



Opinion

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Let Supreme Court interpret the law

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PHOENIX -- President Bush has often criticized "activist judges" for allegedly shaping the law to fit their own policy preferences instead of enforcing it as written.

Now, Bush's own appointees to the Supreme Court have an opportunity to show that they will enforce a law that Congress enacted more than 30 years ago, rather than bending that law out of shape to avoid a result that they would rather not reach.

The law involved is the 1970 Clean Air Act, still relevant. Although the act is long and complicated, at least one of its requirements is clear and simple. It requires the administrator of the Environmental Protection Agency to issue standards limiting automobile emissions of any air pollutant "which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare."

This provision is mandatory. If a pollutant "may reasonably be anticipated to endanger public health or welfare," then the EPA must act.

There can be little doubt that such gases "may reasonably be anticipated to endanger public health or welfare" within the meaning of the act, because the act defines endangerment of public welfare to include harmful effects on Earth's climate. Since global warming is likely to raise sea level by melting the polar ice caps, thereby inundating hundreds of square miles of coastal areas, it is certainly a threat to public welfare.

The EPA denied the petition. Interestingly, however, the EPA did not deny that automobile emissions contribute to global warming, or that global warming endangers public welfare. Instead, the EPA offered two justifications for its refusal to act. First, the EPA claimed that greenhouse gases are not air pollutants within the meaning of the act. This denial, however, is simply not credible. The act defines "air pollutant" to include "any substance or matter which is emitted into or otherwise enters the ambient air." Since greenhouse gases are substances, and they enter the air, they are air pollutants.

The EPA's second reason for denying the petition was subtler but equally arrogant. The EPA argued that, as a matter of policy, automobile emission standards are not a good approach to solving the problem of global warming. Claiming that such standards would not be "effective or appropriate," the EPA declared that it "disagrees" with their use to combat global warming.

In December the court heard arguments in a lawsuit brought by 12 states who have asked the courts to overturn the EPA's decision. The EPA's lawyers urged the court to affirm the EPA's refusal to act on the grounds that the EPA's decision was "reasonable."

The problem with the EPA's defense is that it asks the court to second-guess a judgment that Congress made when it created the act. It is not up to the EPA, or the courts, to decide whether automobile emission standards are a wise, reasonable or economical way to control air pollution. Congress decided that automobile emission standards are a good idea, and it instructed the EPA to issue them for any air pollutant that endangers the public's health or welfare.

If Bush's EPA disagrees with the act, it can ask Congress to change it. Until then, to paraphrase Donald Rumsfeld, the EPA should implement the law that Congress wrote, not the one it wishes Congress had written. If the EPA refuses to follow the law, then the courts should order it to do so. That's their job.

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