

ADMINISTRATIVE LAW — POWERS OF AGENCIES — D.C. CIRCUIT SHIELDS ENVIRONMENTAL PROTECTION AGENCY FROM MAKING CONTROVERSIAL DETERMINATION OF CLIMATE ENDANGERMENT. — *Massachusetts v. EPA*, 415 F.3d 50 (D.C. Cir.), *reh'g en banc denied*, 433 F.3d 66 (D.C. Cir. 2005).

Under the second Bush Administration, the Environmental Protection Agency (EPA) has tried to avoid addressing the issue of climate change.<sup>1</sup> Recently, the D.C. Circuit lent it a hand. In *Massachusetts v. EPA*,<sup>2</sup> the court denied a petition to review the EPA's decision not to regulate greenhouse gas emissions from new motor vehicles under section 202(a)(1) of the Clean Air Act<sup>3</sup> (CAA). Split three ways, the court's decision is not binding precedent, but Judge Randolph's opinion delivering the judgment of the court should nevertheless set off alarms. By twisting the facts of the case and stretching precedent, the opinion effectively limits the EPA's accountability to both the public and Congress.

In October 1999, a number of organizations petitioned the EPA to regulate the emissions of four greenhouse gases from new motor vehicles and engines under section 202(a)(1) of the CAA.<sup>4</sup> Section 202(a)(1) provides, in pertinent part: "The Administrator [of the EPA] shall by regulation prescribe . . . standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles . . . , which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare."<sup>5</sup> The petitioners asserted that the greenhouse gas emissions endangered public health and welfare by significantly contributing to global climate change and that the EPA thus had a duty to regulate them under section 202(a)(1).<sup>6</sup>

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<sup>1</sup> For instance, in June 2003, reports surfaced that the EPA had removed a chapter on climate change from a report on the state of the environment after the White House proposed significant changes to the chapter. See, e.g., Andrew C. Revkin & Katharine Q. Seelye, *Report by EPA Leaves Out Data on Climate Change*, N.Y. TIMES, June 19, 2003, at A1; Elizabeth Shogren, *Editing Flap over EPA's Report on Environment: Whitman Cuts Section on Climate Change Because Only Language White House Agreed on Was "Pabulum,"* L.A. TIMES, June 20, 2003, at A16.

<sup>2</sup> 415 F.3d 50 (D.C. Cir.), *reh'g en banc denied*, 433 F.3d 66 (D.C. Cir. 2005).

<sup>3</sup> 42 U.S.C. § 7521(a)(1) (2000).

<sup>4</sup> Control of Emissions from New Highway Vehicles and Engines, 68 Fed. Reg. 52,922, 52,922–23 (Sept. 8, 2003) [hereinafter *Petition Denial*].

<sup>5</sup> 42 U.S.C. § 7521(a)(1). The statute defines "air pollutant" as "any air pollutant agent or combination of such agents, including any physical, chemical, biological, radioactive . . . substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant . . ." Clean Air Act § 302(g), 42 U.S.C. § 7602(g).

<sup>6</sup> *Petition Denial*, *supra* note 4, at 52,923. In evaluating petitioners' scientific claims, the EPA relied primarily on a report produced for the White House by the National Resource Council (NRC), an agency of the National Academy of Sciences. *Massachusetts v. EPA*, 415 F.3d at 56–57

The EPA denied the petition for rulemaking in September 2003,<sup>7</sup> claiming that the CAA does not authorize regulation of greenhouse gases.<sup>8</sup> Alternatively, it argued that the CAA imposes neither a duty on the Administrator to decide whether a pollutant meets the statutory standard of endangerment nor a duty to regulate once endangerment has been found.<sup>9</sup> In support of this second argument, the EPA offered several policy explanations for its refusal to regulate greenhouse gas emissions from vehicles: reluctance to issue regulations without more complete scientific and technical knowledge;<sup>10</sup> belief that regulating motor vehicle emissions under section 202 would “result in an inefficient, piecemeal approach to addressing the climate change issue”;<sup>11</sup> fear that regulation might weaken efforts to persuade developing countries to reduce emissions;<sup>12</sup> concern about the emission reduction methods currently available;<sup>13</sup> and recognition that the Bush Administration had other policies in place regarding climate change.<sup>14</sup> Petitioners — “twelve states, three cities, an American territory, and numerous environmental organizations”<sup>15</sup> — filed for review of the agency’s decision in the D.C. Circuit in October 2003.<sup>16</sup>

