

EPA has implicitly admitted defeat in terms of overturning the science behind the Endangerment Finding. Instead, it relies on a series of legal arguments. I tease apart those arguments in a [Regulatory Review essay](#). Here, I want to make a different point: It is impossible to square those arguments with Justice Stevens's 2007 Supreme Court majority opinion in [Massachusetts v. EPA](#). Below, I'll prove my point by lining up quotes from the Trump EPA and the Supreme Court opinion.

Trump EPA: *The Endangerment Finding “exceeded the agency’s authority to combat ‘air pollution’ that harms public health and welfare.”*

Mass. v. EPA: “If EPA makes a finding of endangerment, the Clean Air Act requires the agency to regulate emissions of the deleterious pollutant from new motor vehicles.... Under the clear terms of the Clean Air Act, EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do.”

Trump EPA: “A policy decision of this magnitude ... lies solely with Congress.”

Mass. v. EPA:

“While the Congresses that drafted §202(a)(1) might not have appreciated the possibility that burning fossil fuels could lead to global warming, they did understand that without regulatory flexibility, changing circumstances and scientific developments would soon render the Clean Air Act obsolete. The broad language of §202(a)(1) reflects an intentional effort to confer the flexibility necessary to forestall such obsolescence.”

Trump EPA: “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.”

Mass. v. EPA: “[T]he first question is whether §202(a)(1) of the Clean Air Act authorizes EPA to regulate greenhouse gas emissions from new motor vehicles Because [the Bush] EPA believes that Congress did not intend it to regulate substances that contribute to climate change, the agency maintains that carbon dioxide is not an “air pollutant” within the meaning of the provision. ...*The statutory text forecloses EPA’s reading.*”

Trump EPA: “[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.”

Mass. v. EPA: “Agencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop. They instead whittle away at them over time.... And reducing domestic automobile emissions is hardly a tentative step. [T]he United States transportation sector emits an enormous quantity of carbon dioxide into the atmosphere—more than 1.7 billion metric tons in 1999 alone. [About the [same](#) as much in 2025]Judged by any standard, U. S. motor-vehicle emissions make a meaningful contribution to greenhouse gas concentrations and hence, according to petitioners, to global warming.”

The Supreme Court opinion in *Mass. v. EPA* stands in stark contradiction to EPA’s current arguments. There is no way to square them — or at least, no good faith way to do so. If the Supreme Court wants to uphold the current EPA, it will need to overrule *Massachusetts v. EPA*, either explicitly or by draining it of significance.

There may not be five votes for that outcome. The three liberals will obviously be opposed. Chief Justice Roberts dissented from the opinion, but in the [AEP case](#), he joined an opinion explicitly premised on EPA’s power to regulate greenhouse gases. (So did Justice Scalia, for that matter). Justice Barrett seems reasonably open to persuasion on regulatory matters.

Even the other conservatives may see less need to overrule the opinion, since they can always use the major question doctrine to ensure that important EPA climate regulations fit their idea of reasonableness.

In short, we should not blindly assume that Trump’s EPA will win this round. The battle for sane climate regulation continues.