

Supreme Court reverses decision allowing greenhouse gas nuisance suits

The Supreme Court yesterday ruled unanimously that the Clean Air Act bars federal common law suits seeking to restrict greenhouse gas emissions on the ground that they constitute a public nuisance. In [*American Electric Power Co. v. Connecticut*](#), the high court reversed a decision by the U.S. Court of Appeals for the Second Circuit allowing a suit by a group of states to proceed against AEP, the Tennessee Valley Authority, Southern Co., Xcel Energy and Duke Energy Corp.

"The critical point is that Congress delegated to [the Environmental Protection Agency] the decision whether and how to regulate carbon-dioxide emissions from power plants; the delegation is what displaces federal common law," Justice Ruth Bader Ginsburg wrote in a decision on behalf of the court.

"The expert agency is surely better equipped to do the job than individual district judges issuing ad hoc, case-by-case injunctions," Ginsburg said. "Federal judges lack the scientific, economic, and technological resources an agency can utilize in coping with issues of this order."

Eight states—California, Connecticut, Iowa, New Jersey, New York, Rhode Island, Vermont and Wisconsin—filed the suit in 2004, but New Jersey and Wisconsin withdrew from the case earlier this year.

APPA, the Edison Electric Institute and National Rural Electric Cooperative Association filed a joint brief last year urging the Supreme Court to grant AEP's appeal and overturn the Second Circuit decision. Regulation of greenhouse gases "is too consequential, and too complex, to address on a piecemeal basis" through "nuisance" suits in different courts across the country, the utility associations said. — ROBERT VARELA

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