Judge Randolph announced the judgment of the court and delivered an opinion in which he concluded that the Administrator had exercised appropriate discretion under section 202(a)(1).<sup>17</sup> Before turning to the merits of the case, Judge Randolph took note of the EPA’s argument that petitioners had failed to establish two of the three elements of Article III standing — that petitioners’ alleged injuries were caused by the EPA’s failure to regulate and that those injuries could be

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(opinion of Randolph, J.). The EPA also received more than 50,000 public comments on the petition but determined that the information they contained did not significantly contribute to the information available to the NRC when it prepared its report. Petition Denial, *supra* note 4, at 52,930.

<sup>7</sup> Petition Denial, *supra* note 4, at 52,922.

<sup>8</sup> *Id.* at 52,925–29. The EPA had asserted during the Clinton Administration that the CAA did authorize such regulation. See *Is CO<sub>2</sub> a Pollutant and Does EPA Have the Power To Regulate It?: Joint Hearing Before the Subcomm. on National Economic Growth, Natural Resources, and Regulatory Affairs of the Comm. on Government Reform and the Subcomm. on Energy and Environment of the Comm. on Science*, 106th Cong. 11–13 (1999) (statement of Gary S. Guzy, EPA General Counsel); Memorandum from Jonathan Z. Cannon, EPA Gen. Counsel, to Carol M. Browner, EPA Adm’r (Apr. 10, 1998) (on file with the Harvard Law School Library).

<sup>9</sup> Petition Denial, *supra* note 4, at 52,929.

<sup>10</sup> *Id.* at 52,931.

<sup>11</sup> *Id.*

<sup>12</sup> See *id.*

<sup>13</sup> See *id.*

<sup>14</sup> See *id.* at 52,531–33 (opinion of Randolph, J.).

<sup>15</sup> *Massachusetts v. EPA*, 415 F.3d at 53. Ten states and several trade associations opposed petitioners as intervenors. *Id.*

<sup>16</sup> See Final Brief for the Petitioners in Consol. Cases at i, *Massachusetts v. EPA* (No. 03-1361), 2005 WL 257460.

<sup>17</sup> *Massachusetts v. EPA*, 415 F.3d at 58 (opinion of Randolph, J.).

redressed by a favorable ruling.<sup>18</sup> Because he found that the standing questions were intertwined with the merits, however, Judge Randolph proceeded to address the merits without ruling on standing.<sup>19</sup>

Judge Randolph assumed for the sake of argument that the CAA granted the EPA authority to regulate greenhouse gas emissions.<sup>20</sup> He then discussed the scientific evidence of global warming and summarized the EPA's policy considerations in declining to regulate. Relying on *Ethyl Corp. v. EPA*,<sup>21</sup> he found that it was permissible for the EPA to weigh these policy considerations in addition to the scientific evidence when making its decision: "Congress does not require the Administrator to exercise his discretion solely on the basis of his assessment of scientific evidence."<sup>22</sup> The court, he said, would uphold agency conclusions based on policy judgments when the agency had to resolve issues "on the frontiers of scientific knowledge."<sup>23</sup>

Judge Sentelle filed a brief opinion dissenting in part and concurring in the judgment. He argued that petitioners had failed to establish particularized injury, an element of injury in fact.<sup>24</sup> Even assuming that the dire consequences of global warming asserted by petitioners came to pass,<sup>25</sup> petitioners still could not show particularized injury: "[Global warming] is harmful to humanity at large. Petitioners are or represent segments of humanity at large. . . . The generalized public good that petitioners seek is the thing of legislatures and

<sup>18</sup> *Id.* at 54 (opinion of Randolph, J.). The only element of Article III standing that the EPA did not challenge was injury in fact, although Judge Sentelle's opinion focused on this element. *See id.* at 60–61 (Sentelle, J., dissenting in part and concurring in the judgment).

