



TRANSCRIPT

Environmental Insights Episode #1, 2026

Guest: Jody Freeman

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Jody Freeman:

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Rob Stavins:

Welcome to [Environmental Insights](#), a podcast from the [Harvard Environmental Economics Program](#). I'm your host, [Rob Stavins](#), a professor here at the [Harvard Kennedy School](#) and director of the program. On February 12th of this year, the U.S. Environmental Protection Agency finalized its rescission of the [2009 Greenhouse Gas endangerment finding](#). And this action by the Trump administration reversed what was a scientific determination that greenhouse gases threaten public health and welfare, effectively removing the legal basis for federal regulations on greenhouse gas emissions, at least under the Clean Air Act for vehicles, power plants and other sources.

Now, this has received a great deal of press coverage, at least in the United States, but to really understand its short-term and long-term implications and the full context, I think it's going to be helpful to understand the gestation and the evolution of the endangerment finding. And for that, there is surely no one better in the world to guide us through the political and legal history and the path going forward than my colleague and friend [Jody Freeman](#), the Archibald Cox Professor of Law at [Harvard Law School](#), where she founded both the [Environmental and Energy Law Program](#) and the school's [Environmental Law Clinic](#).

Jody, welcome back to [Environmental Insights](#).

Jody Freeman:

It's great to be with you, Rob. Always a pleasure.

Rob Stavins:

So, as you may recall from your previous visit to this podcast series, I usually start out by asking my guests to talk about their personal and professional background, but we did that already when you were here, it's actually five years ago in February of 2021 at the beginning of the presidency of Joe Biden. So, today we can turn directly to the issues at hand, and as I said before we get to what the endangerment finding is or was, I'm thrilled that you can help to explain how it came about because you've been

involved in the gestation of it over years, and then in the litigation [Massachusetts v. EPA](#) that eventually found its way to the U.S. Supreme Court. So, can you take us back to the beginning and trace the early history of it?

Jody Freeman:

Yes, I'm happy to because there's a long arc that has led us to the moment where the government is now saying we lack the authority to regulate greenhouse gas emissions under the Clean Air Act. It's a 180-degree turn from the position of course that EPA took in the Obama administration when I was in the White House. And so, it's worth going back to trace that arc.

This story begins really with the Supreme Court decision in *Massachusetts versus EPA* that you mentioned, which came down in 2007. And in that case, the court held that greenhouse gases are pollutants under the Clean Air Act, so they're regulatable under that law. And it also rejected the George W. Bush administration's reasons for refusing to make an endangerment finding at the time. Now, this finding in essence is a scientifically based determination that greenhouse gases endanger, public health or welfare, and that emissions from the U.S. economy contribute to it.

That finding is foundational in the Clean Air Act. You can't set standards, you can't regulate without making that determination. So, when the George W. Bush administration at the time decided it didn't want to do that, the issue went to the Supreme Court because the administration had turned down a petition to set that endangerment finding, to make that determination, and then to go ahead and set standards for cars and trucks in the transport sector. And when it turned out in that petition, the plaintiff sued and argued that the administration was wrong. So, in *Mass. V. EPA*, the court said greenhouse gas are pollutants. The endangerment finding has to turn on science and the relevant statutory considerations, and that excludes policy reasons for not making it. And the George W. Bush administration was told, you have to go back and either make this finding or explain why you're not based on those relevant considerations, and your policy reasons aren't sufficient.

That was the determination at the time. And then the EPA at the tail end of the Bush administration actually had put together all of the most up-to-date science that supported making that endangerment finding. And at the time the administration declined to do it. They actually issued an announcement that said, yes, all of the analysis has been done, but we're still not going to make this finding. And they essentially left it for the incoming Obama administration. And that's where my role in the story picks up. I did write a brief in *Massachusetts versus EPA* and was involved in it to some extent. So, I go back to that original Supreme Court decision, but I was deeply involved in the first year of the Obama administration sort of developing the strategy to use the Clean Air Act to regulate greenhouse gases. And the Supreme Court had said Greenhouse gases are pollution. And the Obama administration took the scientific analysis that EPA had already done, updated it, and made the endangerment finding for greenhouse gases. Then the first set of standards was for emissions from new cars and trucks under section 202 of the law. Interestingly, that is the section that the Trump administration now is claiming it does not have the authority under to make this endangerment finding or set these car standards.

