

States Can Sue Utilities Over Emissions

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A two-judge panel of a federal appeals court has ruled that big power companies can be sued by states and land trusts for emitting carbon dioxide. The decision, issued Monday, overturns a 2005 District Court decision that the question was political, not judicial.

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A panel of the United States Court of Appeals for the Second Circuit, in New York, ruled that eight states — California, Connecticut, Iowa, New Jersey, New York, Rhode Island, Vermont and Wisconsin — as well as New York City and three land trusts could proceed with a suit against [American Electric Power](#), Southern Corporation, the Tennessee Valley Authority, [Xcel Energy](#) and Cinergy Corporation, all large coal-burning utilities.

The case, brought in 2004, said the defendants were creating a “public nuisance” and sought reductions in emissions that scientists say are changing the climate. The states cited studies from the [United Nations](#) and the [National Academy of Sciences](#) that predicted damage and said in fact that their environments had already been damaged. The land trusts said that an increase in sea level would inundate their properties, among other problems.

The power companies said that the federal courts had never recognized an argument in common law that greenhouse gas emissions contribute to [global warming](#), and that if action were to be taken, Congress would have to do it.

The lower court agreed that the issues demonstrated the “transcendently legislative nature of this litigation,” and that if they found in favor of the states and the land trusts, the courts would have to figure out how to cap emissions, set reduction goals and a schedule for achieving them, and take other steps that would seem to require legislation.

The appeal was heard by a three-judge panel, but one of the judges, [Sonia Sotomayor](#), was elevated to the [Supreme Court](#) in August. The case was decided by Joseph M. McLaughlin, who was appointed to the court in 1990 by the first President George Bush, and Peter W. Hall, nominated in 2003 by the second President Bush.

Matt Pawa, the lead lawyer for the Open Space Institute and the [Audubon Society](#) of New Hampshire, both plaintiffs, said in a statement that “for hundreds of years, courts have been there to protect citizens from harm,” and could do so again now.

At the [Natural Resources Defense Council](#), an environmental group that was not a plaintiff, David Doniger, a senior lawyer, said the best way to fight global warming was to have Congress act. But he added, “The court’s decision guarantees that if the Congress fails to do its job, or blocks the [E.P.A.](#) from doing its job, the biggest power companies will still be held accountable in the federal courts.”

At American Electric Power, Pat D. Hemlepp, a spokesman, said the company's lawyers had not decided whether to appeal. But he added: "We don't feel that litigation is a proper avenue to address climate concerns. In our view, it's a policy issue."

"Legislation would be the best approach, and that's happening now," Mr. Hemlepp said, referring to a bill that has passed the House and that the Senate may take up this year.

Many participants in the global warming debate appear to prefer a decision by the Congress, because it could balance competing interests, between and among regions and industries, to cut emissions of global warming gases.

But Monday's decision means that all three branches of the federal government could have a role. In addition to the possibility that Congress will act, the Supreme Court held in April 2007, that global warming gases were a pollutant under the Clean Air Act, and thus could be regulated by the Environmental Protection Agency.