The Supreme Court today issued its long-awaited decision in an important climate change case, *American Electric Power v. Connecticut*. http://www.supremecourt.gov/opinions/10pdf/10-174.pdf As expected, the Court rejected a public nuisance lawsuit that a coalition of states and private land trusts had brought against the owners of Midwestern coal-fired power plants, challenging their massive greenhouse gas emissions on public nuisance grounds. In a unanimous opinion authored by Justice Ginsburg, the Court ruled that the federal common law of nuisance had, in this context, been "displaced" by USEPA's ability to regulate greenhouse gas emissions under the Clean Air Act.

The rejection of the states' public nuisance lawsuit had been expected: at oral arguments this spring, none of the justices had expressed support for the plaintiffs' legal theories. But environmentalists are likely to view today's decision as a combination of good and bad news.

On the bad news side, the environmental community's' ability to rely on federal public nuisance law to address the deleterious impacts of climate change is unquestionably at an end. The Court squarely ruled that the federal government's authority to regulate greenhouse gas emissions under the Clean Air Act–as the justices ruled it could in its 2007 *Massachusetts v. USEPA* decision, and as federal regulators are currently working to do–displaces any role that federal nuisance law might otherwise have. And the Supreme Court rejected outright the states' claim, embraced by the Second Circuit Court of Appeals, that the states' nuisance claim remained viable unless and until the federal government actually adopts regulations limiting greenhouse gas emissions from defendants' power plants–something that hasn't happened yet.

At the same time, environmentalists can breathe a sigh of relief that the justices didn't adopt a more sweeping ruling. Defendants in the case had also argued that plaintiffs' lacked standing to bring their public nuisance lawsuit, and that the litigation was barred under the political question doctrine. Today's Supreme Court decision failed to disturb the Second Circuit's ruling rejecting both of those procedural defenses, instead relying on the narrower displacement theory to throw out the litigation. (Only four of the eight justices deciding the case–Justice Sotomayor having recused herself–apparently believed that the states had legal standing to pursue the lawsuit, just enough to leave that aspect of the Second Circuit's decision undisturbed.)

To be sure, today's opinion spells the end of efforts to invoke federal nuisance law in response to the myriad, deleterious environmental impacts of greenhouse gas emissions. But an adverse decision based on either standing or political question grounds would have been far more detrimental to environmentalists' long-term efforts to address climate change

in the federal courts. In that sense, plaintiffs and their environmental allies in *AEP v. Connecticut* dodged a bullet today–barely.