

Scholars, lawyers, and judges will be spending a lot of time dissecting today's ruling. Overall, it's a bit like yesterday's World Cup game — EPA didn't win outright but it didn't lose either.

Here are three key questions with some initial thoughts:

**What is the direct legal impact of the ruling?** This was really a split decision. Some sources will escape being covered by EPA's greenhouse gas rule, but most sources (over 80%, according to the Court) remain covered. So EPA can claim that it gained more than it lost from the decision. It is also important to note that seven Justices have now confirmed the ruling in *Massachusetts v. EPA* that the Clean Air Act covers greenhouse gases. The Court also failed to review, and thereby upheld, the greenhouse gas rule for vehicles.

**What is the political effect?** Everybody on both sides will be spinning the decision. My guess is that the spins will cancel, and there won't be any net political impact.

**How does the decision affect EPA's current proposals?** This is probably the most important question and the hardest to answer. Technically, there's no effect: the current proposals involve an entirely different section of the statute, as the Court makes clear in a footnote. But there's some language in the opinion that seems unhelpful:

*"We acknowledge the potential for greenhouse-gas BACT to lead to an unreasonable and unanticipated degree of regulation, and our decision should not be taken as an endorsement of all aspects of EPA's current approach, nor as a free rein for any future regulatory application of BACT in this distinct context. Our narrow holding is that nothing in the statute categorically prohibits EPA from interpreting the BACT provision to apply to greenhouse gases emitted by [certain] sources."*

That language doesn't directly apply — different section of the statute, different language and history. But it does seem to indicate a willingness by the Court to second-guess the reasonableness of EPA's regulations to ensure that they don't expand regulatory authority too much. This language is hard to square with the general rule that it's up to the agency, not the Court, to make policy decisions about the statute. The current make-up of the Court seems to be four Justice who will support EPA as far as the language of the statute will go; two who will resist all greenhouse gas regulation; and three who are willing to give EPA some slack but who are worried about letting EPA go too far. We'll see whether EPA sees this as a signal to trim back its proposal.