Massachusetts v. U.S. EPA: Implications of the Supreme Court Verdict
Testimony of Martha Coakley, Massachusetts Attorney General
June 8, 2007

Chairman Markey, Ranking Member Sensenbrenner, and members of the Committee. Thank you for inviting me here today to discuss global climate change, one of the most pressing environmental issues of our time.

As the U.S. Supreme Court recognized this past April, states are and will be directly harmed by climate change. For example, in Massachusetts, we are losing 200 miles of coastline to rising seas. Meanwhile, states across the country are concerned about the threats to our water supply and the increase in severe weather events that are costing all of us.

The Commonwealth of Massachusetts recognizes global warming as a problem that needs immediate attention. To this end, we are actively working on the state and regional levels. We are engaged in the Regional Greenhouse Gas Initiative, a market-based, cap and trade program for power plant emissions; we are committed to investing in renewable energy, and are leading with proposals for green public buildings and expansion of public transportation. Meanwhile, we have been waiting and eager for the federal government to take a leadership role in our necessary fight against global warming. We have long been waiting for the Environmental Protection Agency (EPA) to adopt motor vehicle emissions standards that allow states to address the leading cause of global warming.

Given the Supreme Court's decision in *Massachusetts v. EPA*, I won't belabor the history of the case. Nevertheless, it is important to reflect for a moment on the timeline of federal inaction that was responsible for the origination of the case. The United States

has been, and remains, a full party to the 1992 United Nations Framework Convention on Climate Change, better known as the Rio Treaty. Although that Treaty does not set specific, enforceable targets for the reduction of greenhouse gases, it does commit the United States and other developed countries to both reducing emissions , as well as to leading the rest of the world by good example.

In 1998, the EPA Administrator rightly concluded that the agency had existing statutory authority under the federal Clean Air Act to reduce greenhouse gas emissions; the Act *expressly* lists effects on "climate" among the "effects on welfare" that EPA is charged with preventing, *expressly* defines the term "air pollutant" with comprehensive breadth, and, indeed, even *expressly* refers to carbon dioxide as an air pollutant. Environmental groups then filed a rulemaking petition formally requesting EPA to use its existing authority to set motor vehicle emission standards for greenhouse gases. That rulemaking petition was filed in 1999, eight years ago. EPA's denial of that petition became the basis for *Massachusetts v. EPA*. By asserting a legal claim that was contradicted by the plain language of the Clean Air Act, the EPA has now squandered almost a decade. Should it have taken a law suit by several states and others to demonstrate to the Environmental *Protection* Agency that its job includes protecting the environment?

In light of the Supreme Court decision, it is clear that it is long past time for the EPA to use its regulatory authority. While we recognize that the Court did not specifically order the agency to adopt motor vehicle emission standards, it constrained EPA's regulatory choices in a way that makes such regulation inevitable. Simply put, the EPA can no longer plausibly say that the statutory trigger for commencing regulation –

that emissions are endangering public health and welfare – has not been met. We are heartened that the White House and the EPA itself appear to acknowledge this both in their characterizations of the impact of the Court's ruling and in their promises that regulations controlling greenhouse gas emissions will be forthcoming. Although some of the Administration's statements about its specific intentions have been less than clear, it appears that the EPA Administrator intends to move forward with new regulations under Section 202 of the Act (which regulates emissions from new motor vehicles) and Section 211 of the Act (which regulates fuels). This would seem to mean that the Administrator does not intend to contest that the endangerment of public health and welfare threshold has been met.

However, we are disheartened that the EPA has stressed the need for lengthy periods of time both to digest the Supreme Court decision, and to embark on a period of exhaustive deliberation with other agencies about what to do next. Respectfully, the message of *Massachusetts v. EPA* is simple: the Court has said to the EPA, in effect, "you have not been doing your job and that it is time for you to start doing it." We are discouraged by the EPA's reluctance to commit to firm proposals or timelines for action. If the EPA is serious about attacking the problem of global climate change, then there are two specific actions that it should pursue immediately.

First, the EPA should begin immediately a formal process to conclude that the endangerment threshold has been crossed. This process is a prerequisite to most regulation under the Clean Air Act. Starting that process is simple, and it requires *no* further deliberation. The EPA needs merely to publish a notice in the Federal Register that it proposes to determine that greenhouse gas emissions from motor vehicles or other

sources "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare," and to invite public comment. By beginning the process now, the EPA does not forfeit any right to deliberate over more difficult regulatory design issues involved in actually setting the applicable emissions standards. However, a continued unwillingness to even start the threshold step of determining endangerment would demonstrate that the EPA may have no true intentions of undertaking the process of setting regulatory standards at all.

Secondly, once the public comment process concludes next week, the EPA should grant California's request for a Section 209 waiver for its state motor vehicle regulations as expediently as possible. I want to emphasize how important the EPA's approval of the waiver is for the dozen states, including Massachusetts, that have adopted the California regulations. While California has formally notified the EPA that it will sue if the agency does not rule on the waiver by the middle of October, there is simply no reason for the EPA to wait that long. My colleagues and I would like nothing better than to see any further litigation by state attorneys general on this issue obviated.

The Supreme Court's ruling has induced many industry groups to call for a more comprehensive, market-based approach to replace sector-by-sector command-and-control regulation under the Clean Air Act. We welcome the engagement of the affected industries in the legislative debates, and we are hopeful that their support for a comprehensive solution will produce an efficacious result. We emphasize, however, that while Congress can improve upon the regulatory approaches that the Clean Air Act provides, the current law allows EPA to go a long way toward addressing the problem.

For example, the EPA can already set motor vehicle emission standards that will achieve substantial reductions in greenhouse gases.

As Congress considers additional legislative approaches, we urge it to reject language that Congressman Boucher, Chairman of the Energy and Air Quality Subcommittee of the Energy and Commerce Committee, unveiled last Friday, and held a hearing on yesterday. While requiring only incremental increases in federal motor vehicle fuel economy standards and other modest changes, the proposed bill would amend the Clean Air Act in two fundamentally short-sighted ways. First, it would eliminate the authority that the Clean Air Act has provided EPA for decades to regulate greenhouse gas emissions. Second, the bill would eliminate EPA's ability to grant a waiver for state motor vehicle greenhouse gas emission standards. Congress is, of course, free to amend the underlying statutory framework that the Court reviewed in *Massachusetts v. EPA*. Nevertheless, we urge Congress not to turn back the clock at precisely the time that the need for aggressive action has become so undeniably apparent.

While individual states continue to work to lessen our environmental impact, Congress could take a major step in the right direction by passing legislation to significantly increase our fuel economy standards--without hampering states' emissions efforts or marginalizing the EPA's authority—helping both our environment and consumers' wallets.

We specifically urge Congress to respect and support the role of states in developing solutions. For the last several years, it has been the states that have led the way and that have filled the void left by the federal government. We recognize that these issues can be very complicated, especially to the extent that we as a country move closer

toward a more comprehensive emissions trading scheme. We need to find creative ways to structure such a program that allows for states to continue to play a leadership role, without placing excessive burdens on local industries. For example, if a national "cap and trade" emission trading program were enacted, emissions credits could be distributed on a state-by-state basis, allowing each state to set aside additional reductions should they so choose.

Thank you again for allowing me this opportunity to testify and represent the states' perspective. I appreciate the critical work you are undertaking for our nation and planet.