

Court Faults EPA

Contributed by Robert Barnes and Juliet Eilperin
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High Court Faults EPA Inaction on Emissions
 Critics of Bush Stance on Warming Claim Victory

By Robert Barnes and Juliet Eilperin
 Washington Post Staff Writers
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The issue at stake in the case, one of two yesterday that the court decided in favor of environmentalists, is somewhat narrow. But environmentalists and some lawmakers said it could serve as a turning point, placing new pressure on the Bush administration to address global warming and adding to the political momentum that the issue has received because of Democratic control of Congress and a desire from the corporate community for a comprehensive government response to the issue.

The Natural Resources Defense Council said in a statement that the ruling "repudiates the Bush administration's do-nothing policy on global warming," undermining the government's refusal to view carbon dioxide as an air pollutant subject to EPA regulation.

The ruling could also lend important authority to efforts by the states either to force the federal government to reduce greenhouse gas emissions or to be allowed to do it themselves. New York is leading an effort to strengthen regulations on power-plant emissions. California has passed a law seeking to cut carbon dioxide emissions from automobiles starting in 2009; its regulations have been adopted by 10 other states and may soon be adopted by Maryland.

The decision in *Commonwealth of Massachusetts et al. v. Environmental Protection Agency et al.* also reinforced the division on the Supreme Court, with its four liberal members in the majority and its four most conservative members dissenting. Justice Anthony M. Kennedy's role as the key justice in this term's 5 to 4 decisions was again on display, as he sided with Stevens, Stephen G. Breyer, Ruth Bader Ginsburg and David H. Souter.

The case dates from 1999, when the International Center for Technology Assessment and other groups petitioned the EPA to set standards for greenhouse gas emissions for new vehicles. Four years later, the EPA declined, saying that it lacked authority to regulate greenhouse gases and that even if it did, it might not choose to because of "numerous areas of scientific uncertainty" about the causes and effects of global warming. Massachusetts, along with other states and cities, took the agency to court.

The court majority said that the EPA clearly had the authority to regulate the emissions and that its "laundry list" of reasons for not doing so were not based in the law. "We need not and do not reach the question whether on remand EPA must make an endangerment finding. . . . We hold only that EPA must ground its reasons for actions or inaction in the statute," Stevens wrote.

Chief Justice John G. Roberts Jr. wrote one dissent, which was joined by Justices Samuel A. Alito Jr., Antonin Scalia and

Clarence Thomas. He said that global warming may be a "crisis," even "the most pressing environmental problem of our time," but that it is an issue for Congress and the executive branch. He said the court's majority used "sleight-of-hand" to even grant Massachusetts the standing to sue.

Scalia wrote another dissent, which Roberts and the others also joined, saying the EPA had done its duty when it considered the petition and decided not to act. He said the court "has no business substituting its own desired outcome for the reasoned judgment of the responsible agency."

But reaction from even staunch supporters of the EPA's actions seemed to reflect a recognition of the changed political currents and a belief that Congress and the administration must now confront the issue, rather than leaving it to agencies or the states.

"The Alliance of Automobile Manufacturers believes that there needs to be a national, federal, economy-wide approach to addressing greenhouse gases," said the alliance's president, Dave McCurdy, whose group had supported the EPA's position.

In a sign that the ruling is already reverberating on Capitol Hill, House Energy and Commerce Committee Chairman John D. Dingell (D-Mich.) -- a key player in the House debate over global warming -- issued a statement saying: "While I still believe Congress did not intend for the Clean Air Act to regulate greenhouse gases, the Supreme Court has made its decision and the matter is now settled. Today's ruling provides another compelling reason why Congress must enact, and the President must sign, comprehensive climate change legislation."

House Democrats have vowed to pass global warming legislation by July 4, and Senate leaders are working on their version of the bill. But it is unclear what kind of plan they will adopt and whether they will pass it as soon as they have promised.

Senate leaders said they will call EPA officials before the Environment and Public Works Committee this month to ask them how they plan to deal with the court's decision.

In the other environmental case, *Environmental Defense et al. v. Duke Energy Corp. et al.*, the court unanimously supported a decades-old initiative aimed at forcing power plants to install pollution-control equipment.

The case involved a movement launched during the Clinton administration to force companies to install pollution-control equipment in aging coal-fired power plants. More than two dozen plants in the South and the Midwest still have cases pending.

Staff writer William Branigin contributed to this report.