

## **Transforming the Global Warming Debate**

### **By Doug Kendall**

It is a dirty little secret that industry dislikes federal environmental regulation more than anything -- except a patchwork of regulation at the state and local level. We learned this at the beginning of the environmental era, when industry fought the federal Clean Air Act tooth and nail until it became clear that, absent federal legislation, states were going to take matters into their own hands.

The lesson of these early fights is that industry is better motivated by fear than science. Like the impacts of air pollution in the 1960s, the science of global warming has long been sufficiently clear to warrant a federal response. What has been lacking is a credible threat that industry would be worse off without a federal response.

That changed recently when the Supreme Court ruled in favor of Massachusetts in critical global warming case. Before the Supreme Court's ruling, industry had reason to think that they would succeed in frustrating meaningful action at the state and local level through litigation. While these suits against state climate change laws will go on, the Court's sweeping rejection of EPA's arguments against a federal response will make it much more difficult for industry to prevail.

For example, the Court held that EPA's duties to combat air pollution under the Clean Air Act are "wholly independent" from the federal Department of Transportation's responsibility to regulate fuel efficiency under the Energy Policy and Conservation Act (EPCA). This rejection by the Court blows a rather large hole through the auto industry's argument that efforts by California and other states to reduce greenhouse gas emissions from automobiles are "preempted" by EPCA.

More generally, EPA offered a laundry list of reasons supporting its refusal to regulate tailpipe global warming pollution. Industry has essentially borrowed this list in its own suits against laws in California and other states that reduce greenhouse gas emissions from automobiles. But the Court cast these arguments aside in *Mass v. EPA*, and the broad logic of the Court's opinion supports state laws.

If the courts act quickly and clear away the remaining industry challenges to action at the state level, a single federal standard for greenhouse gas emissions will start to look very attractive to industry. In this regard, the fact that a federal court in Vermont has already begun a trial on industry's claim that federal law preempts auto emissions standards at the state level is a very good sign.

Equally important is what states may devise next. California has been leading the nation in responding to global warming, as it has in addressing many previous environmental problems. But Eliot Spitzer is eager to exercise his powers as governor of New York, and on April 19<sup>th</sup> he announced a plan to implement the "most aggressive energy efficiency goal in the nation while reducing greenhouse gas emissions throughout the state." What could be more terrifying to industry than the thought of Eliot Spitzer and

Arnold Schwarzenegger fighting over who reigns supreme as the state environmental superhero.

States are often described as the laboratories of American democracy. But their role in global warming, like in many big problems, also includes serving as a catalyst for democracy at the federal level. Experiments at the state level might not be tolerated long enough to produce lab results. But aggressive state experimentation will bring and keep industry at the table until a federal solution can be hammered out.

Reaction to the Supreme Court's global warming ruling has myopically focused on whether it will force EPA into action. It probably won't. But in helping states ramp up and defend their own responses, the Court's ruling should fundamentally alter the legislative debate at the federal level. In that, the Court has done the country a great service.

*Doug Kendall is founder and Executive Director of Community Rights Counsel (CRC), a non-profit law firm that filed a brief in Mass. v. EPA on behalf of local governments. CRC has just launched Warming Law, [www.warminglaw.com](http://www.warminglaw.com), a weblog that will track global warming cases as they progress through the system. This piece was distributed to more than 1200 papers around the country by The McClatchy-Tribune Information Services on Wednesday, April 25, 2007.*