

Ferguson: Energy Matters

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Supremes – EPA Can Act on Global Warming

Environmentalists are abuzz this week in the wake of a Supreme Court decision Monday rejecting EPA's arguments for not regulating greenhouse gas emissions. I doubt that the consequences of this decision are as far-reaching as enviros hope, but it's probably the most important environmental decision that the Court will make this year.

The main issues in *Massachusetts v. EPA* were whether EPA has authority under the Clean Air Act to regulate greenhouse gas emissions, and if so, whether there is adequate scientific evidence connecting GHG emissions and global warming. EPA had answered "no" to both questions and had prevailed in the lower courts. The Supreme Court, in its 5-4 decision, ruled otherwise on both counts.

The decision was a definite slap at the Bush administration which too often has made its own decisions about which laws, especially environmental laws, are enforced and which not. But to be honest, the four dissenting conservative justices had a valid point, too.

The dissenters argued that how the country will deal with global warming is a political issue that Congress should decide. This is true. Nevertheless, I also agree with the majority that regulation of GHG emissions are clearly within the scope of the Clean Air Act and that the scientific evidence for the need to control these emissions is solid enough to form a basis for regulation.

If Congress wants to change the law, it has the authority to do so, of course. But in the meantime, federal agencies have the responsibility to enforce *existing* law, whether the White House wants them to or not. So in my opinion, the significance of the decision is that the executive branch has no authority to decide which laws are enforced and which not.

What the consequences of the decision will be for global warming are much less clear. Presumably EPA will now begin the lengthy process of making rules to limit GHG emissions, and the current administration can be counted on to make this process as convoluted as possible. It is unlikely that legislation can be passed in Congress and signed by the president that will make EPA's job any easier. And in any event, final rules will not be adopted during this administration.

By coincidence, on the day of the Court's decision, I attended a community meeting in Santa Rosa of global warming activists planning a local campaign in Sonoma County to reduce GHG emissions. The campaign, which is supported by a variety of elected officials, has adopted a very aggressive goal – to reduce GHG emissions in the County to levels 25% below 1990 levels by the year 2015. (In contrast, California's goal is to reach 1990 levels by 2020.)

My opinion – which I mostly kept to myself – is that their goal is wildly unrealistic. Adopting challenging goals is a fine idea, but at the risk of being old-fashioned, I think there should be some feasible means of achieving the goals. Unfortunately, the means by which the goal would be reached were not discussed at the meeting. Figuring out what the local solutions to global warming are is apparently the next phase of the campaign.

The coincidence between the Supreme Court decision and the Sonoma County activists meeting was a poignant reminder that EPA and the activists both have the same problem. Although EPA is reluctant to find solutions and the Sonoma activists are eager, both are struggling to figure out what can be done about global warming that is acceptable to their constituents.

We all know what has to happen to limit global warming – the amount of fossil fuels we burn must decrease. But how do we make that happen? Alas, that's a question the Supreme Court cannot answer for us.

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