filing of the request, concluded in a legal opinion that the EPA was within its authority to regulate carbon dioxide, a sentiment that was later repeated by his successor only two weeks before the filing.⁹

However, on September 8, 2003, the EPA denied the rulemaking petition, claiming that the Clean Air Act did not empower the EPA to enact “mandatory regulations to address global climate change.”¹⁰ Further, the EPA proclaimed that even if it had such authority, it would be unwise to do so. The EPA maintained that the Clean Air Act did not pertain to carbon dioxide, which is consistently concentrated in the atmosphere, because carbon dioxide is not a local air pollutant.¹¹ Also, because of prior “political history,” potential political repercussions, and economic implications, the EPA concluded that the duty of enacting

5. *Massachusetts v. EPA*, 127 S. Ct. 1438, 1446 (2007).

6. *Id.*

7. 42 U.S.C. § 7521 (2000); *Massachusetts v. EPA*, 127 S. Ct. at 1449.

8. *Massachusetts v. EPA*, 127 S. Ct. at 1449 (brackets in original) (internal quotation marks omitted).

9. *Id.*

10. *Id.* at 1450.

11. *Id.*

mandatory emissions limitations remained with Congress.¹² The EPA also justified its denial of the petition because of the scientific community's failure to establish an unequivocal causal link between increased global temperature and human activity.¹³ Lastly, the EPA claimed that a "piecemeal approach" to climate change, such as emissions limitations, would conflict with the United States President's "comprehensive approach to the problem."¹⁴

On appeal to the United States Court of Appeals for the District of Columbia Circuit, the petitioners were joined by a number of state and local governments. In a split decision of 2-1, the court of appeals ruled against the petitioners, holding that the EPA properly used its discretion in denying the rulemaking petition. In his opinion, Judge Randolph did not present any concrete evaluation of the petitioners' standing to bring the claim.¹⁵ Judge Sentelle, while concurring in the court's holding that the EPA properly exercised its discretion, wrote separately to reveal his belief that the petitioners failed to "demonstrat[e] the element of injury necessary to establish standing" because they could not allege "particularized injuries" as required by law.¹⁶ Conversely, Judge Tatel concluded in his dissent that standing had been established by the petitioners, arguing that the projected rise in sea level that could result in substantial loss of coastal property was a "far cry" from an insufficient generalized harm.¹⁷ Further, Judge Tatel argued that the reduction in carbon dioxide emissions from American vehicles would "delay and moderate" the consequences of global warming and therefore sufficiently redress the petitioners' alleged injury.¹⁸

The United States Supreme Court granted certiorari on June 26, 2006,¹⁹ and in a split decision of 5-4, ruled in favor of the petitioners.²⁰ Justice Stevens, writing for the majority, held that Massachusetts had appropriate standing, and with that threshold justiciability issue satisfied, the Court could appropriately adjudicate the merits of the case.²¹ The majority determined that the EPA failed to provide a

12. *Id.*

13. *Id.* at 1451.

14. *Id.* (internal quotation marks omitted).

15. *Id.*

16. *Id.* at 1452 (brackets in original) (quoting *Massachusetts v. EPA*, 415 F.3d 50, 59-61 (2005) (Sentelle, J., dissenting in part and concurring in judgment)).

17. *Id.* (quoting *Massachusetts v. EPA*, 415 F.3d at 65 (Tatel, J., dissenting)).

18. *Id.* (internal quotation marks omitted) (quoting *Massachusetts v. EPA*, 415 F.3d at 65 (Tatel, J., dissenting)).

19. *Massachusetts v. EPA*, 126 S. Ct. 2960, 2960 (2006).

20. *Massachusetts v. EPA*, 127 S. Ct. at 1463.

21. *Id.* at 1458.

“reasoned explanation” for its refusal to act on the rulemaking petition.²² Therefore, the majority held that the decision was “arbitrary, capricious, . . . or otherwise not in accordance with law.”²³ Chief Justice Roberts, with Justices Scalia, Thomas, and Alito, dissented.²⁴

III. LEGAL BACKGROUND

A. *Statutory Background*

Section 202(a)(1) of the Clean Air Act²⁵ was enacted by Congress in 1970.²⁶ Congress amended section 202(a)(1) in 1977,²⁷ which currently states,

The [EPA] Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any *air pollutant* from 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 reasonably be anticipated* to endanger public health or *welfare*.²⁸

