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ENVIRONMENTAL UPDATE**Industry Scores Victory Related to Greenhouse Gas Emissions in Long-Awaited AEP Decision**

On June 20, 2011 the U.S. Supreme Court rejected the attempt by various states, New York City and several environmental groups to have the judicial system regulate the limits on greenhouse gas emissions. In *American Electric Power Co. v. Connecticut* (No. 10-174), the Court ruled in an **8-0 decision** that it would leave the standard setting and greenhouse gas emission controls to the experts. Since the Clean Air Act and the associated Environmental Protection Agency (EPA) regulations authorized by the Act provide the mechanism to address limits on emissions of carbon dioxide from domestic plants, “there is no room for a parallel track,” and federal common law is not available as a way to sidestep this process. The Court’s decision overturns the Second Circuit’s ruling that permitted the same plaintiffs to proceed with lawsuits against various electric utilities, which alleged that the defendants’ greenhouse gas emissions were considered a public nuisance that contributed to global warming.

Justice Ginsburg’s opinion went on to explain that the system has its own checks and balances. Specifically, once the limits are set, these groups can use the judicial system to challenge them. The Court relied on the fact that this process allows those who are best suited to make the determinations to do so. “It is altogether fitting that Congress designated an expert agency, here, EPA, as best suited to serve as primary regulator of greenhouse gas emissions. The expert agency is surely better equipped to do the job than individual district judges issuing ad hoc, case-by-case injunctions. Federal judges lack the scientific, economic, and technological resources an agency can utilize in coping with issues of this order.”

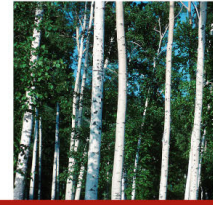
The Court declined to address the state law nuisance claim, finding that its decision on the federal common law question precluded the need to do so. Justice Sotomayor recused herself since she was a member of the Second Circuit when it heard oral arguments in *Connecticut v. American Electric Power Co.*

Thus, for now, it appears that industry will need to keep its eyes on Congress and EPA to make the next move, since victory was achieved in the courtroom.

FOR MORE INFORMATION

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