And just one more point to make. When they put out this rescission, the heart of it is an argument that goes like this. First, we don't have the authority under this law to regulate global pollution. We can only regulate regional pollution. That directly flies in the face of what the Supreme Court said in *Massachusetts versus EPA*. And second, even if we could, the contribution we make with these emissions from vehicles from new cars and trucks is so fractionally, infinitesimally small that it doesn't amount to a contribution to the problem. And the law requires us to say we are contributing to the air pollution that poses the endangerment, and we're just going to say we don't because it's such a small share. So, it would be futile to regulate, so we won't. That's the heart of the administration's argument

now. And all of this really is a rehash of the losing arguments in Massachusetts versus EPA. They look slightly different. They're articulated slightly differently, but the heart of it is the same. So, in my view, they're really taking another run at the losing side of the argument back then and we can talk more about what is not in this final rescission. They had talked about also attacking the science of the endangerment finding, but they dropped that in the final version. And we can talk about why.

Rob Stavins:

So, interestingly, before we get into that, just for our listeners to know in Trump 1.0, in the first Trump administration, although there were lots of ways in which they were working to roll back climate and other environmental laws and regulations, there was never, at least I never heard, that there was serious consideration of trying to rescind the endangerment finding. Is that right?

Jody Freeman:

Yes, that's right. And it's interesting because we would expect the Republican administration to sort of be somewhat deregulatory compared to a Democratic one. We would expect the Trump administration as it did, and it's the first time to roll these rules back and stringency. But most people thought the endangerment finding itself, since it's a scientific determination that turns on an assessment of the harms caused by climate change and our contribution to that set of harms, most people thought it was on such solid ground that no administration would attack it because they would be unsuccessful in court. It would be too legally risky.

But this time, Trump 2.0, in this administration, they've decided to go for it. And it's interesting because the Supreme Court has also never shown any interest in disrupting the endangerment finding. Since the 2007 case, Mass. versus EPA, the court has revisited climate rule several times, and in each instance they've limited the EPA's discretion to set greenhouse gas standards in one way or another. For example, they rejected the EPA's method for regulating power plant emissions. You remember back in the Clean Power Plan case called West Virginia, but that case said, your method is not permissible. You can't use a strategy that shifts generation from dirtier energy sources to cleaner energy sources. But even in that case, there was no question that the endangerment finding should be disturbed. So, it would be an odd thing for the courts to revisit it now. The DC circuit back in 2012 actually upheld the EPA's endangerment finding and its car standards, and the Supreme Court declined to review that decision. So, it's a risky thing for this administration to now take a run at it, but I think I speculate that their thinking is, well, we have three justices on the Supreme Court who remain, who were in the dissent in Mass. versus EPA, including the Chief Justice, and all of the members of the majority from Massachusetts versus EPA are gone, the five justices who voted in the majority, and we have a new conservative Supreme Court, maybe we can pick up a couple of other votes and it's worth taking a run at it.