<sup>19</sup> *See id.* at 55–56 (opinion of Randolph, J.). The overlap of merits and Article III standing put Judge Randolph in a predicament, as the Supreme Court had held in *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 93–102 (1998) that federal courts must resolve Article III standing before addressing the merits of a case, *see id.* at 93–102 (1998), although it permits overlapping questions of statutory standing and merits to be addressed together, *see id.* at 97 n.2. The Court, Judge Randolph wrote, had not anticipated a case in which Article III standing overlapped with the merits, and thus he applied *Steel Co.*'s statutory standing approach to the Article III question. *See Massachusetts v. EPA*, 415 F.3d at 56.

<sup>20</sup> *Massachusetts v. EPA*, 415 F.3d at 56.

<sup>21</sup> 541 F.2d 1 (D.C. Cir. 1976) (en banc). In *Ethyl*, the D.C. Circuit addressed a challenge to the EPA's decision to regulate the lead content of gasoline under section 211(c)(1)(A) of the CAA. *See id.* at 6–7.

<sup>22</sup> *Massachusetts v. EPA*, 415 F.3d at 58 (opinion of Randolph, J.).

<sup>23</sup> *Id.* (quoting *Env'tl. Def. Fund v. EPA*, 598 F.2d 62, 82 (D.C. Cir. 1978)) (internal quotation marks omitted).

<sup>24</sup> *See id.* at 59–60 (Sentelle, J., dissenting in part and concurring in the judgment).

<sup>25</sup> Petitioners' claims of likely injury included:

[I]ncreased flash flooding potential in the Appalachians, degraded water quality and reduced water supply in the Great Lakes, sea-ice melting and permafrost thawing in Alaska, reduced summer snow-pack runoff in the Rockies, extreme water resource fluctuations in Hawaii, and rising sea levels combined with higher storm surges along the coasts of Puerto Rico, the Virgin Islands, and some eastern states.

*Id.* at 61 (Tatel, J., dissenting).

presidents, not of courts.”<sup>26</sup> Although Judge Sentelle would have dismissed the petitions for lack of Article III standing, he joined Judge Randolph in denying the petitions in order to reach the result closest to dismissal.<sup>27</sup>

Judge Tatel dissented from the order denying the petitions.<sup>28</sup> Dismissing the EPA’s objections to petitioners’ standing,<sup>29</sup> Judge Tatel addressed the EPA’s first argument, that it lacks authority under the CAA to regulate greenhouse gases. Judge Tatel found this argument entirely unconvincing, as he read the statute to “clearly give[] EPA authority to regulate ‘any air pollutant’” that met the statutory standard.<sup>30</sup> The EPA, he wrote, wanted to disregard the plain text of the statute: “Unswayed by what it call[ed] ‘narrow semantic analysis’ — but what courts typically call *Chevron* step one,” the EPA had urged the court to undertake a “more holistic analysis” of congressional intent.<sup>31</sup> Judge Tatel, however, found that the EPA’s explanations lacked the “extraordinarily convincing justification” necessary to avoid a literal interpretation of the statute.<sup>32</sup>

Judge Tatel was likewise unpersuaded by the EPA’s alternative argument that even if the CAA granted authority to regulate greenhouse gases, the Administrator had discretion to withhold a threshold judgment on endangerment or to withhold regulation after a finding of endangerment.<sup>33</sup> The EPA’s discretion under section 202(a), wrote Judge Tatel, is limited to determining whether a pollutant meets the statutory standard of endangerment; it does not include “the discretion to withhold regulation because it thinks such regulation bad policy.”<sup>34</sup> Judge

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<sup>26</sup> *Id.* at 60 (Sentelle, J., dissenting in part and concurring in the judgment).

<sup>27</sup> *See id.* at 61.

<sup>28</sup> All three judges agreed that, of the eight petitions consolidated for review, four should be dismissed because they challenged a nonfinal agency action, specifically a memorandum written by EPA General Counsel Robert Fabricant. *See id.* at 54 (opinion of Randolph, J.); *id.* at 60 (Sentelle, J., dissenting in part and concurring in the judgment); *id.* at 61 (Tatel, J., dissenting). The opinions thus focused on the four petitions to review the EPA’s denial of the request for regulation.

<sup>29</sup> Judge Tatel likened the EPA’s burden to that of a party opposing a motion for summary judgment. Petitioners had offered declarations supporting each element of standing, and the EPA had not adequately challenged the declarations. *See id.* at 66.