This amendment was made in response to the Court’s ruling in *Ethyl Corp. v. EPA*,²⁹ which held that the Clean Air Act and “common sense demand regulatory action to prevent harm, even if the regulator is less than certain that harm is otherwise inevitable.”³⁰

The term “air pollutant” is defined by the Act as “any air pollution agent or combination of such agents, including *any* physical, chemical, biological, radioactive . . . substance or matter which is emitted into or otherwise enters the ambient air.”³¹ Also, the term “welfare” is defined to include “effects on . . . weather . . . and climate.”³²

Since the enactment of the Clean Air Act, the concentration of carbon dioxide in the atmosphere has continued to rise, and the scientific community has continued to progress in its understanding of the man-

22. *Id.* at 1463.

23. *Id.* (alteration in original) (quoting 42 U.S.C. § 7607(d)(9)(A) (2000)).

24. *Id.* at 1444.

25. 42 U.S.C. § 7521(a)(1) (2000).

26. Clean Air Act Amendments of 1970, Pub. L. No. 91-604, 84 Stat. 1676.

27. Clean Air Act Amendments of 1977, Pub. L. No. 95-95, § 401(d)(1), 91 Stat. 685, 791.

28. 42 U.S.C. § 7521(a)(1) (emphasis added).

29. 541 F.2d 1 (D.C. Cir. 1976) (en banc).

30. *Id.* at 25.

31. 42 U.S.C. § 7602(g) (2000) (emphasis added).

32. 42 U.S.C. § 7602(h).

induced increase in global surface temperatures.³³ However, it is undisputed that some degree of uncertainty remains.³⁴ Thus, in deciding *Massachusetts v. EPA*, the Court engaged in a debate about what degree of uncertainty is acceptable for establishing appropriate standing.³⁵ The Court, however, did not establish what degree of uncertainty is generally acceptable.³⁶

B. *Historically Significant Caselaw*

1. Standing in General. Interpreting the standing requirement for federal jurisdiction in Article III of the Constitution, the United States Supreme Court held in *Baker v. Carr*³⁷ that a petitioner must have “such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination.”³⁸ The Court, in *Lujan v. Defenders of Wildlife*,³⁹ further defined the holding in *Baker* by requiring litigants who seek to invoke federal jurisdiction to establish that they “have suffered an injury in fact” by proving two elements:⁴⁰ First, injury in fact requires the “invasion of a legally protected interest which is . . . concrete and particularized”;⁴¹ and second, the injury must be “actual or imminent, not . . . hypothetical.”⁴² If injury in fact has been established, there must also be causation (the injury must be “fairly . . . trace[able]” to the conduct of the defendant) and redressability (it must be likely “the injury will be ‘redressed by a favorable decision’”).⁴³

In *Lujan*, however, the Court established an exception to the general standing requirement known as “procedural rights.”⁴⁴ Under this exception, “[a] person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all

33. *Massachusetts v. EPA*, 127 S. Ct. 1438, 1447-48 (2007).

34. *Id.* at 1463.

35. *Id.*

36. *Id.*

37. 369 U.S. 186 (1962).

38. *Id.* at 204.

39. 504 U.S. 555 (1992).

40. *Id.* at 560 (internal quotation marks omitted).

41. *Id.* (citing *Allen v. Wright*, 468 U.S. 737, 756 (1984)).

42. *Id.* (internal quotation marks omitted) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)).

43. *Id.* at 560-61 (alteration in original) (brackets in original) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 38, 41 (1976)).

44. *Id.* at 572 n.7 (internal quotation marks omitted).

the normal standards for redressability and immediacy.”⁴⁵ More importantly, as the Court in *Massachusetts v. EPA*⁴⁶ noted, a litigant with a procedural right has standing if there is merely “some possibility” that the requested relief could persuade the adverse party to reconsider the allegedly harmful decision.⁴⁷ Additionally, in a matter with multiple petitioners, the Court only requires one of the petitioners to qualify for standing for the petition to be considered by the Court.⁴⁸

2. State Standing. Over the past century, through a progression of cases, the United States Supreme Court has established that sovereign states are not normal litigants for the purpose of federal threshold justiciability issues.⁴⁹ In *Georgia v. Tennessee Copper Co.*,⁵⁰ the State of Georgia invoked federal jurisdiction to protect its citizens from out-of-state pollution.⁵¹ The Court held that states are quasi-sovereign and thus have an independent interest “in all the earth and air within [their] domain[s]” that supports federal jurisdiction.⁵² Modern Supreme Court cases, such as *Alden v. Maine*,⁵³ which declared that the states “retain the dignity, though not the full authority, of sovereignty,” have echoed this sentiment.⁵⁴