Rob Stavins:

Oh, that's interesting. In terms of the strategic thinking. So, as you noted earlier, the argument that's being made now by the administration to support the rescission is quite different than what it was when they announced that they were going to be doing this rescission, namely that it was going to be on the scientific grounds as well as the legal grounds. And now as you pointed out, it's all on the legal grounds. I don't know if that means that I wasted my time or I contributed to an effect by having written about as you and many of us did. There was this Harvard submission on the science, on the DOE study. But in any event, since the argument is now made on the basis that the Clean Air Act just does not authorize the agency to prescribe emission standards in response to concerns about global climate change, it sounds as though the 2022 Supreme Court decision striking down the Obama Power Plant Rule, which you've

mentioned, it seems that in their mind that that actually is another legal decision that they rely on, that that means because EPA cannot regulate a global pollutant. At least I've heard people say that. I don't know if that's true, but you tell me. Yeah,

Jody Freeman:

Yeah. Let me clarify this. So, first, let me do two things. One is it's worth talking about the fact that they dropped the frontal attack on the science underpinning the endangerment finding. It's worth understanding why they dropped it because there's still some science in what they're saying, and I think they're wrong. The first argument remains essentially the same, which is, as you said, it's a statutory argument. It's about interpreting the law and saying the language here just doesn't give us the authority. That's remained pretty consistent from the proposal to now. What's missing now is a second backup argument, that is essentially the 2009 endangerment finding was flawed on the science, they argued. It overestimated the harms from climate change. The science is much more uncertain than that. And even today, the science is so uncertain and the analysis of climate change being so bad for us is all wrong. That argument that EPA was making in the proposal depended very heavily on a DOE task force report you mentioned, which was created by a handpicked set of five people, scientists, and I think one economist, who are in fact a peer reviewed published scientists, but their views have always been regarded as fringe, as outside the consensus, and their views have also been debunked as sort of cherry picking the data and skewed and misleading.

And the report they issued was deeply flawed. And the National Academies of Science issued an updated climate report in response partly and wanting to comment on this proposal. And they did just an excellent job knocking out all of the claims essentially of the DOE report. So, two things to say about this. One, the scientific community, including Rob, as you said, Harvard and other scientists and economists, but especially the National Academy, came roaring in with a really excellent sound analysis that responded to all of the flawed science that DOE had put out. The second thing that happened is a federal court found that the process DOE used to handpick these few experts without balancing the review violated federal law. And then in response to that finding, they sort of quickly hastily disbanded this group and kind of ran away and it sort of became a very embarrassing event. So, it was probably wise of the administration to drop the attack on the science because it was extremely legally risky, deeply flawed, and would've made judicial eyebrows go up. Now, on the one hand, you could react to that kind of as you did Rob, you could react to that by saying, well, yay, science. Good.

On the other hand, by removing that part of the rescission, it does make the proposal look a little less crazy, right? And so, it's interesting, the effect it has. Now, the rescission says something like, while we still harbor concerns about the science, they still gesture at skepticism. They say we dropped that argument entirely. But that doesn't mean that science has nothing to do with their legal arguments because one of their principle legal arguments is that the share of emissions that our cars and trucks contribute to global climate change is so small that regulating it will make no difference. And that isn't just a legal argument, right? That depends on an assessment of how pollution works and whether every increment makes the harms from climate change worse. And in fact, the National Academies of Science report that I mentioned specifically notes that every additional ton makes the severity of climate change worse. So, I think the administration is in a little bit of trouble here with this assertion that small shares don't matter. I don't think it's very well grounded in science, and maybe you could comment on whether it's well grounded in economics in terms of the economic impacts being worse too.

Rob Stavins:

Well, so that was exactly the aspect in which I contributed to that Harvard set of comments that I think were probably coordinated by the [Salata Institute](#), I don't recall in any event, was on that, on the international aspects because they were making the argument in the DOE report that because it's a global climate pollutant, that therefore the role contributions of the U.S. were De Minimis and it would have no effect. And that's completely incorrect. I mean, we're the second largest emitter in the world. We're the largest contributor to the existing stock. So, that part was also highly flawed. Now, I assume...

