The other shoe has dropped with the announcement of the final rule repealing EPA's 2009 finding that greenhouse gases endanger human health and welfare. The Trump Administration has the nasty habit of announcing new regulations before posting them. That means that for the moment we are limited to the EPA press release.

Although I'll post again when more details are available, the main outlines of EPA's rationale are already clear. In this post, I'll analyze some of the major assertions and the serious legal issues they raise.

The Endangerment Finding "exceeded the agency's authority to combat 'air pollution' that harms public health and welfare." This seems to squarely conflict with the Supreme Court's holding in *Massachusetts v. EPA* that required EPA to consider the risks of greenhouse gases

"A policy decision of this magnitude … lies solely with Congress." This point involves what is called the Major Questions Doctrine, which requires greater scrutiny of regulations of "vast political and economic significance." The Supreme Court considered the same argument in *Massachusetts v. EPA*, which held that greenhouse gases are subject to regulation under the Clean Air Act. In addition, it seems more logical to apply the Major Questions Doctrine to specific regulations that are issued pursuant to the Endangerment Finding, rather than to the Finding itself, which is an assessment of the effects of emissions rather than a regulation that directly imposes costs. That's exactly what the Court did in *West Virginia v. EPA,* a more recent case that EPA now relies on.

"EPA had for decades understood that the "air pollution" targeted by the statute means pollution that harms health or the environment through local and regional exposure." This is similar to an argument that Justice Scalia made in his dissent in the Massachusetts case. The majority didn't buy it.

"[E]ven if the U.S. were to eliminate all GHG emissions from all vehicles, there would be no material impact on global climate indicators through 2100." It's true that eliminating these emissions would be a tiny fraction of all emissions, with a proportionately tiny percentage reduction in the harm from climate change. But a tiny percentage of a huge number can still be a big number. For instance, something that kills a hundredth of a percent of the U.S. population sounds insignificant (no "material harm" in EPA's terminology). But it would mean 34,000 deaths. Also, in finding that the plaintiffs had standing in the *Massachusetts*

case, the Supreme Court rejected a similar argument that the harm from the auto emissions was too small taken by itself to matter.

EPA's current reasoning basically comes down to the idea that *Massachusetts v. EPA* should be overruled. I imagine there are also clever dodges to allow the Court that wants to do so to avoid explicitly saying that it's explicitly overruling *Massachusetts*. But the substance is clear.

Despite the conservative shift in the Court, however, I don't think it's a done deal that a majority will take this action. For one thing, for their own reasons, neither the oil industry nor the utilities are enthusiastic about this rollback. And the Court has historically been reluctant to overrule decisions on statutory interpretation, since Congress always has the option of fixing a mistake itself.