



Supreme Court Decision in Climate Change Lawsuit: A Short Term Win For Power Companies; Potential Long Term Win For the EPA

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On June 20, 2011, the Supreme Court issued its long-awaited decision in [*American Electric Power Co. v. Connecticut*](#) and unanimously reversed the Second Circuit's controversial decision allowing plaintiffs' climate change-based lawsuit to proceed. The 2004 lawsuit was brought by six states (New York, California, Connecticut, Vermont, Iowa, New Jersey, Rhode Island, and Wisconsin), New York City, and several land trusts. Plaintiffs argued that carbon-dioxide emissions from power plants belonging to four private companies and the Tennessee Valley Authority created a public nuisance and sought a federal court mandate requiring defendants to reduce their emissions.

The Court explained that "the Clean Air Act and the EPA actions it authorizes displace any federal common law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired power plants." The Court saw no need for a "parallel track" in which plaintiffs could also seek emissions abatement through the federal courts, and explained that Congress "designated an expert agency, here, EPA, as best suited to serve as primary regulator of greenhouse gas emissions. The [EPA] is surely better equipped to do the job than individual district judges issuing ad hoc, case-by-case injunctions. Federal judges lack the scientific, economic, and technological resources an agency can utilize in coping with issues of this order."

The decision all but forecloses nuisance theory as avenue for climate change-based lawsuits—a win for the defendant power companies. However, the decision also affirms the EPA's authority to regulate greenhouse gases—first established by the Court's 2007 decision in *Massachusetts v. EPA*—and may, in the long term, facilitate the EPA's ability to regulate greenhouse gases.

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