This morning, the Supreme Court heard 75 minutes of oral argument in *AEP v. Connecticut*. My fellow blogger, Richard Frank, already gave us a preview of the arguments. SCOTUSblog has a nice recap of what happened this morning.

I would just like to highlight a few points from the oral argument. First, the Justices seem hesitant to throw out the public nuisance remedy completely, but are uncomfortable with the complexity of a judicial remedy in this type of case. Justices Ginsburg and Kagan both commented that this looked like the job of agencies.

Second, speaking of agencies, Justice Ginsburg reinforced the Court's holding in *Massachusetts v. EPA*, saying,

> Congress told EPA to set the standards [in the Clean Air Act]. You are setting up a District judge as a kind of 'super EPA.'

Third, at least some of the Justices seem to have a strong grasp of climate change policy and potential regulatory responses. I suppose that is not surprising, given the *Massachusetts v. EPA* case. Justice Breyer, setting up one of his classic hypotheticals, wanted to know why a judge should not impose a $20-a-ton carbon tax as a judicial remedy. (Answer: because he can't.)