# Massachusetts v. E.P.A., 127 S.Ct. 1438 (2007) - Supreme Court expands state standing and standards for reviewing petitions for rulemaking in global warming case

## What is the gas at issue?

## Why do we care about it?

## Where does it come from?

## What does the clear air act §7521(a)(1) require the EPA to issue regulations on?

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

## Does this definition give clear guidance?

## What was the National Climate Program Act of 1978?

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

## What is the Kyoto Protocol?

## Why did the senate reject it?

## What was Congress worried about?

## Was this a partisan vote?

## What did the petition of October 20, 1999 ask the EPA to do?

## What had the EPA said about its authority over CO2 in the past??

## Did EPA seek public comment on the petition?

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

## What has changed between 1998 and 2003?

## What did the EPA cite as evidence that Congress did not intend for the EPA to regulate green house gasses?

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

## What did EPA want from Congress before regulating green house 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?

## 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?

## Why does an injury to everyone usually mean that a given litigant cannot show individualized injury?

## What does Baker v. Carr tell us about the injury requirement?

## What did Lujan tell us about the special dispensation for standing when Congress creates a right to challenge the procedure an agency is following?

## What is the more generous formulation of this principle in the Sugar Cane Growers case?

## Why is this going to be critical for a global warming case?

## What does Justice Holmes tell us about the special status of a state as litigant?

## Who does the state really represent and why does that broaden its standing as compared to a private litigant?

## Does Mass also own affected land?

## What powers did the state give up when it entered the Union that limit what it can do about global warming?

## What does it mean to say that the state is acting as *parens patriae*?

## What are the injuries to Mass caused by global warming?

## Why is this imminent?

## What is the particularized injury that Mass claims to its own lands?

## [76] Causation

## Why does EPA say causation fails?

## What does EPA say is the main reason its efforts will not change the outcome?

## Why does the court say small, incremental reforms are important?

## Why would accepting the EPA's argument in this case hurt agencies in other cases when they want to regulate something?

## Does the court accept that automobile emissions are only a small contributor to global warming?

## [81] The Remedy

## Does redressability require that the remedy fix all the plaintiff's problems?

## What does the court remind us about the factual arguments in this case as it sums up? Have these been tested in court?

## What does the court say Mass has standing to do?

## What does Heckler v. Chaney, 470 U. S. 821 (1985) tell us about the chances of a litigant forcing the agency to take an enforcement action?

## Why are refusals to make rules more amenable to judicial review?

## Why does the existence of a procedure for requesting rulemaking imply some role for judicial review of the denial of the petition for rulemaking?

## What was the primary reason the EPA refused to make a rule on carbon dioxide?

## Why is this sort of reason especially attractive for judicial review?

## What is the Clean Air Act definition of air pollution?

## Under this definition, are you an air polluter?

## Would it really be possible to regulate everything covered by this definition?

## In the tobacco case, what would the FDA have had to do if tobacco were covered by the act?

## Why is this case different?

## Why did subsequent congressional enactments make it clear that congress did not intend that the FDA regulate tobacco?

## Are those present for carbon dioxide?

## Does it matter that it was clear when the Clear Air Act was passed that Congress did not contemplate it covering green house gasses?

## 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?

## Given the broad language of the Clear Air Act, what should EPA have done to avoid this case?

## The dissent

## Which judges are dissenting?

## What is a political question and why does the dissent believe regulating carbon dioxide is a classic political question?

## What was the state trying to do in the Tennessee Copper case?

## How was the injury different the case from the instant case?

## Was this a question of standing or of remedy?

## Why would the state's remedy be different from the private parties?

## Would the private landowners have had standing?

## Would they have standing in Mass v. EPA?

## Why is this a critical difference?

## How does the court analogize parens patriae standing to associational standing?

## Why does this make the state's case harder, not easier as the majority found?

## Why is it inconsistent for the court to allow parens patriae standing and also allow claims based on the state's ownership of land?

## Did any of the litigants rely on Tennessee Copper?

## Has it been used in other cases to support the majority's theory?

## Why is the dissent's attack on the factual basis of the case misplaced?

## What would be necessary for this analysis to be important, i.e., how did EPA screw up the record?

## What was the standing issue in the SCRAP case?

## Why is it important that this is a 1973 case?

## What does the dissent say SCRAP made standing into?