In *Missouri v. Illinois*,⁵⁵ the State of Missouri sought to invoke federal jurisdiction for equitable relief from the potential injury that could result if the Sanitary District of Chicago discharged raw sewage into the Mississippi River.⁵⁶ The Court held that states are permitted to invoke federal jurisdiction when “substantial impairment of the health and prosperity of the towns and cities of the state” is at stake.⁵⁷ The Court in *Alfred L. Snapp & Son, Inc. v. Puerto Rico*,⁵⁸ furthered this holding by indicating that one factor for “determining whether an

45. *Id.*

46. 127 S. Ct. 1438 (2007).

47. *Id.* at 1453.

48. *Id.* at 1453-54 (citing *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006)).

49. *Alden v. Maine*, 527 U.S. 706 (1999); *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592 (1982); *Georgia v. Pa. R.R. Co.*, 324 U.S. 439 (1945); *Georgia v. Tenn. Copper Co.*, 206 U.S. 230 (1907); *Missouri v. Illinois*, 180 U.S. 208 (1901).

50. 206 U.S. 230 (1907).

51. *Id.* at 236.

52. *Id.* at 237.

53. 527 U.S. 706 (1999).

54. *Id.* at 715.

55. 180 U.S. 208 (1901).

56. *Id.* at 208-16.

57. *Id.* at 240-41.

58. 458 U.S. 592 (1982).

alleged injury to the health and welfare of [a state's] citizens suffices to give the [s]tate standing . . . is whether the injury is one that the [s]tate, if it could, *would likely attempt* to address through its sovereign lawmaking powers.”⁵⁹

The Supreme Court has also specifically addressed the justiciability issues of particularized harm and redressability for state injury claims. In *FEC v. Akins*,⁶⁰ the Court held that “where a harm is concrete, though widely shared, the Court has found injury in fact.”⁶¹ Regarding redressability, the Court has held that an incremental remedy to the alleged injury is sufficient for standing purposes.⁶² In *Williamson v. Lee Optical of Oklahoma, Inc.*,⁶³ the Court held, “[A] reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.”⁶⁴ This is important for states in addressing issues with widespread sources and effects, such as pollution. The Court in *Larson v. Valente*⁶⁵ went further, stating, “[A] plaintiff satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his *every* injury.”⁶⁶

IV. COURT'S RATIONALE

The United States Supreme Court granted certiorari on June 26, 2006⁶⁷ and, in a 5-4 opinion written by Justice Stevens, ruled in favor of the petitioners.⁶⁸ The Court held that (1) the EPA's denial of the petition to regulate new automobile GHG emissions presented a risk of actual and imminent harm to Massachusetts; (2) the relief requested was sufficiently likely to redress the actual and imminent harm claimed by Massachusetts by reducing the extent of the injury; (3) the Clean Air Act authorizes the EPA to regulate GHG emissions in the event it forms a “judgment” that such emissions contribute to climate change; and (4) once the EPA has responded to a petition for rulemaking, its reasons for action or inaction must conform to the language of the authorizing

59. *Id.* at 607 (emphasis added).

60. 524 U.S. 11 (1998).

61. *Id.* at 24 (internal quotation marks omitted).

62. *See* *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 489 (1955); *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982).

63. 348 U.S. 483 (1955).

64. *Id.* at 489.

65. 456 U.S. 228 (1982).

66. *Id.* at 243 n.15.

67. *Massachusetts v. EPA*, 126 S. Ct. 2960, 2960 (2006).

68. *Massachusetts v. EPA*, 127 S. Ct. 1438, 1444, 1463 (2007).

statute.⁶⁹ As such, the Court granted states a special interest in pursuing their claims in federal courts.⁷⁰ Additionally, the Court more narrowly defined the scope of discretion granted to federal agencies when they determine when to act under a federal statute.⁷¹

