

## Supreme Court Nixes Climate Case Against Power Companies

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Plaintiffs have failed in an attempt to bring a common-law nuisance claim against a handful of fossil-fuel power companies as a way to require those companies to reduce their greenhouse gas emissions. This means that regulation of greenhouse gases will remain the responsibility of the U.S. EPA and Congress, with only a limited role for the courts.

In an opinion issued Monday, the U.S. Supreme Court reasoned that the Clean Air Act occupies this field of regulation, thereby preempting any attempt to create additional requirements in the federal courts. In this regard, the Court cited the holding of the seminal case, *Massachusetts v. EPA*, where the Court held that greenhouse gases were, indeed, "air pollutants" under the Clean Air Act.

The plaintiffs, a collection of states and conservation groups, had been more successful at the court of appeals, but, at that time, the U.S. EPA had not yet issued its greenhouse gas regulations. The plaintiffs' case became less compelling when the EPA issued regulations in 2010 requiring greenhouse gas controls on some large emitters, and initiated another rulemaking to look at setting emissions limits for fossil-fuel power plants, which would include the facilities at issue in the case before the Court.

Overall, the Court recognized that the proper role of the judiciary is to review action taken by the EPA and Congress, not to initiate its own requirements, reasoning that courts are not well equipped to make the complex technical and policy decisions that such regulations require. Indeed, the Court was careful to point out that it was not endorsing any particular view on the complicated issue of climate change.

If you have questions about the Clean Air Act or the legal implications of this case, please contact Sustainability and Climate Group Chair Dan DeWitt ([ddewitt@wnj.com](mailto:ddewitt@wnj.com) or 616.752.2208) or any other member of the Environmental or Sustainability and Climate groups at Warner Norcross & Judd.