<sup>30</sup> *Id.* at 61–62 (quoting 42 U.S.C. § 7521(a)(1) (2000) (emphasis added)).

<sup>31</sup> *Id.* (citation omitted) (quoting Brief of Respondent at 25, 54, Massachusetts (No. 03-1361) (on file with the Harvard Law School Library)) (internal quotation mark omitted). At step one of *Chevron*, a court reviewing an agency’s construction of its governing statute determines whether Congress has spoken to the precise question at issue. If Congress’s intent is clear, the inquiry is over. *See Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984).

<sup>32</sup> *Massachusetts v. EPA*, 415 F.3d at 68 (Tatel, J., dissenting) (quoting *Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1041 (D.C. Cir. 2001)).

<sup>33</sup> Judge Tatel read the EPA’s brief as advancing the former argument but thought the petition denial more clearly reflected the latter, *see id.* at 73–74, though he confessed that he found it “difficult even to grasp the basis for EPA’s action,” *id.* at 73.

<sup>34</sup> *Id.* at 74.

Tatel further noted the precautionary nature of section 202(a), which Congress had amended in 1977 to “require[] regulation to precede certainty.”<sup>35</sup> He would have remanded the matter to the EPA either to make an endangerment finding or to provide an explanation for not doing so in light of the statutory standard.<sup>36</sup>

With these divergent views of the court, the splintered decision carries no precedential weight — a fortunate outcome for future petitioners given the liberties that Judge Randolph took with the facts of the case and the court’s precedent in *Ethyl*. While Judge Randolph expressed no opinion about the EPA’s authority to regulate greenhouse gas emissions,<sup>37</sup> neither did he expressly endorse the EPA’s alternative argument that the Administrator has discretion to withhold threshold judgments on endangerment or to withhold regulation subsequent to an endangerment finding. Instead, Judge Randolph evidently preferred another approach: without explicitly saying so, he decided the case as if the EPA had made a threshold judgment that greenhouse gases did not meet the endangerment standard.<sup>38</sup> To conclude that such a judgment was reasonable, Judge Randolph had to treat the EPA’s policy rationales as if they were factors to consider when making the threshold endangerment determination<sup>39</sup> — the stage at which *Ethyl* allows policy to be considered. This both extended *Ethyl* beyond prudent limits and allowed the agency to shirk its responsibility to make a politically difficult finding.

In *Ethyl*, the EPA had promulgated regulations under CAA section 211(c)(1)(A)<sup>40</sup> to reduce the lead content of gasoline.<sup>41</sup> A collection of lead additive manufacturers and gasoline refiners challenged the regulations partly on the grounds that the Administrator had impermissibly engaged in “policy judgments” (in the form of risk assess-

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<sup>35</sup> *Id.* at 77.

<sup>36</sup> *Id.* at 62. Judge Tatel doubted that the EPA could provide a statute-based explanation for refusing to find endangerment. According to Judge Tatel, the NRC report upon which the EPA relied clearly stated that anthropogenic global warming was occurring, *see id.* at 62, and suggested that “uncertainties about future warming relate chiefly to its scope,” *id.* at 64. After quoting for almost two pages from the NRC report on the expected consequences of climate change, he concluded: “I have grave difficulty seeing how EPA, while treating the NRC Report as an ‘objective and independent assessment of the relevant science,’ could possibly fail to conclude that global warming ‘may reasonably be anticipated to endanger public health or welfare’ . . .” *Id.* at 80 (citation omitted) (quoting 42 U.S.C. § 7521(a)(1) (2000); Petition Denial, *supra* note 4, at 52,930).

<sup>37</sup> *See id.* at 56 n.1 (opinion of Randolph, J.).

<sup>38</sup> Judge Tatel himself observed that Judge Randolph went “beyond the agency’s own arguments” in tacitly assuming that the EPA had found no endangerment. *Id.* at 76 (Tatel, J., dissenting).

<sup>39</sup> *See, e.g.*, Petition Denial, *supra* note 4, at 52,925, 52,931.

<sup>40</sup> 42 U.S.C. § 7545(c)(1)(A) (2000), amended by Energy Policy Act of 2005, Pub. L. No. 109-58, tit.XV, 119 Stat. 594, 1067.

