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CLIMATE: 'Strange bedfellows' file briefs in Supreme Court emissions case

Lauren Morello, *Greenwire* reporter

States, environmental groups, scientists and energy companies filed opening legal briefs with the Supreme Court last week in a lawsuit aimed at forcing U.S. EPA to regulate greenhouse gas emissions from motor vehicles.

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The High Court will hear oral arguments this term on *Massachusetts v. EPA*, concerning an appeals court decision upholding the Bush administration's refusal to regulate carbon dioxide as a pollutant under the Clean Air Act.

Oral arguments in the case are expected in December, about a year after the U.S. Circuit Court of Appeals for the District of Columbia denied, in a 4-3 decision, the states' motion to reverse an earlier ruling issued by a three-judge panel of the court ([Greenwire](#), June 26).

Massachusetts v. EPA

Amici curiae briefs for petitioners

Filer

Madeleine K. Albright

Alaska native groups

Arizona, Iowa, Maryland, Minnesota and Wisconsin

Aspen Skiing Co.

California environmental groups

Church groups

Climate scientists

U.S. Conference of Mayors

Delaware

Entergy Corp.

Former EPA administrators

National Wildlife Federation

Ocean & coastal groups

Brief

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"What is so shocking here is that even though the clear authority exists under the Clean Air Act to regulate [GHG emissions], even though the urgency is evermore apparent, EPA has refused not only to regulate but even to respond to our requests to regulate," said Andrew Kimbrell, director of the International Center for Technology Assessment, a plaintiff in the suit.

The states that brought the lawsuit -- California, Connecticut, Illinois, Maine, Massachusetts, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont and the District of Columbia -- have drawn a diverse array of supporters.

"This case makes for strange bedfellows," Entergy Corp. noted in the *amicus* brief it filed last

week.

The power company acknowledged that it has taken a position that is "atypical of an industry largely opposed to CO2 regulation" but said it believes EPA's position on the regulation question will not stand the test of time. "Entergy seeks certainty with respect to the regulatory regime it must operate under," the company says in its brief.

Among other parties filing "friend of the court" briefs were energy company Calpine, former Secretary of State Madeleine Albright, Alaska native groups, the National Wildlife Federation, hunting and fishing groups, four former EPA administrators, the National Council of Churches, and the U.S. Conference of Mayors.

Climate change 'affects every sector'

The unusual coalition arose because climate change "affects every American sector," said Carl Pope, executive director of the Sierra Club, a plaintiff in the case.

In fact, several of the *amicus* briefs filed last week argue that the effects of global warming are already apparent.

"Over the past 25 years, Aspen has watched its total precipitation decrease by 6 percent, with snowfall decreasing by 16 percent," noted the Aspen Skiing Co., which operates four ski areas that cover 5,200 acres in Colorado's Rocky Mountains. "Average temperatures have already increased by about 3 degrees Fahrenheit."

Those changes could shorten or end the ski season within the next few decades, the recreation company said: "The impact of climate change is current, and well under way."

In California, "summer temperatures are rising, crops are failing, the Sierra Nevada snowpack is dwindling, winter flooding is increasing, and summer river flows are declining," according to a brief filed by state conservation and sportfishing groups.

But the stakes may be even higher in Alaska -- one of the "front lines of climate change," according to a brief filed by Amici Alaska Inter-Tribal Council, the Council of Athabascan Tribal Governments, and Resisting Environmental Destruction of Indigenous Lands.

Among the effects already seen in their state, the Alaska Natives say in their brief: declining health of caribou, kelp, sea lions, and other native species; recession of sea ice; and melting of permafrost.

"Nowhere are the effects of anthropogenic greenhouse gas emissions more severe than in the Arctic, where the rate of warming is twice that of the rest of the world," the groups wrote. "At stake is the physical and cultural survival of Alaska's oldest inhabitants."

'Remarkable consensus'

Meanwhile, other *amici* briefs took EPA to task for what one filing called "a remarkable consensus within the scientific community" that global warming is occurring and is caused in part by human activity.

"We are profoundly troubled by the misunderstanding or misrepresentation of the current state of knowledge of climate change evident in [EPA's] denial of the petition ... to regulate emissions of greenhouse gases from mobile sources," reads a brief filed by several notable climate scientists, including NASA climatologist James Hansen and University of California-Irvine professor Sherwood Rowland, who won the Nobel Prize in 1995 for discovering the destructive effect of aerosols and coolants on the ozone layer.

In its legal filings, EPA has cited a 2001 National Research Council report on climate change as the scientific authority for its decisions. But the agency has misrepresented the findings of the report, which NAS wrote at the request of the Bush administration, according to the scientists and a group of four former EPA administrators.

Moreover, the agency's decision to require "unequivocal proof" linking greenhouse gas emissions to global warming before it takes regulatory action is a break with EPA authority and precedent, the administrators -- former EPA heads Carol Browner, William Reilly, Douglas Costle and Russell Train -- wrote in a separate brief.

"Had such a flawed approach been followed by EPA in the past, [we] would not have been able to protect the public health ... from the hazards of leaded gasoline, airborne benzene, ozone-depleting CFCs, and particulate matter," said the four former officials.

EPA setting 'troubling' precedent?

One of the more interesting arguments was made by former Secretary of State Madeleine Albright.

While the main point made by states that brought the lawsuit, and their supporters, is that EPA is shirking its regulatory authority, Albright argued that in one respect, the agency may be overreaching.

In denying petitions to regulate automobiles' GHG emissions under the Clean Air Act, EPA argued that doing so "could also weaken U.S. efforts to persuade key developing countries to reduce the GHG intensities of their economies."

But according to Albright, EPA lacks the congressional authorization and expertise to make such an argument. "Congress has been careful to separate the EPA's domestic regulatory function from the formulation of international climate policy," instead assigning it to the State Department, she wrote.

Furthermore, Albright noted, the agency's position could set what she called a "troubling" precedent, allowing "speculative foreign policy concerns" to trump federal statutes and creating new questions about separation of powers in the federal government.

[Click here](#) to read the opening brief filed by Massachusetts and other plaintiffs in the case.

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