

November 29, 2006

Justices to Decide Merits of Global Warming Petition

By **FELICITY BARRINGER**

WASHINGTON, Nov. 28 — The Supreme Court will hear oral arguments on Wednesday on the questions of whether the federal government, particularly the [Environmental Protection Agency](#), is authorized and obligated to take action to ease [global warming](#).

Massachusetts, which has been joined by 11 other states, 3 cities and 13 environmental groups, will argue that the federal agency has shirked its legal responsibility to protect the public and ignored the requirements of the Clean Air Act.

Federal lawyers, in tandem with those of the automobile industry, are arguing that existing law is inadequate to support far-reaching regulation and that Congress or the foreign policy arena, or both, are the appropriate places to produce new global warming policies.

Calling the case “the most pressing environmental case in decades,” Massachusetts’s attorney general, Thomas F. Reilly, said, “The most indisputable fact in this case is that our climate is changing and that change is being caused by dangerous greenhouse-gas emissions.”

He added, “The federal government’s willing suspension of belief when it comes to global climate change has left it to the states to stand up and force action.”

But, lawyers on both sides of the issue agree, the justices’ answers to a more basic question —

whether the plaintiffs have a right to bring the case — may have the greatest ramifications.

In deciding that issue, known legally as a question of standing, the justices may determine whether Massachusetts and its fellow petitioners have made a good enough case that the atmosphere and oceans are warming at a dangerous rate, fueled in part by human actions like burning fossil fuels, and that the petitioners have been harmed in the process.

Second, the court may decide whether any person or state injured by a worldwide phenomenon may seek legal redress even though it would only partly deal with any damage.

The question of standing was not decided by the appeals court. That panel rejected Massachusetts's claim that the federal environmental agency was obligated to regulate the emission of heat-trapping chemicals from the tailpipes of new passenger vehicles. One judge said the harm the state had suffered was too generalized to give it standing. A second said the potential loss of coastal land was enough to give it automatic standing, and the third judge did not address the issue.

The case originally stemmed from a 1999 application by 19 environmental groups asking the E. P.A. to regulate greenhouse-gas emissions in new passenger vehicles.

“I think by far the issue that could have the most far-ranging impact is the standing issue,” said Jeffrey Holmstead, who until recently was assistant administrator for air and radiation at the E. P.A. “Just because if the court determines that these petitioners don't have standing, what that means is the federal courts really won't be available for people who want to bring lawsuits related to climate change.”

Mr. Holmstead, who is a partner at Bracewell & Giuliani, a lobbying firm, added, “From my

perspective, I think that's not a bad thing because I don't think the courts are equipped to deal with issues like this."

Environmental groups are also concentrating heavily on the question of the agency's authority, under the Clean Air Act, to regulate carbon dioxide and other so-called greenhouse gases as air pollutants.

Paul D. Clement, the solicitor general, opposes this, saying in his brief not only that Massachusetts and the other petitioners lack standing, but also that the action they seek would have little impact on global climate change. The United States transportation sector, which is mostly made up of passenger vehicles, accounted for about 7 percent of worldwide fossil-fuel emissions in the 1990s.

E.P.A. action, Mr. Clement argued, "would therefore result in, at most, a tiny percentage reduction in worldwide greenhouse-gas emissions."

For Mr. Reilly, that is beside the point. He argues in the Massachusetts brief that under the Clean Air Act, the federal agency "is free to propose a comprehensive solution to the problem of climate change if it wishes to do so, but it is not free to reject the approach Congress explicitly set forth."

The question of the agency's authority to regulate carbon dioxide and other greenhouse gases as pollutants "is the environmentalists' big issue," said Richard J. Lazarus, a law professor at [Georgetown University](#). For the government, he added, a third issue, whether the agency is not just permitted to regulate greenhouse gases but is obliged to do so, may loom largest.