<sup>41</sup> *See Ethyl Corp. v. EPA*, 541 F.2d 1, 7 (D.C. Cir. 1976) (en banc).

ments) in deciding that lead met the statutory threshold of endangerment.<sup>42</sup> The court found that “a determination of endangerment to public health is necessarily a question of policy that is to be based on an assessment of risks.”<sup>43</sup> But this did not leave the Administrator with unbridled policy discretion: “To the contrary, the policy guidelines are largely set, both in the statutory term ‘will endanger’ and in the relationship of that term to other sections of the Clean Air Act.”<sup>44</sup> *Ethyl* thus permitted the agency to take into account only those policy considerations that bore on the statutory standard of endangerment.

As Judge Tatel pointed out, however, none of the EPA’s policy justifications in the instant case — such as President Bush’s preferred approach to climate change — related to whether greenhouse gases met the statutory standard.<sup>45</sup> Instead, the EPA was using its policy considerations not to support a threshold judgment, but for an entirely different purpose, namely to argue that it could either avoid making that judgment altogether or avoid regulation even after finding endangerment.<sup>46</sup> The EPA thus did not attempt to place its policy justifications into *Ethyl*’s framework; indeed, the EPA never cited *Ethyl* for support.<sup>47</sup>

This presented a problem for Judge Randolph, who indicated that the threshold judgment and subsequent regulation after finding endangerment were both mandatory: “Section 202(a)(1) *directs* the Administrator to regulate emissions that ‘in his judgment’ ‘may reasonably be anticipated to endanger public health or welfare.’ . . . In *requiring* the EPA Administrator to make a threshold ‘judgment’ about whether to regulate, [section] 202(a)(1) gives the Administrator considerable discretion.”<sup>48</sup> Given this language, had the EPA declined to make a finding on endangerment, one would have expected Judge Randolph to rule against the EPA. Similarly, if the EPA had determined that greenhouse gases met the statutory standard, one would have expected Judge Randolph to require the EPA to regulate them. But because Judge Randolph proceeded to find for the EPA, he had to treat the agency as having made the requisite finding of no endangerment.<sup>49</sup> Such an approach was logically the only option left to Judge

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<sup>42</sup> See *id.* at 10, 20.

<sup>43</sup> *Id.* at 24.

<sup>44</sup> *Id.* at 29.

<sup>45</sup> See *Massachusetts v. EPA*, 415 F.3d. at 77 (Tatel, J., dissenting).

<sup>46</sup> See, e.g., *Petition Denial*, *supra* note 4, at 52,929–31.

<sup>47</sup> See *Massachusetts v. EPA*, 415 F.3d. at 58 (opinion of Randolph, J.).

<sup>48</sup> *Id.* at 57–58 (emphases added) (citing *Ethyl*, 541 F.2d at 20 & n.37). *Ethyl* makes clear that the threshold determination refers to the endangerment judgment, which is required before regulations may be issued. See *Ethyl*, 541 F.2d at 13, 20, 24.

<sup>49</sup> As noted earlier, Judge Randolph never said explicitly that he was reading the EPA’s petition denial as a finding of no endangerment. He referred to the EPA’s decision by terms such as

Randolph, given the four possible reasons to find for the EPA: (1) the EPA lacks statutory authority, (2) the EPA may decline to make a threshold determination, (3) the EPA may decline to regulate after making a threshold determination of endangerment, or (4) the EPA has made a defensible determination that greenhouse gases do not meet the endangerment standard. After skipping over the first possibility and rejecting the second and third, only the last remained.

The glaring problem with this approach is that the EPA did not make such a finding. Given the EPA's main argument — that it had no authority under the statute to regulate greenhouse gas emissions — it could hardly have proceeded to make a finding as to whether greenhouse gas emissions met the statutory standard. And in fact, the EPA expressly denied making such a judgment. Consistent with its position in denying the petition that section 202(a)(1) did not “impose a mandatory duty on the Administrator to exercise her judgment”<sup>50</sup> on endangerment, the EPA stated in its brief that the denial “reflects EPA's decision not to make *any* endangerment finding — either affirmative or negative.”<sup>51</sup> Accordingly, the EPA's petition denial did not contain a detailed assessment of scientific evidence on which such a finding would normally be based;<sup>52</sup> all that was left for Judge Randolph to construe as justifications for such a finding were the EPA's policy arguments about why it should not have to make a threshold finding or issue subsequent regulation. By transplanting the EPA's broad policy arguments into *Ethyl's* narrow holding, Judge Randolph put words in the EPA's mouth and conjured a finding that the EPA had not made.

