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Massachusetts v. EPA: Section 202(a)(1) Authority
and the Regulation of Motor Vehicle Greenhouse Gas Emissions

I. Introduction

In Massachusetts v. EPA, a coalition comprised of "twelve states, three cities, an American territory, and numerous environmental organizations" sued the EPA for denying "a petition requesting it to regulate carbon dioxide (CO₂) and other greenhouse gas emissions from new motor vehicles under § 202(a)(1) of the Clean Air Act." Following an adverse decision in the D.C. Circuit, the coalition obtained a writ of certiorari to the Supreme Court to clarify the scope of the EPA Administrator’s authority pursuant to section 202(a)(1). Specifically, the Court will consider "[w]hether the Administrator . . . has authority to regulate air pollutants associated with climate change under section 202(a)(1)" and "[w]hether the . . . Administrator may decline to issue emission standards for motor vehicles based on policy considerations not enumerated in section 202(a)(1)."

This article provides a brief overview of Massachusetts v. EPA as well as the petitioners and the EPA’s respective positions. Part II describes the petition for rulemaking that spawned Massachusetts v. EPA. Part III discusses the results of the case in the D.C. Circuit Court. Part IV summarizes the arguments the petitioners and respondents have filed in the Supreme Court for the forthcoming appeal.

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2 See Massachusetts v. EPA, 415 F.3d 50, 58 (D.C. Cir. 2005), cert. granted, 126 S. Ct. 2960 (U.S. Nov. 29, 2006) (No. 05-1120).
3 Id. at 53.
4 Id. (citing 42 U.S.C. § 7521(a)(1) (2000)).
5 See id. at 58.
7 Id.
II. Petition for Regulation

In 1999, citing greenhouse gas (GHG) emissions’ contribution to global warming, "the International Center for Technology Assessment and a number of other organizations petitioned EPA to regulate [GHG] emissions from new motor vehicles and engines under section 202(a)(1)." They argued that the EPA was obliged to regulate these GHGs for several reasons. First, section 302(g) of the Clean Air Act (CAA), scientific reports, and prior EPA acknowledgement all suggest that CO₂, CH₄, N₂O, and HFCs are "air pollutants" within the meaning of section 202(a)(1). Second, evidence has indicated that global climate change could pose grave risks to humanity, and global climate change therefore meets the "may reasonably be anticipated to endanger public health and welfare" standard of section 202(a)(1). Third, the organizations petitioning the EPA argued that regulation of motor vehicle GHG emissions is an attainable objective for the EPA, and they demonstrated this attainability with suggestions on CO₂ regulation. Finally, they argued that because the Administrator has already determined that motor vehicle GHG emissions are hazardous or potentially hazardous to human health, the word "shall" in section 202(a)(1) mandates regulation by the Administrator.

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8 Control of Emissions from New Highway Vehicles and Engines, 68 Fed. Reg. 52922, 52922–23 (Sept. 8, 2003). This entry in the Federal Register contains the EPA’s discussion of the petition for regulation of motor vehicle GHG emissions as well as the EPA’s rationale for its denial of the petition.

9 Id.

10 See 42 U.S.C. § 7602(g) (2000) ("The term ‘air pollutant’ means 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. Such term includes any precursors to the formation of any air pollutant . . . .”); Control of Emissions from New Highway Vehicles and Engines, 68 Fed. Reg. at 52923. The petitioners cited an April 10, 1998 memorandum from a former EPA general counsel to a former EPA Administrator in which the general counsel acknowledged that CO₂ fell within the CAA section 302(g) definition of “air pollutant.” Id. It follows, argued petitioners, that CH₄, N₂O, and HFCs are also air pollutants. Id.


12 See id. (quoting 42 U.S.C. § 7521(a)(1) and noting the petitioners’ citation of statements of the United Nations Intergovernmental Panel on Climate Change as evidence of the potential hazards of global climate change).

