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Opinion XML

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PRO-CON: Should Supreme Court force EPA to set limits? YES

President Bush has often criticized "activist judges" for allegedly shaping the law to fit their own policy preferences instead of enforcing it as written.

Now, Bush's own appointees to the Supreme Court have an opportunity to show that they will enforce a law that Congress enacted more than 30 years ago.

The law involved is the Clean Air Act, enacted in 1970 and still very relevant today. It requires the administrator of the Environmental Protection Agency to issue standards limiting automobile emissions of any air pollutant "which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare."

This provision is mandatory.

If Bush's EPA doesn't agree with the Clean Air Act, it can ask Congress to change it. Until then, EPA should implement the law that Congress wrote, not the one that it wishes Congress had written. And if EPA refuses to follow the law, then the courts should order it to do so.

Joseph M. Feller, professor of law at Arizona State University and a member scholar of the Center for Progressive Reform.

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