Jody Freeman:

Can I add one more thing on this? Just to be fair about their argument. What they're saying is, look, this section of the law, section 202 under which we've issued this endangerment finding and then regulated car and truck emissions, it focuses on new cars and trucks. And the right way to think about this is every individual category of car and truck and to assess the contribution based on those. So, they're slicing and dicing the share of U.S. emissions, not just into the sector, but into sub parts of the sector to make the numerator of our emissions look as small as possible. And of course, it makes some intuitive sense. You look at the contribution from each of our sectors, say the transport sector, the power sector, the oil and gas sector, or the industrial sector, and that does look like a relatively small share of the global problem. And then if you look further at individual categories within those sectors, of course you're going to say, well, right, this is pretty small, but there's nothing in the Clean Air Act that says, well, EPA can't regulate pollution unless it can solve the whole problem. The most straightforward reading of the language 'contribute to air pollution that causes an endangerment,' 'contribute to,' is that a contribution can be a small share because of course pollution is a small share problem. So, I think the most natural reading of the law doesn't favor the administration here, but they're certainly pushing this idea that there has to be some De Minimis threshold.

Rob Stavins:

It's interesting because it sounds to me like a trivial, our observation that as we go to a sector basis, then to the company basis, and then to the individual basis, and then what are my emissions? Wait, what are my emissions between nine and 10 o'clock in the morning? It's inevitable that that numerator, as you refer to it, it's going to get smaller and smaller.

Jody Freeman:

I will say it's not impossible that five justices on the Supreme Court say to themselves, well, the word 'contribution,' it's possible to imagine there has to be some threshold.

It's possible they might say something like that. And if you look at the law carefully, it says that this judgment is delegated to the administrator. So, they might say, okay, Congress delegated this to you and we're going to let you have some room to maneuver here to say that there's some minimal threshold here for a contribution. The problem is if the court does that and the agency then says, well, nothing in this sector gets over the threshold, and then it goes to the power sector and says, well, nothing in this sector gets over the threshold for that section of the law, 'significant contribution' is the wording there, and they go sector to sector and conclude nothing gets over a threshold. What you'll have on your hands is a sort of fictitious power, an imaginary power, to draw a line that says we won't regulate anything. And that's the problem. So, I can imagine a place where the Supreme Court might land where it doesn't quite say that EPA lacks authority to regulate global pollution because that would contradict what it said in *Mass. versus EPA*, but it's possible they would find something in the language of contribution to rule for the administration. I don't think that would be the right reading of the law, but I certainly think EPA is hoping for it.

Rob Stavins:

And so, I assume, given what you said, it eventually getting to the Supreme Court, that's going to be on the basis of lawsuits that are going to be, or maybe they already have been filed by environmental advocacy groups and some of the states. Is that right?

Jody Freeman:

Yes. So those lawsuits already have been filed, and now we get into some strategery around litigation. This will go first to the DC Circuit Court of Appeals because clean air rule challenges go there. Congress has directed that in the Clean Air Act, and there will be a three-judge panel that will hear the argument. The DC Circuit's very sophisticated. They deal a lot with Clean Air Act and other regulatory issues. I wouldn't be surprised at all if this got struck down by the DC Circuit, but it will depend of course on the three judges who are sitting on that panel. It's also possible that even if the administration were to lose in that first go round that they would then seek En banc review. That is all the sitting judges on the DC Circuit. That would take another round of litigation. So now we're talking about another possible year to get through that. So, if we have a first year with the DC Circuit, then we have a sort of second year if they go En banc. It could be that long until, let's say the Trump administration loses there too. They would seek review in the Supreme Court, seek certain in the Supreme Court, and then question is, would the court take it? If they do take it, another year goes by. So, I guess what I would tell you is even if this does reach the Supreme Court, it will be quite some time, and it will pretty much run out the clock on the administration. So, we're not going to see any greenhouse gas rules likely from this administration between now and the time they leave office.

Rob Stavins:

So, in the meantime, before it gets to the Supreme Court, the rescission of the endangerment finding is the law of the land.

