

12-1268 SOUTHEASTERN LEGAL FOUNDATION V. EPA

DECISION BELOW: 684 F.3d 102

LOWER COURT CASE NUMBER: 09-1322, et al.

QUESTION PRESENTED:

Leveraging this Court's opinion in *Massachusetts v. EPA*, 549 U.S. 547 (2007), the Environmental Protection Agency ("EPA") has launched the most expansive regulatory program in the history of the United States, a program that not only regulates greenhouse gas ("GHG") emissions from mobile sources (at issue in *Massachusetts*), but also from thousands (potentially millions) of stationary sources. By EPA's own admission, expanding GHG regulation to stationary sources was contrary to the express terms of the Clean Air Act ("CAA" or "the Act"), was at odds with clear congressional intent, and produced a regulatory program that was "absurd" and "impossible" to administer. The U.S. Court of Appeals for the D.C. Circuit, however, affirmed the totality of EPA's regulatory program, due in large part to that court's view that EPA's legal premises were compelled by *Massachusetts*.

This Petition raises three questions for this Court's consideration:

1. May EPA exert authority over GHG emissions under the Clean Air Act where (1) EPA acknowledged that its interpretation of the Act is fundamentally inconsistent with both the express terms of the Act and the manifest intent of Congress and would lead to results that are "absurd" and "impossible" to administer, (2) there exist reasonable, alternative interpretations of the Act that do not create such conflicts and absurd results, and (3) EPA's action was based on an irrational claim of scientific certainty in the face of ample contradictory and equivocal evidence in the rulemaking record?

2. Having adopted an "absurd" and "impossible" interpretation of the Act, may EPA then rewrite the statutory requirements of the CAA to substitute its own preferred "tailored" regulatory regime for stationary GHG emissions in order to avoid the absurd and impossible results of its own making?

3. Is EPA's administrative "tailoring" of the Act to avoid the absurd results of its own interpretation beyond judicial review on the ground that no party has standing to challenge the assumed administrative power to relax statutory requirements?

LIMITED TO THE FOLLOWING QUESTION: Whether EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases.

CONSOLIDATED WITH 12-1146, 12-1248, 12-1254, 12-1269 and 12-1272 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 10/15/2013