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EMINENT SCIENTISTS ASK HIGH COURT TO ALLOW GLOBAL WARMING RESTRICTIONS ON POWER PLANTS

Representing 14 of the country's leading climate change scientists, Public Justice today urged the U.S. Supreme Court to hold power plants accountable for their carbon dioxide emissions and allow states to impose restrictions on how much of the chemical compound may be released.

The scientists' *amicus* brief in *AEP v. Connecticut et al.*, argues that there is no scientific uncertainty about the warming effects of greenhouse gases, like carbon dioxide; that the power plants threaten substantial harm to communities in the six plaintiff states; and that the benefits of reduced emissions would be significant.

The scientists include Mario Molina, who received the Nobel Prize in chemistry for his role in showing that chlorofluorocarbons damage the Earth's ozone layer; and Dan Schrag, director of the Harvard University Center for the Environment.

Likening the scale, momentum and long response time of climate change to a huge supertanker, the scientists warned that "the planet is headed toward a shipwreck" and that "evasive action" and emission reductions "to reduce the throttle" are essential.

The case began in 2004, when several states and land trust organizations filed suit in New York against six electric power companies and the Tennessee Valley Authority, alleging that carbon dioxide emissions from the plants had contributed to global warming, thereby creating a public nuisance under federal law.

The states – Connecticut, New York, Rhode Island, California, Iowa and Vermont – claim the emissions from the power companies account for about one-tenth of all carbon dioxide emissions in the country and cause a wide range of environmental harms, including coastal flooding, reduced food supplies, water shortages, and ecosystem disruptions.

The plaintiffs asked the court only to order the power companies to reduce their carbon dioxide emissions; they did not seek economic damages.

Still, the district court dismissed the lawsuit, ruling that the emissions restrictions were political matters, more befitting legislation than litigation.

The Second Circuit Court of Appeals reversed that decision, citing well-established principles of tort and public nuisance law, including several cases involving complex environmental questions. The Second Circuit also found that the states' claims were not preempted by the federal Clean Air Act because the Environmental Protection Agency had not exercised its authority to regulate carbon dioxide emissions.

"The science of climate change is not up for debate" said Richard Webster, the attorney of record on this brief, "we want the Court to understand that climate change is real, it's happening, and we need to take action to mitigate its consequences."

Oral argument in *AEP v. Connecticut et al.*, is scheduled for April 19.

Professor Schrag and Professor Peter Huybers were the lead authors for the scientists. The attorneys on the brief were Public Justice's Power-Cotchett Attorney Richard Webster, Environmental Enforcement Project Director Jim Hecker, Budd-Kazan Attorney Matt Wessler, and Executive Director Arthur Bryant.

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