As Jonathan noted (here and here) last month, after a lengthy delay, the 2d Circuit ruled that a public nuisance suit brought by states and environmental groups against major power producers based on their greenhouse gas emissions did not pose a non-justiciable political question, and that the plaintiffs had standing. That ruling has obviously not yet swept the field, however. Shortly after it came down, Judge Saundra Brown Armstrong, in the Northern District of California, dismissed the nuisance claims of the Native Village of Kivalina, Alaska, against Exxon Mobil and other big oil and coal companies.

Kivalina is a coastal village which, according to the Army Corps of Engineers, must be relocated because the loss of sea ice has greatly increased its vulnerability to winter storms. It seeks to recover the costs of relocation (at least) from defendants, who according to the complaint "include many of the largest emitters of greenhouse gases in the United States." (Luke Cole was representing Kivalina before his tragic death this summer.)

Judge Armstrong dismissed the claims both on political question and on standing grounds. On the political question issue, she concluded, disagreeing with the 2d Circuit, that there were no judicially discoverable and manageable standards for determining whetherthe gravity of the harm caused by the defendants' greenhouse-gas emitting activities outweighs their utility, which is a commonly applied test for nuisance liability. She also wrote that the policy decisions about acceptable levels of emissions and who should bear their costs (as among the large number of emitters) should be made in the first instance by the political branches. Finally, she ruled that the plaintiffs did not have standing because they could not show that the defendants' emissions, as opposed to all the other global sources of greenhouse gas emissions, caused the damage to the village. That holding seems inconsistent with the Supreme Court's opinion finding standing in *Massachusetts v. EPA*, but Judge Armstrong distinguished that case as resting on "special solicitude" for states asserting their sovereign rights against a federal agency defendant.

The key hurdle for Judge Armstrong, with respect to both standing and the political question doctrine, was why these defendants, as opposed to any others, should be hailed into court. I sympathize — it's hard to understand why the big electric power producers should be liable for damage to the states of Connecticut, California, and others from global warming, but oil companies should be responsible for relocating the Village of Kivalina. Still, it's at least as troublesome to suppose that no one is responsible for the costs of saving Alaskan coastal villages from drowning because we've all caused it.

It will be interesting to see what happens to this case in the Ninth Circuit.