

District Court Dismisses States' Global Warming Suit Against Utilities as Presenting Political, Not Judicial, Question

September 16, 2005

On September 15, Judge Preska of the federal district court in Manhattan dismissed two parallel suits alleging that certain large electric generators were maintaining a common law nuisance by contributing to global warming. *State of Connecticut, et al., v. American Electric Power Company, Inc., et al.* (USDC SDNY, No. 04 Civ. 5669 etc.). She ruled that remedies for harm allegedly caused by global climate change are committed to the political branches, not the judiciary. The case therefore fell within the limited category of “political questions” over which federal courts lack subject matter jurisdiction. It would be impossible, she wrote, for a court to decide the case “without an ‘initial policy determination’ first having been made by the elected branches to which our system commits such policy decisions, *viz.*, Congress and the President.”

The case was initiated by eight states (Connecticut, New York, California, Iowa, New Jersey, Rhode Island, Vermont, and Wisconsin) and the City of New York, against Tennessee Valley Authority and four large investor-owned utility systems (American Electric Power, Southern Company, and Xcel Energy). A parallel action against the same defendants was filed by three environmental land trusts. The complaints alleged that the utilities were maintaining an interstate common law nuisance by emitting large quantities of carbon dioxide and other greenhouse gases that are causing global warming and harming people and property. The plaintiffs sought an injunction capping the utilities carbon-dioxide emissions and specifying annual reductions at a rate to be determined.

Judge Preska accepted the plaintiffs' allegations as true for purposes of deciding the utilities' motions to dismiss. The motions challenged the plaintiffs' standing to maintain the suits, contended that federal common law nuisance precedents were inapplicable to global warming, and urged that global warming issues were committed to the political branches under the Constitution's separation-of-powers.

Judge Preska held it unnecessary to decide the standing question because she found, as a threshold matter, that the complaints presented only political questions over which the court lacked subject matter jurisdiction. Her opinion focused on “the transcendently legislative nature of this litigation.” The relief sought in the complaints, she held, raised enormously complex questions of national economic policy, foreign relations, and national security. Such questions require initial resolution by the elected branches. This conclusion, she held, was confirmed by the U.S. Environmental Protection Agency's recent statements about the scope of climate change issues, and by the current policies of the Administration and Congress concerning such issues: Thus, she concluded, “[t]he explicit statements of Congress and the Executive on the issue of global climate change in general and their specific

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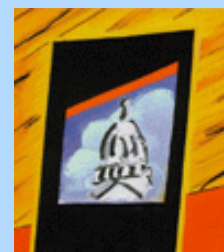
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refusal to impose the limits on carbon dioxide emissions [that] Plaintiffs now seek to impose by judicial fiat[,] confirm that making the ‘initial policy determination[s]’ addressing global climate change is an undertaking for the political branches.”

The decision’s emphasis on the role of the federal legislative and executive branches may also impact state-initiated efforts to address greenhouse gas controls through state processes.

For Additional Information

Questions about this decision or any other matters relating to global climate change may be addressed to Bob Nordhaus, Stephen Fotis, or Kyle Danish of Van Ness Feldman’s Environmental Practice at (202) 298-1800.

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