If Judge Randolph was determined to avoid forcing the EPA to regulate greenhouse gas emissions, his mischaracterization of the EPA's decision may have been the narrowest grounds on which to do so, because embracing either of the EPA's arguments would have made challenges like the petitioners' more difficult to sustain in the future.<sup>53</sup> His approach, however, is not without costs. For one, stretching *Ethyl's* policymaking authority as far as Judge Randolph did when he im-

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“decision to forego rulemaking,” *Massachusetts v. EPA*, 415 F.3d at 57 (opinion of Randolph, J.), “refusal to regulate,” *id.* at 58, and “regulatory forbearance,” *id.*

<sup>50</sup> Petition Denial, *supra* note 4, at 52,929.

<sup>51</sup> Brief of Respondent at 63–64, *Massachusetts v. EPA*, 415 F.3d. 50 (D.C. Cir. 2005) (No. 03-1361).

<sup>52</sup> To illustrate this point, the subheadings under “EPA Response” in the petition denial are “EPA's Legal Authority Under the CAA,” “Interference With Fuel Economy Standards,” “No Mandatory Duty,” and “Different Policy Approach.” Petition Denial, *supra* note 4, at 52,925, 52,929.

<sup>53</sup> Accepting at *Chevron* step one the EPA's first argument that the CAA does not authorize regulation of greenhouse gases would have eliminated the possibility that a future Administrator could choose to regulate; accepting the EPA's alternative argument that it could eschew a congressional mandate altogether for policy reasons would have had ramifications reaching far beyond the context of regulating greenhouse gas emissions.

ported the EPA's policy arguments into the *Ethyl* framework undermines agency accountability to Congress. If the EPA accepts Judge Randolph's invitation to consider policies unrelated to the statutory standard, and if future courts allow this expansion, then the carefully cabined policymaking authority of *Ethyl* loses any meaningful limits, effectively allowing the EPA to circumvent the mandates of the CAA any time it thinks the statute's approach unwise.

In addition, Judge Randolph's mischaracterization of the EPA's action weakens the agency's accountability to the public by letting the EPA skip straight to its desired outcome without having to make the public finding upon which that outcome should be predicated. Issuing a finding against endangerment in the case at hand — tantamount to an official statement that dangerous climate change is not occurring<sup>54</sup> — would have unleashed a political firestorm.<sup>55</sup> In contrast, framing its arguments as matters of statutory authority allowed the EPA to relegate the debate to the realm of lawyers and judges. If the EPA's arguments about statutory authority and duty were unpersuasive, Judge Randolph should have directed the EPA to make a threshold judgment, not invented a judgment on its behalf. Because agencies are held accountable to the public through the elected Executive, helping an agency reach its preferred outcome in a way that bypasses political repercussions insulates the Executive and diminishes public accountability. In effect, this approach enlists the federal courts in helping the agencies hide the ball. These unwelcome consequences of Judge Randolph's opinion, along with the untenable factual premise upon which it rests, should weaken its persuasiveness in future cases.

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<sup>54</sup> Although the EPA emphasized the less certain aspects of climate science, see Petition Denial, *supra* note 4, at 52,930, it did not argue that anthropogenic climate change was not occurring, that vehicle emissions were not contributing to it, or that the state of the science was too uncertain to permit a threshold judgment. The EPA in fact acknowledged that climate change was a real concern: "We agree with the President that 'we must address the issue of global climate change.'" *Id.* at 52,929.

<sup>55</sup> The EPA has suffered strong public criticism of its climate change politics before. See, e.g., Ricardo Alonso-Zaldivar, *Controversy Plagues Positive EPA Report*, L.A. TIMES, June 24, 2003, at A19; Editorial, *Censorship on Global Warming*, N.Y. TIMES, June 20, 2003, at A22; Revkin & Seelye, *supra* note 1; Shogren, *supra* note 1; Russell E. Train, Letter to the Editor, *When Politics Trumps Science*, N.Y. TIMES, June 21, 2003, at A14 (letter from a former EPA Administrator).