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2 **American Legislative Exchange Council**
3 **Resolution in Opposition to EPA’s Regulation of Greenhouse Gases from Mobile**
4 **Sources**

5 **Whereas**, in *Massachusetts v. EPA*, the U.S. Supreme Court found in a 5-4 decision that
6 Massachusetts had been harmed by global warming, that EPA has the authority to
7 regulate greenhouse gases under § 202 of the Clean Air Act, and that EPA has failed to
8 justify its decision to not already regulate greenhouse gases;

9
10 **Whereas**, the alleged harms found by the Supreme Court cannot reasonably be
11 “anticipated to endanger public health or welfare”¹ as required by § 202 of the Clean Air
12 Act (§ 202 regulates emissions from new vehicles):

- 13
14 • The rise in carbon dioxide and greenhouse gases is not linked to a decline in
15 welfare or public health—indeed, quite the opposite is true. While carbon dioxide
16 levels have risen from 0.03 percent of the earth’s atmosphere in pre-industrial
17 times to 0.04 percent of the earth’s atmosphere today,² temperatures have risen
18 just 1°F since the end of the Little Ice Age a little over 100 years ago. During the
19 warming of the past 100 years, global GDP has increased 18-fold, average life
20 span doubled, and per capita food supplies increased even though population
21 almost quadrupled.
- 22
23 • The Supreme Court cited a “precipitate rise in sea levels”³ as a harm caused by an
24 increase in greenhouse gas levels. However, global sea level is rising at a pace of
25 less than 6 inches per century, which is consistent with the rate of sea level rise
26 that has been occurring since the end of the last ice age epoch 15,000 years ago.
27 Moreover, the rate of sea level rise has been decreasing during the past 50 years.⁴
28 Furthermore, in Massachusetts and other places in the United States it is difficult
29 to discern a threat to public health or welfare from sea level rise. The value of
30 waterfront real estate has dramatically increased, even as sea level has risen.
- 31
32 • The Supreme Court stated that “rising ocean temperatures may contribute to the
33 ferocity of hurricanes.” However, scientists at the National Hurricane Center
34 (NHC) have documented that hurricane activity is no higher now than in decades
35 past. “[W]e don’t see any new trend. There’s no link to global warming that you
36 can see at all,” NHC hurricane expert Chris Landsea reports.⁵ Also, the latest
37 computer models show global warming will cause more wind shear, which

¹ 42 U.S.C. § 7521(a)(1).

² Encyclopædia Britannica, *Global Warming*,
<http://www.britannica.com/oscar/print?articleId=311438&fullArticle=true&tocId=256251>.

³ *Massachusetts v. EPA*, 549 U.S. ?? at ?? (2007).

⁴ See, e.g. Simon J. Holgate, *On the Decadal Rates of Sea Level Change During the Twentieth Century*, 34 *Geophysical Research Letters* 1602 (Jan. 2007). One page summary is available at http://meteo.lcd.lu/globalwarming/Holgate/sealevel_change_poster_holgate.pdf.

⁵ United Press International. “Scientist doubts warming-hurricane link.” (May 2, 2007)
<http://www.newsdaily.com/TopNews/UPI-1-20070502-19042700-bc-us-hurricanes.xml>

1 restricts the formation of hurricanes.⁶ Furthermore, November 2006, the World
2 Meteorological Association released a statement reflecting their consensus
3 opinion on the possible link between hurricanes and global warming. They stated
4 that “no firm conclusions could be made on this point” and that “no individual
5 tropical cyclone [hurricane] can be directly attributed to climate change.”⁷
6

- 7 • The Supreme Court cited “the global retreat of mountain glaciers, reduction in
8 snow-cover extent, the earlier spring melting of rivers and lakes”⁸ as harms. It is
9 difficult to see how those events “endanger public health or welfare” as required
10 by §202 of the Clean Air Act. Consider the opposite—advancing glaciers,
11 increase in snow-cover extent, later spring melting of rivers and lakes. Those all
12 sound like greater dangers to public welfare.
13
- 14 • The warming temperatures and increased precipitation of the 20th century have
15 resulted in moister soil and less frequent and less severe drought than in centuries
16 past.⁹ Scientists have likened the warmer, moister conditions of the 20th century to
17 “literally becoming more like a gardener’s greenhouse.”¹⁰
18
- 19 • The Supreme Court cites the spread of disease as a harm caused by global
20 warming. But diseases such as malaria have become less prevalent in the United
21 States as temperatures have increased. In the 1940s, malaria was endemic in 36
22 states, including Washington, Oregon, Montana, Minnesota, Ohio, New York, and
23 New Jersey, as well as in the Netherlands and England.¹¹ The reason that malaria
24 was eradicated in the United States is because we used better medicine and
25 insecticides to combat it. As Bjorn Lomborg explains, “malaria is a disease that is
26 related strongly to economic development and weakly to climate change.”¹²
27
- 28 • Hotter temperatures by themselves will not “endanger public health or welfare.”
29 The direct impact of climate change is *fewer* deaths due to heat than to cold. In
30 the United States this means 175,000 fewer deaths per year.¹³

