Given the Supreme Court’s prominent role in deciding important issues of the day, it is easy to get caught up in the latest juicy Court mishap. Justice Scalia erroneously depicted precedent in his dissent in *EPA v. EME Homer City Generation*, which had to be corrected. But don’t let that be the reason you read this blog post. This case is important for the states.

The Clean Air Act's Good Neighbor Provision prohibits upwind states from emitting air pollution in amounts that will contribute significantly to downwind states failing to attain air quality standards. In *EPA v. EME Homer City Generation* the Supreme Court resolved two issues related to the Good Neighbor Provision. Justice Ginsburg wrote the 6-2 opinion.

The Court first considered how responsibility for air pollution should be allocated. This is no easy question when “[m]ost upwind States propel pollutants to more than one downwind State, many downwind States receive pollution from multiple upwind States, and some States qualify as both upwind and downwind.”

EPA chose cost-effectiveness in its Transport Rule. So, for example, for nitrogen oxide, all upwind states have to reduce pollution at a cost threshold of $500 per ton. (Spending more money EPA concluded would only minimally reduce pollution.)

The D.C. Circuit held that EPA must instead consider only each upwind state's physically proportionate responsibility for each downwind state's air quality problem.

The Supreme Court disagreed concluding that the Good Neighbor Provision allows EPA to consider costs. “EPA's cost-effective allocation of emission reductions among upwind States, we hold, is a permissible, workable, and equitable interpretation of the Good Neighbor Provision.”

EPA issued Federal Implementation Plans (FIPs) allocating each upwind state's emissions budget. Upwind states argued that they should have been given an opportunity to develop and implement State Implementation Plans (SIPs) before FIPs were issued.

If SIPs are inadequate EPA has two years to issue FIPs. The upwind states in this case failed to submit adequate SIPs. When EPA issued each state's emissions budget it issued FIPs allocating the budgets. The D.C. Circuit required EPA to give states a “reasonable” time period to propose SIPs implementing their budgets. The Supreme Court disagreed noting that the Clean Air Act makes it clear that once EPA has found a SIP inadequate, EPA has a statutory obligation to issue a FIP.

States and local governments filed on both sides in this case. Upwind states are mostly in the South and Midwest. This case is win for states and local governments in downwind states (and, of course, the EPA).

The Supreme Court will decide another Clean Air Act case this term involving regulating greenhouse gases emissions from stationary source.
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