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What Next on Global Warming?

By David Schoenbrod

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NOW THAT THE SUPREME COURT HAS DECIDED THAT THE EPA MUST deal with global warming under the Clean Air Act, what will happen? Not much, if the past is prologue.

The 1970 statute called for reducing all then-known pollutants to healthy levels by 1977. Yet 100 million Americans still breathed unhealthy air even in 1987 — and many still do. This failure should be laid at the doorstep of Congress: It crafted a law that members could vote for to achieve an end, but left the means — the rules and regulations — of achieving that end to others. That way, legislators could take credit for a popular goal, but shift the blame to the EPA for the costs of achieving it. No wonder they voted for the statute all but unanimously.

Even better, Congress could then get additional credit by coming down hard on the EPA when voters complained about the cost of its proposed rules. Not surprisingly the agency found that delay was the easiest course of action under Democratic and Republican presidents alike. When green voters complained that the EPA failed to achieve clean air on schedule, the legislators took more credit by thumping the agency again.

The most important progress came only after the charade went on long enough for voters to blame Congress. Thus Congress delegated to the EPA the power to make rules on emissions from power plants and other stationary sources in 1970, but the agency did nothing much on carcinogenic air pollutants and acid rain for two decades. Only when blame fell on Congress did it take responsibility in 1990 for making the hard, costly choices. Progress also came from the states, which did more to clean up power plant emissions in the 1960s than the EPA accomplished in the 1970s. According to Brookings Institution scholar Robert Crandall, “the assertions about the tremendous strides the EPA has made are mostly religious sentiment.”

Because the provision of the Clean Air Act under which the EPA now must deal with global warming leaves the hard choices up to the agency, we should expect delay. And when that becomes impossible, we should expect the EPA to take action of only marginal importance. Environmental groups understand this, so their claims of victory in the Supreme Court quickly segue into calls for Congress “to pass the kind of bold legislation that our planet so desperately needs.” There would be no need for new legislation if the old legislation were any good.

The real importance of the Court’s decision is that it will increase pressure on Congress to pass a special statute. But any new statute is unlikely to be bold. Like their forebears in the 1970s, the sponsors of the leading bills trumpet their zeal to achieve environmental goals but deny that there will be much impact on voters. How? The answer will be like the one provided in 1970 — government will improve technology and put the burden on big, bad polluters rather than ordinary folks. In the 1970s, however, pollution-control technology did not improve nearly fast enough to produce healthy air on schedule.

The direct costs of environmental regulation today add something like $2,000 per year to the prices and taxes that the average family pays. The price is surely worth it, but the failure of Congress to own the costs of cleaning the air delegitimated tough agency action in the 1970s, just as it will delegitimate it with global warming.

Congressional blandishments of painless global-warming control are likely to produce a federal statute like California’s Global Warming Solutions Act of 2006. Here, too, the state legislature established a popular goal — to bring California’s global warming emissions down to 1990 levels by 2020 — but left a state agency to make the rules needed to achieve the goal. The law would be more accurately labeled the Global Warming Wishlist Act of 2006.

A “bold” global warming statute requires Congress to do more than mouth the phrase “cap and trade.” It will need to decide which caps on which constituencies. Those are choices Congress will be disinclined to make for many years unless voters see through the promises of a free global warming lunch.

What about a tax on global warming emissions? A tax requires legislators to leave their fingerprints on a measure imposing palpable costs to voters. When he was president, Bill Clinton supported such a tax; but it’s not in the bill sponsored by Sen. Hillary Clinton. If Congress leaves the hard choices to the EPA, the president takes the blame for the costs. It’s better for the president if Congress shares the blame. When it is willing to do so, we will know Congress is serious.

Until then, we are left with the Supreme Court reading the Clean Air Act to mean that the EPA is responsible for solving each and every pollution problem. That reading is correct. What is incorrect is the law’s premise, that leaving the hard choices up to the EPA is a sound way to solve any pollution problem.

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