⁶ Associated Press. “Hurricane forecaster: oceans, not CO₂, cause global warming.” (April 27, 2007)

<http://www.iht.com/articles/ap/2007/04/28/america/NA-GEN-US-Top-Forecaster-Global-Warming.php>

⁷ World Meteorological Association, Summary Statement on Tropical Cyclones and Climate Change, Nov. 2006, http://sciencepolicy.colorado.edu/prometheus/archives/IWTC_Summary.pdf.

⁸ *Mass. v. EPA*, 127 S.Ct. at 1455.

⁹ Andreatis, K. M., and Lettenmaier, D. P. “Trends in 20th century drought over the continental United States. *Geophysical Research Letters*, VOL. 33, L10403, doi:10.1029/2006GL025711 (2006).

¹⁰ Farquhar, G. and Roderick, M. L. “Changes in Australian pan evaporation from 1970 to 2002.” *International Journal of Climatology*, 24: 1077–1090 (2004).

¹¹ See BJORN LOMBORG, COOL IT 95 (2007) citing Robert T. Boyd, *Another Look at the “Fever and Ague” of Western Oregon*, 22 *ETHNOHISTORY* 135 (1975); CDC, *Eradication of Malaria from the United States (1947–1951)*, http://www.cdc.gov/malaria/history/eradication_us.htm (2004); Paul Reiter, *From Shakespeare to Defoe: Malaria in England in the Little Ice Age*, 6 *Emerging Infectious Diseases* 1 (2000) <http://www.cdc.gov/ncidod/eid/vol6no1/pdf/reiter.pdf>.

¹² BJORN LOMBORG, COOL IT 101 (2007)

¹³ BJORN LOMBORG, COOL IT 38 (2007) citing Francesco Bosello et al., *Economy-wide Estimates of the Implications of Climate Change: Human Health*, 58 *ECOLOGICAL ECON.* 579, 582 (2006); A. Cagle & R.

1 **Whereas**, the Supreme Court noted that in 1999 the American automobile fleet “accounts
2 for more than 6% of the worldwide carbon dioxide emissions,”¹⁴ However:

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- 4 • By 2004 the U.S. light duty vehicle fleet only was responsible for 4.2
5 percent of global emissions.¹⁵ And if the entire country was to implement
6 California’s carbon dioxide regulation on motor vehicles, it would reduce
7 the temperature by 0.01°C by 2100¹⁶—far too small of an amount to be
8 measured, let alone affect climate in any way.
- 9 • Instituting California’s carbon dioxide regulations as a remedy to combat
10 climate change is no remedy at all because it would provide zero
11 environmental benefits.
- 12

13 **Whereas**, the language of other sections of the Clean Air Act such as § 111 (regulating
14 emissions from stationary sources), § 108 (creating a list of criteria air pollutants), § 109
15 (requiring EPA to establish National Ambient Air Quality Standards (NAAQS)), and §
16 110 (compelling states to develop State Implementation Plans to comply with NAAQS)
17 are substantially similar to § 202; therefore, if EPA regulates carbon dioxide and other
18 greenhouse gas emissions under § 202, it will be forced, through litigation, to regulate
19 greenhouse gases from stationary sources, leading the absurd result of having states
20 trying to reduce global ambient levels of carbon dioxide emissions through State
21 Implementation Plans.

22

23

24 **Therefore**, be it resolved that because of the aforementioned lack of evidence that
25 human-caused emissions of greenhouse gases will “endanger public health or welfare” as
26 required by §202 of the Clean Air Act, the American Legislative Exchange Council urges
27 EPA to not make an endangerment finding under § 202 of the Clean Air Act and regulate
28 greenhouse gases from mobile sources.

29

30 **Be it further resolved** that that until and unless Congress enacts new statutory language
31 clarifying and specifying EPA’s legal and regulatory obligations with respect to carbon
32 dioxide under the Clean Air Act, EPA should refrain from further deliberations on a
33 possible endangerment finding regarding carbon dioxide regulation under § 202 of the
34 Clean Air Act.

Hubbard, *Cold-related Mortality in King County, Washington, U.S.A., 1980–2001*, 32 ANNUALS OF HUMAN
BIOL. 525 (2005).

¹⁴ Mass. v. EPA, 127 S.Ct. at 1457.

¹⁵ John R. Christy, *Report 27 April 2007*.

¹⁶ *Id.*