13 See id.

14 See id.
The EPA denied the petition for regulation on September 8, 2003.\textsuperscript{15} It stated, "Based on a thorough review of the CAA, its legislative history, other congressional action and Supreme Court precedent, EPA believes that the CAA does not authorize regulation to address global climate change."\textsuperscript{16} The EPA cited \textit{FDA v. Brown & Williamson Tobacco Corp.},\textsuperscript{17} past Congressional inaction, and the difficulties of fitting GHGs within the regulatory framework of the National Ambient Air Quality Standards (NAAQS) of the CAA in support of its conclusion.\textsuperscript{18} The EPA also claimed that it could effectively regulate GHG emissions only by interfering with the Energy Policy and Conservation Act (EPCA), a result that Congress implicitly forbids.\textsuperscript{19}

The EPA further argued that even if it had the authority to regulate GHGs, section 202(a)(1) does not indicate when the Administrator must issue a judgment on the dangers of GHGs.\textsuperscript{20} Consequently, the Administrator has the discretion when to make such findings.\textsuperscript{21} The EPA maintained that such discretion also allows the administrator to consider relevant policy issues in determining whether regulation would be appropriate.\textsuperscript{22}

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\item \textsuperscript{15} \textit{Id.} at 52925.
\item \textsuperscript{16} \textit{Id.}
\item \textsuperscript{17} See \textit{FDA v. Brown & Williamson Tobacco Corp.}, 529 U.S. 120, 161 (2000) (holding that the FDA lacks authority over customarily marketed tobacco products).
\item \textsuperscript{18} See \textit{Control of Emissions From New Highway Vehicles and Engines}, 68 Fed. Reg. at 52926--28.
\item \textsuperscript{19} See \textit{id.} at 52929 ("Congress’ care in designing the CAFE program makes clear that EPCA is the only statutory vehicle for regulating the fuel economy of cars and light trucks.").
\item \textsuperscript{20} See \textit{id.} ("While section 202(a)(1) uses the word ‘shall,’ it does not require the Administrator to act by a specified deadline.").
\item \textsuperscript{21} See \textit{id.}
\item \textsuperscript{22} See \textit{id.} at 52929–30. The EPA proceeded to list the policy considerations upon which the Administrator relied in refusing to regulate motor vehicle GHG emissions. See \textit{id.} at 52930–33. First, there are many sources of GHG emissions, and regulating only new motor vehicles would "result in an inefficient, piecemeal approach to the climate change issue." \textit{Id.} at 52931. Second, unilateral reduction in GHG emissions could weaken the United States’ ability to bargain with developing countries to convince them to reduce their own emissions. \textit{Id.} The result would be an increase in those countries’ emissions, which would negate the effects of United States GHG reductions. \textit{Id.} Third, "the President has laid out a comprehensive approach to global climate change that calls for near-term voluntary actions and incentives along with programs aimed at reducing scientific uncertainties and encouraging technological development . . ." \textit{Id.} Furthermore, the remedies offered by the petitioners, which would "reduce motor vehicle petroleum consumption" and improve tire efficiency, were inadequate. \textit{Id.} With regard to petroleum consumption, the EPA noted that the Department of Transportation (DOT) dictates fuel efficiency
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III. D.C. Circuit Court Opinion

In response to the EPA’s denial of the petition, a number of states, cities, and organizations (petitioners) sought judicial review of the agency’s decision. On July 15, 2005, a three-judge panel of the D.C. Circuit issued three separate opinions on the EPA’s decision. Judge Randolph issued the opinion of the court, holding "that the EPA Administrator properly exercised his discretion under § 202(a)(1) in denying the petition." Judge Sentelle would have rejected the petitioners’ claim for lack of standing, but he concurred with Randolph’s judgment because it was the "judgment closest to that which I myself would issue." Judge Tatel dissented, finding that "at least one petitioner has standing" and that the "EPA’s order cannot be sustained on the merits."

A. The Petitioners’ Standing

Sentelle found that the petitioners lacked standing based on their inability to allege a particularized injury. Randolph, however, found that the standing issue and the merits issues were too intertwined to address separately. Thus, he proceeded to the merits without resolving the standing issue.

