



FOR IMMEDIATE RELEASE

April 19, 2013

Court Urged To Clarify Scope Of EPA's Authority To Regulate Greenhouse Gases

(Utility Air Regulatory Group v. EPA)

The Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to review (and ultimately rein in) the Environmental Protection Agency's (EPA) authority to embark on an ever-expanding program to regulate greenhouse gases (GHG), a regulatory scheme that is likely to impact virtually the entire economy.

In a brief filed in *Utility Air Regulatory Group v. EPA*, WLF argued that EPA has seized on the Supreme Court's narrow ruling in *Massachusetts v. EPA* (authorizing EPA to regulate GHG emissions from motor vehicles) to claim the authority to regulate GHG emissions from virtually *any* sector of the economy. As a result, EPA has decided to implement a scheme of GHG regulation that reflects not Congress's priorities as set forth in the Clean Air Act (CAA) or other federal statutes, but merely the Agency's own self-generated priorities.

"EPA has opened a Pandora's Box of expansive greenhouse gas regulation that is likely to spread, on a timetable of EPA's own choosing, to virtually the entire economy," said WLF Senior Litigation Counsel Cory Andrews after filing WLF's brief. "It is vitally important, therefore, before this regulatory expansion proceeds any further, that the Court grant certiorari in this case to clarify the intended scope of *Massachusetts v. EPA*," Andrews said.

WLF's brief was prepared with the pro bono legal assistance of Peter Glaser, a partner with the law firm Troutman Sanders LLP.

The case arises from administrative rules adopted by the EPA in the wake of *Massachusetts* to regulate GHGs as "air pollutants" under the CAA. Under the "Tailoring Rule," EPA explained that its regulation of vehicle GHG emissions under the CAA automatically made GHGs subject to regulation under certain stationary source permitting programs. And under the "Timing Rule," EPA determined that GHGS would become subject to regulation under these programs as of January 2, 2011. Many states, businesses, and trade groups from across the economic spectrum petitioned for review of these rules. A panel for the U.S. Court of Appeals for the D.C. Circuit either dismissed or denied all the petitions. The Petition in this case seeks to overturn the appeals court's refusal to review EPAs new rules.

In urging the U.S. Supreme Court to review (and ultimately overturn) the decision below, WLF argued that *Massachusetts* did not hold that EPA has authority to regulate GHGs under every provision of the CAA without regard to Congress's intent as to the ambit of that particular provision. As EPA GHG regulation now begins to spread to other areas of the economy, WLF urged the Court to use this opportunity to confine *Massachusetts* to its intended scope. WLF further argued

that EPA's arrogation to itself of nearly unlimited regulatory power, combined with nearly unlimited discretion to choose when to exercise that power, cannot possibly have been the Court's intended result in *Massachusetts*. As demonstrated in WLF's brief, the most fundamental principles of our legal system forbid such accumulation of power by an administrative agency.

WLF is a public interest law and policy center with supporters in all 50 States. WLF regularly litigates in environmental matters to promote a rational balance between environmental protection, on one hand, and economic growth and property rights on the other.

For further information, contact WLF Senior Litigation Counsel Cory Andrews, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.