Jody Freeman:

That's true. And the only way it wouldn't be is if a challenger sought a stay. Now, that's a really tough strategic question because seeking a stay, trying to block the rule, gets it into court faster, and then the administration might seek an emergency appeal to the Supreme Court to get it to lift that stay. And there's a good argument that it's not in the interest of the challengers to get to the Supreme Court quickly.

Rob Stavins:

I see.

Jody Freeman:

The idea here is if it's going to reach the court, there's no need for it to happen right away. Perhaps the clock will run out on this administration. There might be a new administration that would rescind the rescission unless the Supreme Court has ruled. So, there's a reason to play keep away, and I can imagine that being part of the strategic analysis at the moment.

Rob Stavins:

So, that takes me to the concern about what you just raised about the Supreme Court, in fact, actually siding with the administration. What would be, we can probably finish up with this, what would be the

short-term and long-term implications for climate laws and regulations? What does that actually mean? From my non-legal perspective as an economist, I assume that means that the Congress would need to come up with new legislation and not rely upon the Clean Air Act as it's written. Is that wrong?

Jody Freeman:

That's one possible outcome. Let's imagine the Supreme Court takes the case. Let's imagine there's a majority that ratifies the administration's theory that EPA cannot regulate global pollution

That would knock out the Clean Air Act as a source of federal climate regulations because if they can't make an endangerment finding here for cars and trucks, then surely they can't make an endangerment finding anywhere in the Clean Air Act if they can't regulate global pollution. So, if the court were to go for that argument, then you're right, Congress would need to amend the law to restore EPA's authority to set greenhouse gas standards. Now, the administration's doing some sort of fancy footwork. It's not clearly trying to eliminate all of the greenhouse gas rules. There's some hesitation over, say the methane rule, which you know a lot about, because the oil and gas industry has signaled it wants a federal comprehensive rule on methane. And in fact, the one the Biden administration designed was very attentive to the industry in allowing them to use new technologies to take advantage as those technologies evolved. So, the oil and gas industry was fairly pleased with that methane rule. So, it's not clear to me how this administration would distinguish this endangerment finding decision from the endangerment findings on which all the other climate rules rest. Right? In my view, if you're claiming you can't regulate a global air pollution problem, that's going to cut across all of the Clean Air Act climate rules. So, that's a long answer to say yes, if the Supreme Court agrees with the furthest reaching argument they're making, I think you need an amendment from Congress. However, there are various ways in which you could imagine the Supreme Court giving some room to maneuver to this administration, like I said before, deciding yes, there could be some threshold and contribution and leaving it to the agency to set that. That kind of holding would let a future administration come back and set a different threshold for contribution. Right. So, there's a real open question here, because it depends on if the case reaches the Supreme Court and what they decide.

Rob Stavins:

So, then there is, if I understand you correctly, there is a middle ground in which a Supreme Court decision could leave a future administration with some leeway to do some work and still use part, the Clean Air Act to look at climate.

Jody Freeman:

Yes. That's possible. Although I really need to underscore that suggesting there's some threshold for contribution is really, really problematic for the reasons we said before. How can you logically, scientifically, economically, defensively draw that line? I think that's a really hard question, and I don't think their approach should survive arbitrary capricious review.

Rob Stavins:

Well, I hope it's not until the Supreme Court decision comes down, if one does, that I have you back, but if we haven't talked in the meantime on this podcast, when that Supreme Court decision comes, I'm definitely coming back to you, Jody, for what will be number three.

Jody Freeman:

Anytime. Anytime. Happy to do it and great to see you.

Rob Stavins:

Likewise. So, thanks very much to my guest today, [Jody Freeman](#), the Archibald Cox Professor of Law at [Harvard Law School](#), for this discussion of the endangerment finding – its background, its challenges, and the path forward. I hope you will all join us again for the next episode of [Environmental Insights: Conversations on Policy and Practice](#) from the [Harvard Environmental Economics Program](#). I'm your host, [Rob Stavins](#). Thanks for listening.

Announcer:

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