Tatel disagreed with Randolph and Sentelle, finding that at least one petitioner, Massachusetts, demonstrated injury, causation, and redressability with regard to the EPA’s

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24 Id. at 58.
25 Id. at 60 (Sentelle, J., concurring in judgment).
26 Id. at 61 (Sentelle, J., concurring in judgment).
27 Id. at 61 (Tatel, J., dissenting).
28 Id. at 60 (Sentelle, J., concurring in judgment) ("[Global warming] is harmful to humanity at large. . . . [T]he alleged harm is not particularized, not specific, and in my view, not justiciable."). Although the issue of standing is not among the questions presented to the Supreme Court, it was argued in the EPA’s merits brief. See id. at 56 ("[T]he merits inquiry and the statutory inquiry often overlap’ and ‘are sometimes identical, so that it would be exceedingly artificial to draw a distinction between the two.’") (quoting Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 97 n.2 (1998)).
refusal to regulate and therefore satisfied the standing requirements.31 Massachusetts’ injury was the predicted rising sea levels that would diminish coastal land and result in "more frequent and severe storm surge flooding events along the coast."32 Tatel viewed this as a particularized injury because it "undeniably harms [Massachusetts] in a way that it harms no other state."33 Massachusetts satisfied the causation requirement because of motor vehicle GHG emissions’ contribution to global warming, which in turn yields increased sea levels and the associated consequences.34 Moreover, observed Tatel, "the U.S. transportation sector (mainly automobiles) . . . [is] responsible for about 7% of fossil fuel emissions."35 With regard to redressability, Tatel noted that GHG emissions reductions in motor vehicles could curb the impact of global warming.36

B. Judge Randolph’s Opinion on the Merits

Randolph found that the Administrator’s decision to refuse regulation of motor vehicle GHG emissions was an appropriate exercise of the Administrator’s discretion pursuant to section 202(a)(1).37 Randolph explained, "In requiring the EPA Administrator to make a threshold ‘judgment’ about whether to regulate, § 202(a)(1) gives the Administrator considerable discretion.”38 Moreover, the Administrator can look beyond scientific evidence39 to policy

31 Id. at 64 (Tatel, J., dissenting) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61 (1992)).
32 See id. (Tatel, J., dissenting) (quoting Kirshen Decl. ¶¶ 7-8).
33 Id. at 65 (Tatel, J., dissenting).
34 Tatel further stated, "Other states may face their own particular problems stemming from the same global warming—Maine may suffer from loss of Maine coastal land and New Mexico may suffer from reduced water supply—but these problems are different from the injuries Massachusetts faces." Id.
35 See id. (Tatel, J., dissenting) (quoting MacCracken Decl. ¶ 5(a)-(d), 12-19).
36 Id. (Tatel, J., dissenting) (quoting MacCracken Decl. ¶ 31).
37 See id. (Tatel, J., dissenting) ("Achievable reductions in emissions of CO₂ and other [GHGs] from U.S. motor vehicles would . . . delay and moderate many of the adverse impacts of global warming." (quoting MacCracken Decl. ¶ 5(e))).
38 Id. at 57–58.
39 See id. (citing Ethyl Corp. v. EPA, 541 F.2d 1, 20 n.37 (D.C. Cir. 1976) (en banc)).
considerations in exercising his discretion under section 202(a)(1). Randolph observed that "[i]n addition to the scientific uncertainty about the causal effects of greenhouse gases on the future climate of the earth, the Administrator relied upon many ‘policy’ considerations that, in his judgment, warranted forbearance at this time." These were acceptable bases for denying the petition for rulemaking, and therefore, concluded Randolph, the "Administrator properly exercised his discretion under § 202(a)(1) in denying the petition for rulemaking."

C. Judge Tatel’s Opinion on the Merits

Unlike Randolph and Sentelle, who ruled for the EPA without examining whether the agency has the power to regulate motor vehicle GHG emissions, Tatel addressed whether "the Clean Air Act authorize[s] EPA to regulate emissions based on their effects on global climate[.]") Tatel found that GHGs emitted by new motor vehicles fit within the unambiguous definition of "air pollutant" under CAA section 302(g). Because section 202(a)(1) instructs the Administrator to regulate "any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines which in his judgment may cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare," the CAA gives the