A. *The Majority*

Justice Stevens concluded that Massachusetts (one of the petitioners) had appropriate standing to dispute the denial of the rulemaking petition pursuant to the Clean Air Act.⁷² The Court extended to Massachusetts “special solicitude” to challenge the EPA’s actions, ruling that Congress had granted a procedural right under 42 U.S.C. § 7607(b)-(1).⁷³ This allowed Massachusetts to assert its claim without meeting all of the “normal standards for redressability and immediacy.”⁷⁴ Regarding the requirements of injury and redressability, the majority held that the EPA’s “steadfast refusal to regulate greenhouse gas emissions presents a risk of harm to Massachusetts that is both ‘actual’ and ‘imminent’”⁷⁵ and that “[t]here is . . . a ‘substantial likelihood that the . . . relief requested’ will prompt [the] EPA to take steps to reduce that risk.”⁷⁶ The majority noted that the Commonwealth of Massachusetts owns a substantial amount of its coastal property, which would bear hundreds of millions of dollars in damage from increased sea levels.⁷⁷ The Court also held that Massachusetts had shown sufficient causation because both the EPA’s failure to dispute the connection between GHGs and global warming and its refusal to regulate GHGs contributed to Massachusetts’s injuries.⁷⁸ Further, the Court recognized that reducing new car emissions would contribute to slowing global emissions.⁷⁹ The Court also held that Massachusetts had satisfied the

69. *Id.* at 1454-55, 1458, 1459-60, 1462.

70. *Id.* at 1454-55.

71. *Id.* at 1459-63.

72. *Id.* at 1454-55.

73. *Id.*; 42 U.S.C. § 7607(b)(1) (2000).

74. *Massachusetts v. EPA*, 127 S. Ct. at 1453 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572 n.7 (1992)).

75. *Id.* at 1455 (quoting *Lujan*, 504 U.S. at 560).

76. *Id.* at 1455 (quoting *Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, 438 U.S. 59, 79 (1978)).

77. *Id.* at 1456.

78. *Id.* at 1457.

79. *Id.* at 1457-58.

redressability requirement, noting that a plaintiff does not need to “show that a favorable decision will relieve his every injury.”⁸⁰

After the threshold justiciability issues were satisfied, the Court focused on the actions that lead to the suit—the EPA’s refusal to regulate GHGs under the Clean Air Act.⁸¹ The Court noted that federal agencies have wide discretion over how to use their limited resources to tackle agency responsibilities.⁸² Further, the Court, relying on *Heckler v. Chaney*,⁸³ commented that an agency’s discretion is at its highest when choosing “not to bring an enforcement action.”⁸⁴ The Court distinguished, however, between an agency’s decision not to initiate an enforcement action and the denial of a petition for rule-making.⁸⁵ The Court held that the Clean Air Act expressly permits judicial review of a denial of a petition for rulemaking,⁸⁶ and the Court “may reverse any such action found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”⁸⁷ Ultimately, the Court held that the statutory text of the Clean Air Act unambiguously includes GHGs as air pollutants subject to EPA regulation.⁸⁸ Further, neither party disputed that GHGs (1) enter the atmosphere and (2) contribute to its warming.⁸⁹

The Court rejected the EPA’s reliance on *FDA v. Brown & Williamson Tobacco Corp.*,⁹⁰ in which the Court held that the regulation of tobacco by the FDA would remove tobacco from commercial circulation and would conflict with the “‘common sense’ intuition” that Congress intended no such result.⁹¹ The Court held that EPA regulation of emissions in the case at hand was distinguishable from the FDA regulation in *Brown* because the EPA regulation would not result in the removal of a product (automobiles) from circulation, as was the case in *Brown*.⁹²

80. *Id.* at 1458 (emphasis omitted) (quoting *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982)).

81. *Id.* at 1459-63.

82. *Id.* at 1459; see *Chevron, U.S.A., Inc., v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-45 (1984).

83. 470 U.S. 821 (1985) (holding that the refusal of an agency to initiate enforcement proceedings is not normally subject to judicial review).

84. *Massachusetts v. EPA*, 127 S. Ct. at 1459.

85. *Id.*; see *Am. Horse Prot. Ass’n v. Lyng*, 812 F.2d 1, 3-4 (D.C. Cir. 1987).

86. *Massachusetts v. EPA*, 127 S. Ct. at 1459 (citing 42 U.S.C. § 7607(b)(1)).

87. *Id.* (quoting 42 U.S.C. § 7607(d)(9)).

88. *Id.* at 1460.

89. *Id.*

90. 529 U.S. 120 (2000).

91. *Massachusetts v. EPA*, 127 S. Ct. at 1461 (quoting *Brown*, 529 U.S. at 133).

