

10-174 AMERICAN ELECTRIC POWER CO. V. CONNECTICUT

DECISION BELOW: 582 F.3d 309

LOWER COURT CASE NUMBER: 05-5104, 05-5119

QUESTION PRESENTED:

The court of appeals held that States and private plaintiffs may maintain actions under federal common law alleging that defendants - in this case, five electric utilities - have created a "public nuisance" by contributing to global warming, and may seek injunctive relief capping defendants' carbon dioxide emissions at judicially-determined levels. The questions presented are:

1. Whether States and private parties have standing to seek judicially-fashioned emissions caps on five utilities for their alleged contribution to harms claimed to arise from global climate change caused by more than a century of emissions by billions of independent sources.

2. Whether a cause of action to cap carbon dioxide emissions can be implied under federal common law where no statute creates such a cause of action, and the Clean Air Act speaks directly to the same subject matter and assigns federal responsibility for regulating such emissions to the Environmental Protection Agency.

3. Whether claims seeking to cap defendants' carbon dioxide emissions at "reasonable" levels, based on a court's weighing of the potential risks of climate change against the socioeconomic utility of defendants' conduct, would be governed by "judicially discoverable and manageable standards" or could be resolved without "initial policy determination[s] of a kind clearly for nonjudicial discretion." *Baker v. Carr*, 369 U.S. 186, 217 (1962).

JUSTICE SOTOMAYOR TOOK NO PART.

CERT. GRANTED 12/6/2010