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40 See id. ("What the Ethyl court called ‘policy judgments’ also may be taken into account. By this the court meant the sort of policy judgments Congress makes when it decides whether to enact legislation regulating a particular area." (citing Ethyl, 541 F.2d at 26)).
41 Id. (citing Control of Emissions from New Highway Vehicles and Engines, 68 Fed. Reg. 52922, 52929 (Sept. 8, 2003)). Randolph’s reference to "scientific uncertainty" is based on a study conducted by the National Research Council, which states that "a causal linkage between greenhouse gas emissions and global warming ‘cannot be unequivocally established.’" Id. at 57 (citing NATIONAL RESEARCH COUNCIL, CLIMATE CHANGE SCIENCE, 17).
42 See id. ("[A] reviewing court will uphold agency conclusions based on policy judgments when an agency must resolve issues on the frontiers of scientific knowledge." (internal quotation marks omitted) (quoting Envtl. Def. Fund v. EPA, 598 F.2d 62, 82 (D.C. Cir. 1978))).
43 Id.
44 Id. at 67 (Tatel, J., dissenting).
45 Id. (Tatel, J., dissenting). Section 302(g) of the CAA provides, "The term ‘air pollutant’ means 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." 42 U.S.C. § 7602(g). Tatel also noted that in 1990 Congress specifically identified CO₂ as an air pollutant in section 103(g) of the CAA. Massachusetts, 415 F.3d at 67 (Tatel, J., dissenting).
46 Massachusetts, 415 F.3d at 67 (Tatel, J., dissenting) (quoting 42 U.S.C. § 7521(a)(1)).
EPA the authority to regulate GHGs emitted from new motor vehicles. Tatel said that the EPA could avoid this literal interpretation by "show[ing] either that, as a matter of historical fact, Congress did not mean what it appears to have said, or that, as a matter of logic and statutory structure, it almost surely could not have meant it." Tatel found that the EPA failed to make such a showing.

Next, Tatel addressed whether the EPA "acted within its discretion in denying the petition for rulemaking," and he found that the EPA contravened its authority pursuant to the CAA. He determined that the statutory standard in section 202(a)(1) only allows the Administrator discretion to "'judg[e],’ within the bounds of substantial evidence, whether pollutants ‘cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.'" Such is the "statutory standard for endangerment," and thus, the Administrator cannot base determination of endangerment on unrelated policy reasons or withhold determination for such reasons. Because the EPA failed to ground its denial of the petition or its policy reasons in support of the decision in the statutory framework of section 202(a)(1), Tatel determined that the EPA abused its discretion. This finding, as well as Tatel’s finding that the CAA grants the EPA the authority to regulate motor vehicle GHG emissions, led Tatel to conclude that the petitions for review should be granted.

III. The Arguments to the Supreme Court

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47 See id. at 67–68 (Tatel, J., dissenting) ("Faced with such language, a court . . . would normally end the analysis here and conclude that GHGs are 'air pollutants’ . . .").
48 Id. at 68 (Tatel, J., dissenting) (quoting Engine Mfrs. Ass’n v. EPA, 88 F.3d 1075, 1089 (D.C. Cir. 1996)).
49 Id. (Tatel, J., dissenting).
50 Id. at 73 (Tatel, J., dissenting).
51 See id. at 81 (Tatel, J., dissenting) ("EPA has utterly failed to relate its policy reasons to section 202(a)(1)’s standard.").
52 Id. at 75 (Tatel, J., dissenting) (quoting 42 U.S.C. § 7521(a)(1)).
53 Id. (Tatel, J., dissenting).
54 See id. (Tatel, J., dissenting).
55 See id. at 81 (Tatel, J., dissenting).
56 See id. at 82 (Tatel, J., dissenting).
A. Petitioners’ Supreme Court Merits Brief

In their merits brief, petitioners first consider "[w]hether the Administrator . . . has authority to regulate air pollutants associated with climate change under section 202(a)(1)." Arguing that the Administrator has such authority, petitioners advocate a plain text interpretation of section 202(a)(1). Because CO₂, CH₄, N₂O, and HFCs clearly fall within the definition of "air pollutant" under section 302(g), petitioners contend, the Administrator can regulate them pursuant to section 202(a)(1). Petitioners next address Brown & Williamson; they find that the facts in that case, which merited Court denial of agency authority, are nonexistent in Massachusetts v. EPA. Moreover, unlike Brown & Williamson, in which an exercise of agency authority would have been inconsistent with Congressional legislation, EPA authority over motor vehicle GHG emissions would not conflict with Congressional intent.

