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### **COURT FAILS TO DECIDE EPA AUTHORITY TO REGULATE GLOBAL WARMING POLLUTION** **Split decision poses no obstacle to California vehicle emissions standards**

WASHINGTON (July 15, 2005) -- Today, a fractured three judge panel of the U.S. Court of Appeals here failed to resolve the question whether the Environmental Protection Agency (EPA) has the authority and responsibility to regulate the pollutants that cause global warming.

Issuing three conflicting opinions, the court by a 2-1 vote denied petitions from 12 states, three cities and more than a dozen environmental groups, including the Natural Resources Defense Council (NRDC), who challenged the EPA's 2003 refusal to regulate carbon dioxide (CO<sub>2</sub>) and other global warming pollution from U.S. cars and trucks.

The decision will have no effect on the authority of states, such as California, to continue regulating global warming pollution from vehicles or power plants.

“Only one of the three judges addressed the central question in the case, and he ruled the Clean Air Act empowers EPA to curb the pollution that causes global warming,” said David Doniger, senior attorney and policy director of NRDC's Climate Center. “This splintered court decision provides little cover for the administration's continuing refusal to take action against the growing dangers of global warming.”

Two judges did not even address the central question of whether carbon dioxide and other global warming emissions are “air pollutants” under the Clean Air Act and whether EPA has the authority to regulate them.

The only judge who wrote on the question of authority, David Tatel, rejected the agency's claim, finding that greenhouse gases “plainly fall within the meaning of ‘air pollutant’” and that the Clean Air Act expressly includes effects on “climate.”

After reviewing a 2001 National Academy Sciences report on which EPA relied, Judge Tatel said: “I have grave difficulty seeing how EPA ... could possibly fail to conclude that global warming ‘may reasonably be anticipated to endanger public health or welfare.’ Judge Tatel concluded that “EPA has authority – indeed the obligation – to regulate their emission from motor vehicles.”

Judges Randolph and Sentelle side-stepped the question of EPA's authority.

- Judge Randolph wrote that he would defer to various EPA “policy” reasons for not acting: e.g., that new motor vehicles are only one source of global warming emissions; that unilateral U.S. action might deter other countries from acting; and that further research and voluntary action were appropriate responses for now.

- Judge Sentelle concluded that the petitioning states, cities, and environmental organizations lack “standing” to sue over global warming pollution. Global warming, he wrote, “is harmful to humanity at large,” and that no one may sue in these circumstances. Sentelle joined Randolph in the result, but not the reasoning.
- Judge Randolph did not join Sentelle’s position on standing. Judge Tatel rejected it outright, holding that Massachusetts’ loss of coastline clearly meets standing requirements.

Petitioners are likely to seek re-hearing before the full 11-member U.S. Court of Appeals or to seek review by the Supreme Court.

Petition filers included Massachusetts, California, Connecticut, Illinois, Maine, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, the District of Columbia, Baltimore and New York City. Environmental petitioners included the Natural Resources Defense Council and thirteen other public interest groups.

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