92. *Id.*

The Court also held, in contrast to *Brown*, that the EPA failed to show any congressional action that would conflict with EPA emissions regulation.⁹³ The Court noted in addition that the EPA had not previously denied the authority to regulate GHGs, but conversely, in 1998 the EPA asserted that it in fact had such authority.⁹⁴ Further, the Court denied the EPA's argument that the regulation of GHGs would unlawfully overlap with the Department of Transportation's authority to set mileage standards.⁹⁵ Instead, the Court held that federal agencies could overlap in their obligations and simultaneously avoid inconsistency.⁹⁶

The Court then addressed the EPA's alternative argument that even if the EPA had the statutory authority to regulate GHGs, it would be "unwise" to regulate GHGs at this time.⁹⁷ The majority, rejecting this argument, held that the EPA was not permitted to consider factors divorced from the statutory language, such as the "President's ability to negotiate with . . . developing nations" and the concern that the approach would be "piecemeal."⁹⁸ The Court restricted the EPA's exercise of discretion to the statutory limits, ruling that subsequent to responding to a rulemaking petition, the EPA's "reasons for action or inaction must conform to the authorizing statute."⁹⁹ The Court further noted that the term "judgment" does not allow an agency to stray from the authorizing statutory text.¹⁰⁰

Lastly, the majority rejected the EPA's argument that the level of uncertainty concerning global warming precluded the EPA from satisfying its obligation to regulate GHGs.¹⁰¹ Justice Stevens wrote that the degree of uncertainty must be so "profound" that the EPA cannot make a "reasoned judgment" that GHGs contribute to the global climate change, and even then the EPA must make a statement to that effect.¹⁰² Justice Stevens concluded that, pursuant to the Clean Air Act, the EPA may avoid further action only if it is able either to establish that GHGs do not add to climate change or to provide a reasonable explanation about why it cannot or will not apply its

93. *Id.*

94. *Id.*

95. *Id.* at 1461-62.

96. *Id.* at 1462.

97. *Id.*

98. *Id.* at 1462-63 (internal quotation marks omitted).

99. *Id.* at 1462.

100. *Id.*

101. *Id.* at 1463.

102. *Id.*

discretion to determine whether GHGs are contributing factors to climate change.¹⁰³

B. *The Dissents*

In his dissent, Chief Justice Roberts conceded that global warming “may be . . . ‘the most pressing environmental problem of our time,’” but nonetheless argued that the petitioners’ claims were nonjusticiable.¹⁰⁴ Specifically, Chief Justice Roberts disputed that the decision in *Lujan* allows for the redress of an alleged injury by federal courts.¹⁰⁵ He argued that the majority approach had the effect of “[r]elaxing Article III standing requirements” for injuries asserted by a state and that the majority failed to support its “special solicitude” rationale.¹⁰⁶ Chief Justice Roberts further stated that the sort of procedural right that the majority upheld was insufficiently supported by the statutory text.¹⁰⁷ Refusing to accept the caselaw relied upon by the majority, the Chief Justice dismissed *Georgia v. Tennessee Copper Co.*¹⁰⁸ as outdated and irrelevant and claimed that the case does not allow for an erosion of Article III standing requirements.¹⁰⁹ In his interpretation, a state asserting a claim as *parens patriae*¹¹⁰ must show that it represents the members and also that at least one of the members satisfies the traditional Article III standing requirements.¹¹¹ Chief Justice Roberts argued that the State’s claims of injury as a landowner were nonsovereign interests outside the realm of *parens patriae*.¹¹²

Lastly, relying on *Massachusetts v. Mellon*¹¹³ and *Alfred L. Snapp & Son, Inc. v. Puerto Rico*,¹¹⁴ Chief Justice Roberts declared that a state may assert a *parens patriae* claim for the protection of its citizens, but the United States is the appropriate party to represent citizens when enforcing rights with respect to a federal agency.¹¹⁵ Furthermore, his

103. *Id.*

104. *Id.* at 1463-64 (Roberts, C.J., dissenting) (quoting Petition for Writ of Certiorari, *Massachusetts v. EPA*, 127 S. Ct. 1438 (No. 05-1120)).

105. *Id.* at 1464 (citing *Lujan*, 504 U.S. at 576).

106. *Id.*

107. *Id.* at 1464-65 (citing 42 U.S.C. § 7607(b)(1)).

108. 206 U.S. 230 (1907).