Petitioners find further flaws in the EPA’s proof that section 202(a)(1) does not grant the authority to regulate GHGs. They note that much of the EPA’s argument relies on failed legislative proposals and subsequent legislation that allegedly would conflict with the EPA regulation of GHGs. Contrary to the EPA’s beliefs, however, EPA regulation of motor vehicle

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57 See Brief for the Petitioners at I, Massachusetts v. EPA, No. 05-1120 (U.S. Aug. 31, 2006).
58 Id. at 11.
59 Id. at 12.
60 Id. at 17.
61 See id. at 20 (“[T]his case presents none of the circumstances described by Brown & Williamson as ‘extraordinary.’”).
62 Id. at 19.
63 Id. at 20–32.
64 Id. at 20 (“EPA noted that when Congress amended [the CAA] in 1990, it did not enact the specific [CO₂] emission limits then proposed.” (citation omitted)).
65 Id. at 22 (“EPA cited provisions form the 1990 Amendments to [the CAA] . . . and from other legislation in asserting that Congress meant for EPA to take a strictly ‘nonregulatory’ approach to climate change.” (citation omitted)).
66 See id. at 20 (“[T]he Court cannot reach EPA’s desired result without effecting a repeal by implication, either through failed legislative proposals or subsequently enacted provisions of [the CAA] and other statutes. . . . EPA’s reasoning reads like a list of anti-rules for statutory interpretation.”).
GHG emissions would not conflict with the statutes cited by the agency.\textsuperscript{67} Furthermore, the Court has determined that "[f]ailed legislative proposals are ‘a particularly dangerous ground on which to rest an interpretation of a prior statute.’"\textsuperscript{68} Petitioners next dispute the EPA’s claim that GHGs could not fit within the regulatory framework of NAAQS, for mobile sources of emissions, at issue in this case, are regulated under a different title of CAA.\textsuperscript{69} Finally, petitioners reject the EPA’s argument that Congress’s fuel economy regulation program under the EPCA precludes CAA authority to regulate fuel economy to address motor vehicle GHG emissions.\textsuperscript{70} Petitioners maintain that CAA authority over fuel economy might overlap with EPCA, but it would not conflict with EPCA because the standards set forth in "both Acts are minimum standards."\textsuperscript{71}

The second issue petitioners address is "[w]hether the EPA Administrator may decline to issue emission standards for motor vehicles based on policy considerations not enumerated in Section 202(a)(1) of [the CAA]."\textsuperscript{72} Petitioners observe that section 202(a)(1) directs the EPA "to decide whether to regulate an air pollutant emitted by motor vehicles on the basis of its judgment as to whether public health or welfare may reasonably be anticipated to be endangered by pollution."\textsuperscript{73} Thus, under a plain text reading of the statute, the EPA and Judge Randolph’s expansive view of the word "judgment" in section 202(a)(1) was erroneous,\textsuperscript{74} and the EPA’s

\textsuperscript{67} See id. at 23 ("There being no inconsistency between the legislation cited by EPA and the clear application of section 202(a)(1) to air pollutants associated with climate change, it was error for EPA to find an implicit repeal of the latter in the former.").
\textsuperscript{68} Id. at 21 (quoting Solid Waste Agency of N. Cook County v. US Army Corps of Eng’rs, 531 U.S. 159, 169–70 (2001)).
\textsuperscript{69} See id. at 28 ("The NAAQS program is an entirely separate program from the mobile source program at issue in this case.").
\textsuperscript{70} Id. at 29–30.
\textsuperscript{71} Id. at 31.
\textsuperscript{72} Id. at I.
\textsuperscript{73} Id. at 38.
\textsuperscript{74} See id. at 44–45 ("A simple parsing of the language shows that the phrase ‘in his judgment’ modifies the clause describing causation and endangerment. It does not qualify the whole of [S]ection 202(a)(1)," (citation omitted)).
reliance on factors outside the section 202(a)(1) standard was an abuse of EPA authority.\textsuperscript{75} While the EPA partially based its denial of the petition on scientific uncertainty, an acceptable policy consideration according to petitioners, the EPA discounted the evidence that suggests global warming "may reasonably be anticipated to endanger public health or welfare."\textsuperscript{76} Therefore, because the EPA’s decision was not rooted in the statutory standard of section 202(a)(1),\textsuperscript{77} the D.C. Circuit Court erroneously found for the EPA.\textsuperscript{78}

