Well, I didn't expect this one.

The Fifth Circuit, in *Comer v. Murphy Oil Co.*, has agreed to follow the Second Circuit by construing Massachusetts v. EPA's standing holding very broadly. It has allowed a class action by private plaintiffs on a common-law public nuisance claim, for damages occurring from greenhouse gas emissions, to move forward.

More to come on this one when I have a chance to finish the opinion. But a couple of points:

1) *Comer* represents a case of private plaintiffs suing private defendants; thus, it has a different procedural and remedial posture from either *Massachusetts v. EPA* or *Connecticut v. AEP*. But if anything, the test here should have been even harder, because the *AEP* plaintiffs are asking for an injunction, and so do not have to point to specific damages.

2) The Fifth Circuit might be the most conservative federal appellate court in the country: if it is going in this direction, then certiorari might soon follow.