

Plaintiffs got a Christmas present from the D.C. Circuit in the form of a pathway to prove standing in climate change cases. The Supreme Court has considered two cases dealing with standing to sue based on injuries caused by climate change. The Court found standing in one case 5-4 and split 4-4 in the second case. But in a case decided on Christmas Eve, the D.C. Circuit gave its blessing to an end-run around the entire dispute. This end-run is likely to be very useful to future plaintiffs in a wide range of cases.

[*Wildearth Guardians v. Jewell*](#) involved coal leasing in the Wyoming Powder River Basin. The plaintiffs challenged the final environmental impact statement (FEIS) for the leases on several grounds, including failure to give adequate consideration to the impact of coal leasing on climate change. The plaintiffs claimed the leases would injure them because of their local impacts on the environment. The district court allowed them to challenge portions of the FEIS dealing with these local impacts, but not the portion dealing with climate change. The reason was the plaintiffs' failure to link their specific injuries to the incremental effect of the coal on climate change.

The D.C. Circuit held that the local injuries were also a basis for raising the climate issue:

[Appellants] have established a separate injury in fact not caused by climate change—the harm to their members' recreational and aesthetic interests from local pollution. In *Center for Biological Diversity*, we noted that "Interior's adoption of an irrationally based Leasing Program could cause a substantial increase in the risk to" petitioners' similar aesthetic injury—"their enjoyment of the animals affected by the offshore drilling"—and held that this gave petitioners standing to challenge the decision to authorize the leasing even though the claimed deficiencies concerned Interior's failure to consider greenhouse gas emissions and global climate change. The same reasoning applies here. The Appellants' aesthetic injury follows from an inadequate FEIS whether or not the inadequacy concerns the same environmental issue that causes their injury. If we vacate the BLM order, their injury will be redressed regardless whether the FEIS's specific flaw relates to local or global environmental impacts; either way, the remedy is "limited to the inadequacy"—here, a deficient FEIS—"that produced the injury in fact that the plaintiff has established.

This theory of standing probably won't help plaintiffs who are far removed in space and time from the emissions in question. But actions that reduce carbon emissions almost inevitably reduce other air pollution. So anyone suffering from local air pollution should have standing

to challenge a government failure to regulate carbon emissions from the same sources.

From a policy point of view, the largest immediate benefit from reducing carbon emissions often consists of the “co-benefits” like reduced air pollution. As it turns out, the co-benefits also are important in a legal sense, because they can provide a basis for standing.