# Massachusetts v. E.P.A., 127 S.Ct. 1438 (2007) - Chevron Analysis

# Learning Objectives for this Module

## Learn the structure of the Clean Air Act’s definition of pollution.

## Learn the Court applied Chevron analysis in this case.

## Learn how the court used the history of clean area legislation to find Congressional intent.

## Learn how the Court views redressability when the requested remedy will only have a small incremental effect on the problem.

# Reading Assignment

## [Massachusetts v. E.P.A., 127 S.Ct. 1438 (2007)](http://biotech.law.lsu.edu/cases/adlaw/mass-v-epa.htm) – the global warming case. Read remainder of the case.

# Issues to be addressed

## Background

### What were EPA's two findings when it finally ruled on the petition in 2003?

#### (1) that contrary to the opinions of its former general counsels, the Clean Air Act does not authorize EPA to issue mandatory regulations to address global climate change, see id., at 52925-52929; and

#### (2) that even if the agency had the authority to set greenhouse gas emission standards, it would be unwise to do so at this time.

### We have already analyzed the standing issues. The court now addresses whether the agency was correct in finding that the Clean Air Act does not give it regulatory authority over greenhouse gases from automobiles.

## Chevron Step One – Is the Law Clear?

### What does the Clean Air Act §7521(a)(1) require the EPA to issue regulations on?

#### [35] "The [EPA] Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare ...

### What is the definition of pollutant in the act?

#### [36] The Act defines "air pollutant" to include "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." §7602(g).

#### "Welfare" is also defined broadly: among other things, it includes "effects on ... weather ... and climate." §7602(h).

### How could these statutory provisions cover greenhouse gases?

## What is the Congressional Intent?

### Even if the statute seems clear, Congress may not have intended it to cover GHGs – this is the Brown and Williamson case.

### What are the indications that Congress was thinking about GHGs?

#### In 1978, Congress enacted the National Climate Program Act, 92 Stat. 601, which required the President to establish a program to "...assist the Nation and the world to understand and respond to natural and man-induced climate processes and their implications..."

##### What does this tell us about the history of concerns with greenhouse gasses (GHG) – is it just something Al Gore thought up?

#### What did the National Academy of Sciences Tell President Carter?

##### "If carbon dioxide continues to increase, the study group finds no reason to doubt that climate changes will result and no reason to believe that these changes will be negligible... . A wait-and-see policy may mean waiting until it is too late."

#### What did the Global Climate Protection Act of 1987 require the EPA to do?

##### Finding that "manmade pollution -- the release of carbon dioxide, chlorofluorocarbons, methane, and other trace gases into the atmosphere -- may be producing a long-term and substantial increase in the average temperature on Earth," §1102(1), 101 Stat. 1408, Congress directed EPA to propose to Congress a "coordinated national policy on global climate change...Congress emphasized that "ongoing pollution and deforestation may be contributing now to an irreversible process" and that "[n]ecessary actions must be identified and implemented in time to protect the climate."

##### Who was president in 1987? Was this always a politically polarized issue?

#### The First Global Warming Treaty

##### What is the Kyoto Protocol?

##### Why did the senate say it would reject it?

###### Did it apply equally to all countries?

##### What was Congress worried about?

###### What is the potential economic consequence of the treaty for the US?

##### Was this a partisan vote?

###### Who was President?

##### How can this be used in the Congressional intent analsys?

### How did the EPA argue that Congress may have been interested in GHGs but did not want it regulated?

#### [48] In concluding that it lacked statutory authority over greenhouse gases, EPA observed that Congress "was well aware of the global climate change issue when it last comprehensively amended the [Clean Air Act] in 1990," yet it declined to adopt a proposed amendment establishing binding emissions limitations. Id., at 52926. Congress instead chose to authorize further investigation into climate change.

### Was there specific legislation on global atmospheric issues?

#### EPA further reasoned that Congress' "specially tailored solutions to global atmospheric issues," 68 Fed. Reg. 52926 -- in particular, its 1990 enactment of a comprehensive scheme to regulate pollutants that depleted the ozone layer -- counseled against reading the general authorization of §202(a)(1) to confer regulatory authority over greenhouse gases.

##### Is ozone the same issue as CO2?

##### When does the specific rule out the general?

### How was this position strengthened by the political history of the Clean Air Act?

#### [50] EPA reasoned that climate change had its own "political history": Congress designed the original Clean Air Act to address local air pollutants rather than a substance that "is fairly consistent in its concentration throughout the world's atmosphere," declined in 1990 to enact proposed amendments to force EPA to set carbon dioxide emission standards for motor vehicles, ibid. and addressed global climate change in other legislation, 68 Fed. Reg. 52927.

## What is the EPA’s policy rational for not making a rule, even if it has the authority?

### What did EPA want from Congress before regulating greenhouse gasses?

### What is the regulatory conflicts problem with the EPA regulating gasoline mileage?

### What does the EPA think of the association between global warming and human production of greenhouse gases?

#### Is this really a technical decision?

### Impact of Unilateral EPA Regs on Global Warming Treaties

#### Why would motor vehicle regulations conflict with the goal of a comprehensive approach to global warming?

#### Why would such regulations weaken the president's ability to persuade developing countries to lower their emissions?

## Is this a political question?

### What is the heart of the dissent's belief that this is a political question?

#### Is there merit to this argument?

## What about redressability?

### Will US auto emissions standards affect global warming in a measurable, as opposed to theoretical way?

### Does this meet the traditional tests for redressability?

### Does redressability require that the regulation solve the problem?

## How could EPA have responded to the petition for rulemaking in a way that might have escaped judicial review?

### What does the EPA need to do to support its refusal to make a rule so that the courts cannot find the refusal arbitrary and capricious?

# Evaluation Questions

## We read Mass v. EPA as an example of how the courts apply *Chevron,* as an introduction to greenhouse gas (GHG) regulation, and as an example of how to use a petition for rulemaking as a device to get into court to challenge an agency’s regulatory position.

## How did plaintiffs use the petition for rulemaking in this case?

## The EPA claimed that it did not have the authority to regulate GHGs. The court used a *Chevron* analysis to decide if this was a correct position. How did the court work through the *Chevron* steps? Consider these questions in your discussion:

### What invited judicial second-guessing of their decision?

### What had the EPA said before the facts in this case about its authority over CO2 in the past? Why does this matter?

### How broad is the definition of pollutant in the Clean Air Act?

### How do plaintiffs claim they fit into the definition of welfare in the statute?

### Why does the court need to look for congressional intent in *Mass. v. EPA*?

### What did the court look to determine congressional intent?

## Once the court finds that the Clean Air Act gives the EPA authority to regulate GHGs, is the EPA compelled to issue the requested rules? If not, what must it tell plaintiffs?