

12-1269 TEXAS V. EPA

DECISION BELOW: 684 F.3d 102

LOWER COURT CASE NUMBER: 10-1092, et al.

QUESTION PRESENTED:

The Clean Air Act compels every stationary source that emits "one hundred tons per year or more of any air pollutant" to obtain an operating permit, and also requires a permit to build or modify any stationary source that emits "two hundred and fifty tons per year or more of any air pollutant." See 42 U.S.C. §§ 7475(a)(1), 7479(1), 7602(j), 7661a(a). After *Massachusetts v. EPA*, 549 U.S. 497 (2007), held that carbon dioxide and other greenhouse gases are air pollutants under the Act, EPA sought to regulate greenhouse-gas emissions from stationary sources. EPA realized that to do so would be absurd if it adhered to the text of the Act, given that millions of buildings (including churches and schools) emit more than 100 or 250 tons per year of carbon dioxide. To enable its desired regulatory expansion, EPA promulgated a "Tailoring Rule" that discards the Act's numerical thresholds and creates a novel permitting regime exclusively for greenhouse gases. The questions presented are:

1. (a) Whether EPA's Tailoring Rule violates the Act by replacing Congress's unambiguous numerical permitting thresholds with criteria of EPA's own choosing. (b) Whether the D.C. Circuit improperly ducked this question on Article III standing grounds.
2. Whether Congress authorized EPA to regulate greenhouse-gas emissions from stationary sources, given that the Act imposes permitting thresholds that are absurdly low if applied to carbon dioxide.
3. Whether *Massachusetts v. EPA* should be reconsidered or overruled in light of the absurd permitting burdens that follow from treating carbon dioxide as an air pollutant under the Act.

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, 12-1268 and 12-1272 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 10/15/2013