

12-1183 AMERICAN LUNG ASSOCIATION V. EME HOMER CITY GENERATION

DECISION BELOW: 696 F.3d 7

LOWER COURT CASE NUMBER: 11-1302, et al.

QUESTION PRESENTED:

The Clean Air Act's "Good Neighbor" provision requires that state implementation plans contain "adequate" provisions prohibiting emissions that will "contribute significantly" to another state's nonattainment of health-based air quality standards. 42 U.S.C. 7410(a)(2)(D)(i). A divided D.C. Circuit panel invalidated, as contrary to statute, a major EPA regulation, the Transport Rule, that gives effect to the provision and requires 27 states to reduce emissions that contribute to downwind states' inability to attain or maintain air quality standards. The questions presented are:

(1) Whether the statutory challenges to EPA's methodology for defining upwind states' "significant contributions" were properly before the court, given the failure of anyone to raise these objections at all, let alone with the requisite "reasonable specificity," "during the period for public comment," 42 U.S.C. 7607(d)(7)(B);

(2) Whether the court's imposition of its own detailed methodology for implementing the Good Neighbor provision violated foundational principles governing judicial review of administrative decision -making;

(3) Whether an upwind state that is polluting a downwind state is free of any obligations under the Good Neighbor provision unless and until EPA has quantified the upwind state's contribution to downwind states' air pollution problems.

LIMITED TO THE QUESTIONS PRESENTED BY THE PETITION IN NO. 12-1182.

CONSOLIDATED WITH 12-1182 FOR ONE HOUR ORAL ARGUMENT.

ORDER OF 11/26/2013: JUSTICE ALITO TOOK NO PART.

CERT. GRANTED 6/24/2013