109. *Massachusetts v. EPA*, 127 S. Ct. at 1465 (Roberts, C.J., dissenting).

110. Latin for “parent of his or her country”; his term refers to a state’s role as a “provider of protection to those unable to care for themselves.” BLACK’S LAW DICTIONARY 1144 (8th ed. 2004).

111. *Massachusetts v. EPA*, 127 S. Ct. at 1465-66 (Roberts, C.J., dissenting).

112. *Id.* at 1466.

113. 262 U.S. 447 (1923).

114. 458 U.S. 592 (1982).

115. *Massachusetts v. EPA*, 127 S. Ct. at 1466 (Roberts, C.J., dissenting).

dissent dismissed the petitioners' standing, claiming that across the board, the facts of this case stretched the limits of standing further than in any previous case.¹¹⁶ Chief Justice Roberts characterized the injury claimed by the petitioners as too widespread to be considered "particularized" or "imminent."¹¹⁷ Causation, he claimed, was too speculative and far too indirectly related to the injury.¹¹⁸ Redressability failed because it was, according to Chief Justice Roberts, too insignificant to avoid being overwhelmed by increasing global GHG emissions from other sources and too speculative to be considered satisfactory under Article III.¹¹⁹

Justice Scalia dissented separately to analyze the merits of the case. In Justice Scalia's view, *Massachusetts v. EPA* was a "straightforward administrative-law case."¹²⁰ He expressed his belief that despite the importance of global warming, "[the] Court has no business substituting its own desired outcome for the reasoned judgment of the responsible agency."¹²¹

Justice Scalia began by emphasizing that the EPA's authority to regulate under the Clean Air Act is conditioned upon a judgment that new vehicle emissions cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.¹²² Pointing out that Congress, when it wants to, knows how to force an agency to act in a particular way, Justice Scalia argued that there is no text within the Clean Air Act that requires the EPA to make a judgment whenever a rulemaking petition is filed.¹²³ Further, he rejected the majority's ruling that the EPA's policy reasons for deferring to exercise its judgment were divorced from the statutory text, stating that "the statute says *nothing at all* about the reasons for which the [EPA] may defer making a judgment," and therefore, the only thing to have been divorced from was silence.¹²⁴ Further, according to Justice Scalia, the EPA's interpretation of the Clean Air Act was reasonable, "the most natural reading of the text," and was entitled to due deference under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*¹²⁵ Lastly, Justice Scalia argued that the current level of scientific

116. *Id.* at 1470-71.

117. *Id.* at 1467-68.

118. *Id.*

119. *Id.* at 1469-70.

120. *Id.* at 1478 (Scalia, J., dissenting).

121. *Id.*

122. *Id.* at 1471-72.

123. *Id.* at 1472.

124. *Id.* at 1473.

125. *Id.* at 1473-74; 467 U.S. 837 (1984).

uncertainty concerning GHGs justified the EPA's decision not to form a judgment.¹²⁶

Justice Scalia also disputed the majority's classification of carbon dioxide as an "air pollutant" under the Clean Air Act, arguing that the plain meaning of the statutory definition of air pollutant requires that the substance be an impurity that enters the ambient air.¹²⁷ Under the majority's approach, Justice Scalia claimed that "everything airborne, from Frisbees to flatulence, qualifies as an 'air pollutant,'" and such an interpretation, according to Justice Scalia, defies common sense.¹²⁸ In summary, his opinion was that regulating the buildup of GHGs in the atmosphere that induce climate change "is not akin to regulating the concentration of some substance that is *polluting the air*."¹²⁹

V. IMPLICATIONS

While the Court's holding in *Massachusetts v. EPA*¹³⁰ appears to invite a flood of global warming litigation, which has yet to occur, some courts have interpreted it as establishing a limited framework for evaluating global warming claims.¹³¹

In September 2007, for example, the United States District Court for the Northern District of California provided some parameters for parties seeking tort damages from injuries caused by global warming. In *California v. General Motors Corp.*,¹³² the State of California sued several automakers, including General Motors, Honda, Toyota, Nissan, and Daimler Chrysler, for violations of federal and state public nuisance codes.¹³³ The State claimed that these automakers created and contributed to global warming by producing "vehicles that emit . . . carbon dioxide," the primary cause of global warming.¹³⁴ Distinguishing itself from the Court in *Massachusetts v. EPA*, the district court held that such a claim would require the court to make the nonjusticiable policy determination of what reasonable carbon dioxide emissions should be.¹³⁵ The district court ruled that such an inquiry was a political question that the courts were not authorized or equipped to adjudicate,

126. *Massachusetts v. EPA*, 127 S. Ct. at 1474-75 (Scalia, J., dissenting).