**B. The EPA’s Brief in Opposition to a Writ of Certiorari**\textsuperscript{79}

In opposing the petition for certiorari, the EPA first maintained that petitioners failed to show standing because they demonstrated neither causation nor redressability.\textsuperscript{80} According to the EPA, petitioners’ evidence did not show that GHG emissions from new motor vehicles in the United States "cause[] or meaningfully contribute[] to their injuries."\textsuperscript{81} The evidence also failed to show substantial proof that regulation of motor vehicle GHG emissions would reduce petitioners’ injuries from global warming.\textsuperscript{82}

Second, the EPA again denied that section 202(a)(1) grants it the authority to regulate motor vehicle GHG emissions to address global warming.\textsuperscript{83} The EPA stressed that applying a holistic statutory interpretation, as was done in Brown & Williamson, illuminates Congress’s

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\item \textsuperscript{75} See id. at 38 ("The agency thought that it could decline to regulate emissions from new motor vehicles under section 202(a)(1) by invoking a mélange of factors not mentioned in that provision. Not so.").
\item \textsuperscript{76} 42 U.S.C. § 7521(a)(1); Brief for the Petitioners [in the Supreme Court] at 42 ("EPA did not seriously engage with the scientific evidence . . . .").
\item \textsuperscript{77} See Brief for the Petitioners, \textit{supra} note 56, at 41 ("[EPA] relied on uncertainty in combination with the other factors clearly having no relevance to the endangerment decision under section 202(a)(1).").
\item \textsuperscript{78} \textit{Id.} at 48.
\item \textsuperscript{79} The EPA’s merits brief was unavailable at the time this article was written; thus, the article considers the EPA’s brief in opposition to certiorari.
\item \textsuperscript{80} See Brief for the Federal Respondent in Opposition at 11, Massachusetts v. EPA, No. 05-1120 (U.S. May 15, 2006).
\item \textsuperscript{81} \textit{Id.} at 13.
\item \textsuperscript{82} See id. at 13–14.
\item \textsuperscript{83} \textit{Id.} at 22–23.
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intent that the EPA not have authority over motor vehicle GHG emissions. The EPA’s holistic interpretation considered the lack of provisions in the CAA indicating a Congressional desire to regulate motor vehicle GHG emissions, the futility of including GHGs within the NAAQS system, and the interference with EPCA that would result from allowing the EPA to effectively regulate motor vehicle GHG emissions. Moreover, the EPA asserted that GHGs are not "air pollutants" under section 302(g) because they are not "air pollution agents."

The EPA also argued that section 202(a)(1) grants the Administrator considerable discretion in making the threshold determination of whether to regulate because it requires the exercise of his "judgment." Furthermore, courts have upheld the EPA’s authority to postpone an endangerment finding under section 202(a)(1) until scientific evidence is more concrete. Thus, "the facts and policy concerns articulated by EPA were sufficient to sustain its decision that a finding of endangerment regarding [motor vehicle GHG emissions] was not appropriate at this time."

IV. Conclusion

Concluding his dissenting opinion, Judge Tatel asserted that "[a]lthough this case comes to us in the context of a highly controversial question—global warming—it actually presents a quite traditional legal issue: has the [EPA] complied with the [CAA]?" Indeed, the petitioners' most compelling argument on appeal to the Supreme Court is one of basic statutory interpretation: A plain text reading of the CAA demonstrates that the EPA can and must regulate

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84 Id. at 23.
85 Id. at 23–24.
86 Id. at 24–25 ("[T]he term ‘air pollution’ as used in the regulatory provisions [of the CAA] cannot be interpreted to encompass global climate change. . . . Therefore, [GHGs] are not ‘agents’ of air pollution.” (citations omitted)).
87 Id. at 16.
88 Id. at 17 (citing Her Majesty the Queen in Right of Ont. v. EPA, 912 F.2d 1525, 1533–35 (D.C. Cir. 1990)).
89 Id. at 18.
90 Massachusetts, 415 F.3d at 82 (Tatel, J., dissenting).
motor vehicle GHG emissions. Despite Tatel's assertion, it seems likely that the controversial nature of global warming will impact the Court's decision; a judgment favoring the petitioners potentially will cause dramatic social changes. However, since the EPA's strongest argument, lack of standing, was not one of the issues set to be heard on appeal, it is difficult to predict how the Court might reject the petitioners' plain text arguments. Regardless of its conclusions, the Court's decision will affect significantly the EPA's policies as well as the environmental movement.