

[Dan's](#) and [Rick's](#) posts very helpfully summarize the impacts of the Court's decision today. (They were also probably written at the same time: great minds think alike). But I'm a little more pessimistic than Dan is concerning Congressional action. He suggests that the decision

makes it more complex for Congress to repeal EPA jurisdiction since doing so would restore the federal common law claims.

I confess that the reasoning here eludes me. Any statute repealing EPA jurisdiction could also displace federal common law claims as well as pre-empting state common law claims (although the latter would be a little tougher). Federal common law is not a brooding omnipresence in the sky: Congress can get rid of it whenever it wants, for whatever reason it wants.

I suppose that the extra displacement aspect of the statute would make that statute a somewhat heavier political lift, but if the Republicans can get rid of *Massachusetts v. EPA*, then also displacing federal common law claims would pretty easy going.

Dan, what am I missing here?