127. *Id.* at 1476-77.

128. *Id.* at 1476.

129. *Id.* at 1477.

130. 127 S. Ct. 1438 (2007).

131. See, e.g., *California v. General Motors Corp.*, No. C06-05755 MJJ, 2007 WL 2726871 (N.D. Cal. Sept. 17, 2007).

132. No. C06-05755 MJJ, 2007 WL 2726871 (N.D. Cal. Sept. 17, 2007).

133. *Id.* at *1.

134. *Id.*

135. *Id.* at *12.

stating that “the authority to regulate carbon dioxide lies with the federal government, and more specifically with the EPA as set forth in the [Clean Air Act],” and “any [s]tate that is dissatisfied with the federal government’s global warming policy determinations may exercise its ‘procedural right’ to advance its interests through administrative channels and, if necessary, to ‘challenge the rejection of its rulemaking petition as arbitrary and capricious.’”¹³⁶ Although the procedural right was available to Massachusetts in *Massachusetts v. EPA*, the district court found it was not available to California against private companies, and thus the claim failed.¹³⁷ The court granted the defendants’ motion to dismiss on the ground that the entire case raised nonjusticiable political questions.¹³⁸

Additionally, there is a looming prospect of states adopting their own regulatory schemes to restrict GHG emissions from motor vehicles. In *Central Valley Chrysler-Jeep, Inc. v. Witherspoon*,¹³⁹ the petitioners sought to enforce enforcement of a California state regulation that restricted new car emissions as GHGs. The petitioners argued that such an act was preempted by 42 U.S.C. § 7543(a)¹⁴⁰ (a portion of the Clean Air Act).¹⁴¹ The court noted,

California Health and Safety Code, section 43018.5 provides civil penalties to manufacturers if emission standards are not met, provides for the ability of manufacturers to credit current performance in excess of standards to later performance shortfall, and enables a period of time for manufacturers to offset early failures to meet standards with later performance in excess of regulatory standards.¹⁴²

However, the court in *Central Valley* recognized that U.S.C. § 7543(b)(1) allows the EPA to grant California a waiver to impose stricter standards than those imposed pursuant to the Clean Air Act, and should that waiver be granted, other states may adopt California’s standards.¹⁴³ The court stayed further proceedings pending the Supreme Court’s decision in *Massachusetts v. EPA*, because if the EPA was held to have authority to regulate GHGs, California could successfully apply for waiver of federal preemption and establish state controls over GHG

136. *Id.* at *11 (quoting 42 U.S.C. § 7607 (2000)).

137. *Id.* at *12.

138. *Id.* at *12-13.

139. No. CVF04-6663 AWILJO, 2007 WL 135688 (E.D. Cal. Jan. 16, 2007).

140. 42 U.S.C. § 7543(a) (2000).

141. *Central Valley*, 2007 WL 135688, at *1.

142. *Id.* at *2 (citing CAL. CODE REGS. tit. 13, § 1961.1 (2007)).

143. *Id.*

emissions.¹⁴⁴ The Supreme Court's ruling in *Massachusetts v. EPA*, granting the EPA the authority to regulate GHGs, appears to have paved the way for other states to adopt California's stricter vehicle emissions regulations, should waiver be granted.¹⁴⁵

Global warming has grown to become regarded as the single greatest environmental threat to mankind. Movies such as *An Inconvenient Truth*¹⁴⁶ have fought to bring the debate to the forefront of American politics. Despite the outcomes of the discussed cases, the federal judiciary has only begun to scratch the surface of litigation regarding global warming. The Supreme Court's opinion in *Massachusetts v. EPA* has succeeded in placing the spotlight on both Congress and the EPA—hopefully signaling the end of the debate concerning mankind's influence on the rise in global ambient air temperature and the beginning of meaningful strides by the government to act upon this threat.

NICK BISHER

144. *Id.* at *11, *15.

145. See David Shepardson, *EPA: California, Other States Can't Impose Their Own Emissions Standards on Autos*, THE DETROIT NEWS, Dec. 19, 2007 (on file with the Mercer Law Review).

146. AN INCONVENIENT TRUTH (Participant Productions 2006).