



July 19, 2005

COURT OF APPEALS RULES THAT EPA IS NOT REQUIRED TO REGULATE GREENHOUSE GASES

(Massachusetts v. EPA)

The Washington Legal Foundation (WLF) scored a victory when the United States Court of Appeals for the District of Columbia Circuit last week rejected an effort by several states and environmental groups to require the Environment Protection Agency (EPA) to regulate carbon dioxide as a pollutant under the Clean Air Act. The petitioners had argued that the EPA should be required to regulate so-called "greenhouse gases" produced by automobiles, manufacturing facilities, and other sources of carbon dioxide that petitioners claim are causing global warming.

In a 2-1 decision, Judge Randolph ruled that the EPA was well within its discretion not to impose mandatory limits on carbon dioxide and other greenhouse gases, but sidestepped the argument made by EPA that it lacked the legal authority to do so. Judge Sentelle had ruled that the petitioners lacked standing to bring the case because the alleged injury was shared by the public at large, and because it was unlikely that a favorable ruling would change the climate and remedy global warming as alleged by the petitioners. Judge Tatel dissented, arguing that there was standing but that the EPA was obligated to regulate the greenhouse gases emitting from motor vehicles.

In its brief, WLF had argued that the issue of global climate change and its causes has been the most prominent energy and environmental issue of recent years. WLF referred the court to comments WLF filed in 1999 as part of the Working Group to Oppose Expanded EPA Authority urging the agency to reject the petition filed by the International Center for Technology Assessment (ICTA). WLF argued that Congress would certainly have been clear and explicit when it enacted the Clean Air Act to give the EPA authority to initiate a massive regulatory program for greenhouse gases or carbon dioxide. Accordingly, under basic principles of statutory interpretation and administrative law, the EPA was not authorized by Congress to venture into this highly controversial area.

Joining the Commonwealth of Massachusetts as state petitioners were Illinois, Maine, New Jersey, New Mexico, New York, Rhode Island, Washington, Oregon, Vermont, and California. Joining ICTA as petitioners were Greenpeace, Center for Biological Diversity, Friends of the Earth, Bluewater Network, Sierra Club, Natural Resources Defense Council, and U.S. Public Interest Research Group, and Physicians for Social Responsibility. WLF's support of EPA was shared by Texas, Michigan, Idaho, North Dakota, South Dakota, Utah, Alaska, Nebraska, Ohio, and Indiana. The petitioners may ask the full court to rehear the case or seek Supreme Court review.

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, and Douglas A. Henderson, a partner in the firm's Atlanta office.

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For information, contact Paul Kamenar, WLF's Senior Executive Counsel, at 202-588-0302. WLF's brief can be obtained from its website at www.wlf.org.