

Wiley Rein Files *Amicus* Brief in Supreme Court Climate Change Case

February 7, 2011

On February 7, 2011, Wiley Rein filed an *amicus* brief in the United States Supreme Court in *American Electric Power v. Connecticut*, No. 10-174 (filed Aug. 2, 2010), seeking reversal of a Second Circuit decision allowing "global warming" nuisance suits to proceed in federal court. In the case under review, several states and private land trusts sued five national energy companies seeking a judicial order imposing specific limits on those companies' carbon dioxide emissions for a period of at least 10 years. This case is a major test of the ability of federal courts to create and use federal common law to impose limits on carbon dioxide emissions in the absence of action by the Legislative or Executive branches.

On behalf of Cato Institute as *amicus curiae*, Wiley Rein supported the Petitioners in seeking certiorari, and at the merits stage argues that the federal courts are not constitutionally and institutionally appropriate actors in the national debate over the proper federal response, if any, to global climate change. There are three questions presented concerning standing, federal common law and the political question doctrine. Wiley Rein's brief argues that the plaintiffs do not have standing to bring these claims, because their alleged injuries are not traceable to the activities of these particular energy companies, as distinguished from the billions of other natural and industrial contributors to climate change. In deciding the standing question, the Court may grapple with the meaning of the Supreme Court's 2007 decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007), which found that certain states had standing to seek judicial review of the EPA's refusal to regulate automobile emissions under the Clean Air Act. Wiley Rein also argues that this case and others like it raise nonjusticiable economic, industrial and environmental policy

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questions appropriately resolved only by the democratically accountable branches. The United States has filed a brief that in large part agrees that this case is not properly before a federal court. The Petitioners' brief can be found [here](#).

In granting certiorari, the Supreme Court signaled its intent to clarify the proper role of federal courts in addressing global climate change. Companies, trade associations and insurers should pay attention to this important case, which will help determine if other global warming cases, seeking damages or injunctive relief, can be properly brought in federal court.

Wiley Rein Appellate and Litigation partner Megan Brown, and associates Brendan Carr, Michael Connolly and Ari Meltzer*, filed this brief.

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