

12-1146 UTILITY AIR REGULATORY GROUP V. EPA

DECISION BELOW: 684 F.3d 102

LOWER COURT CASE NUMBER: 10-1073, et al.

QUESTION PRESENTED:

After this Court decided *Massachusetts v. EPA*, 549 U.S. 497 (2007), the Environmental Protection Agency (EPA) found that its promulgation of motor vehicle greenhouse gas (GHG) emission standards under Title II of the Clean Air Act (CAA), 42 U.S.C. § 7521(a)(1), compelled regulation of carbon dioxide and other GHGs under the CAA's Title I prevention of significant deterioration (PSD) and Title V stationary-source permitting programs. Even though EPA determined that including GHGs in these programs would vastly expand the programs contrary to Congress's intent, EPA adopted rules adding GHGs to the pollutants covered. The panel below held the CAA and *Massachusetts* compelled inclusion of GHGs and, based on that holding, dismissed all petitions to review the GHG permitting program rules on standing grounds. The questions presented are:

1. Whether *Massachusetts* compelled EPA to include GHGs in the PSD and Title V programs when inclusion of GHGs would (i) transform the size and scope of these programs into something that EPA found would be "unrecognizable to ... Congress," Petition Appendix 345a, 380a, and (ii) expand the PSD program to cover a substance that does not deteriorate the quality of the air that people breathe.

2. Whether dismissal of the petitions to review EPA's GHG permit-program rules was inconsistent with this Court's standing jurisprudence where the panel premised its holding that standing was absent on its merits holding that GHGs are regulated "pursuant to automatic operation of the CAA." *Id.* at 96a.

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 12-1248, 12-1254, 12-1268, 12-1269 and 12-1272 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 10/15/2013