

SUPREME COURT DECLINES TO TAKE UP CHALLENGES TO INVALIDATION OF EPA HFC RULE

Wed Oct 17th, 2018 | Categories: [Environmental Law](#) |

On October 9th, 2018 the United States Supreme Court declined to hear an appeal to reverse the D.C. Circuit Court of Appeals' decision to vacate a rule by the U.S. Environmental Protection Agency (EPA) forcing companies that use hydrofluorocarbons (HFCs) in products like spray cans and refrigerators to swap them out for an EPA-approved alternative. While he was not part of the Supreme Court's decision to deny certiorari, newly-appointed Justice Brett Kavanaugh authored the majority opinion in the D.C. Circuit Court of Appeals' decision. -

Kavanaugh, writing for a 2-1 majority, stated that, while Section 612 of the Clean Air Act (CAA or Act) requires manufacturers to replace ozone-depleting substances with safe substitutes, HFCs in certain products do not deplete ozone, and for that reason, the EPA did not have the authority to enforce the replacement provision of the rule. -The attorneys general of seventeen states and the District of Columbia, along with the National Resources Defense Council (NRDC), petitioned the U.S. Supreme Court to review the decision.

NRDC, in their petition for a writ of certiorari, argued that "Section 612 has effectively protected millions of consumers from dangerous substitutes, and efficiently guided multi-billion-dollar investments by hundreds of companies to develop safer substitutes and products. The majority's ruling, however, gravely misreads Section 612 to leave both the public protections and the business incentives of the safe alternatives program in tatters." They went on to state that the ruling not only has the potential to hurt consumers and the environment, but that it also "destroys the incentives that innovative businesses relied on to invest billions of dollars in bringing safer alternatives to market."

Business interest was represented by a separate petition for a writ of certiorari filed by Honeywell International Inc. and The Chemours Company FC LLC. In their petition, Honeywell and Chemours argue that "the decision upends investment-backed expectations of petitioners and other companies who heeded Congress's call to innovate, based on the promise that EPA would bar unsafe products as safer alternatives were developed. [...] The decision below renders the statutory incentives a nullity and will spur a race to the bottom in which manufacturers may compete to supply and use the cheapest substitutes on the market, disregarding environmental or health consequences."

In a statement released after the Supreme Court's decision to deny the petition for cert, Senior Strategic Director for the NRDC David Doniger said that "NRDC will continue working with states and with responsible industry leaders to stay on track, and on schedule, in the transition to safe alternatives."

The Environmental attorneys at Bick Law LLP will continue to monitor the progression of influential cases and the potential impacts they may have on business and consumers across the country.