The Supreme Court decided the AEP case. The jurisdictional issues (standing and the political question doctrine) got punted. The Court said that the lower court rulings were affirmed by an equally divided court. So far as I know, this is the first time that the Court has ever done that and then proceeded to a ruling on the merits. (It would seem more appropriate to dismiss cert. as improvidently granted rather than issue an opinion on the merits.) This is actually good news: it means that there were four Justices to reject the political question doctrine and find standing. Since Justice Sotomayor did not participate but is thought to have been in the majority in the lower court before her appointment to the Court, we can be confident that five Justices would vote accordingly in another case. Hence, it seems clear that lower courts should not apply the political question doctrine in these circumstances and that they should extend standing to climate change cases beyond the strict confines of *Massachusetts v. EPA*.

On the merits, the Court held that the federal common law of nuisance regarding climate change is preempted by the Clean Air Act's grant of jurisdiction to EPA to regulate greenhouse gases. This part of the opinion strongly reaffirms the holding in *Massachusetts v. EPA.* According to today's opinions,

> Massachusetts made plain that emissions of carbon dioxide qualify as air pollution subject to regulation under the Act. 549 U. S., at 528–529. And we think it equally plain that the Act "speaks directly" to emissions of carbon dioxide from the defendants' plants.

In a concurrence, Justices Alito and Thomas said they were taking this position only for the purposes of argument since no party had contested it. Notably, Chief Justice Roberts and Justice Scalia did not join them, so there seem to be six votes (plus Sotomayor) to uphold EPA jurisdiction at this point.

Finally, the plaintiffs are left with a possible claim under state law. The Court did not reach the question of whether that claim is viable since the issues were not briefed or argued.

Overall, this is about as good an outcome as could have been hoped for after oral argument. It also makes it more complex for Congress to repeal EPA jurisdiction since doing so would restore the federal common law claims.