Supreme Court today reaffirmed that it is the Environmental Protection Agency's job to curb dangerous carbon pollution under the Clean Air Act, deciding in Connecticut v. American Electric Power that states cannot bring suit directly against five of the nation's largest power companies to curb their emissions as a public nuisance.

Power plants are the nation's biggest climate polluters. Each year they pump more than two billion tons of carbon dioxide into the air – pollution that is driving dangerous heat waves and smog episodes, rising seas, and stronger storms, floods, and droughts, threatening our health and safety and our homes and communities.

For more than a decade, environmental organizations and leading states have pursued legal strategies to force power plants and other big carbon polluters to clean up.

When the Bush administration denied that EPA had any authority to curb carbon dioxide under the Clean Air Act, NRDC joined a state-environmental coalition to challenge that misreading of the law. The Supreme Court rejected the Bush position in a landmark 2007 case called Massachusetts v. EPA, ruling that EPA has the duty to protect us from dangerous carbon pollution under the nation's 40 year old clean air law.

At the same time, a group of states and conservation land trusts brought suit directly against the country's biggest carbon polluters, invoking a century of Supreme Court precedents backing the states' right to federal court relief when polluters in other states send dangerous air or water pollution across state lines. (NRDC helped represent the land trusts.) The five huge power companies – American Electric Power, Southern Company, Duke Energy, the Tennessee Valley Authority, and Xcel Energy – account for more than 650 million tons per year of CO2.

Today's decision in Connecticut v. American Electric Power throws out the lawsuit brought directly against the five upwind carbon polluters on the basis that it's EPA's job under the Clean Air Act to curb power plants' dangerous carbon pollution. The Court's decision expands on the four-year-old Massachusetts decision by setting forth the specific authority EPA has over power plant pollution.

The Court’s decision puts the spotlight squarely on EPA. The Court noted that the environmental agency has in fact begun to act since Massachusetts by making the scientific determination that carbon pollution is dangerous to public health and welfare, and has set standards to cut carbon pollution from new automobiles by 30 percent over the next five years.

The Court also noted that the EPA is finally moving towards action on power plants, noting the settlement of another case (New York v. EPA, see here and here) under which proposed carbon pollution standards are due in September and final standards next May. The agency has been meeting with stakeholders from industry, environmentalists, states, and others and is undertaking the technical and economic analyses to support standards.

Many power companies support EPA action, because they know that this problem can’t be wished away and that they can thrive while cleaning up. But some of the biggest polluters, such as American Electric Power and Southern Company, have combined with the coal industry and Tea Party politicians to attack the Clean Air Act. Bills to reverse the Supreme Court’s Massachusetts decision and block EPA from curbing carbon pollution sailed through the House but sank in the Senate earlier this year, after the administration promised a veto and the President spoke out against anti-EPA budget “riders.” Congressional Republicans backed down on the budget riders in 11th hour negotiations last April, but they’ll likely try again next fall.

They do so at their political peril. In both national and district-by-district polls, Americans consistently and strongly back EPA authority to protect their health from carbon pollution, by margins of well over 60 percent. So it’s encouraging to see, as reported by Politico (subscription required), that when asked last Thursday whether the White House would consider legislation to block or delay EPA’s
carbon pollution standards, the President’s chief of staff Bill Daley responded: “No, we’re not going to allow any legislation that impedes
the need to improve our health and safety.”

Today’s Supreme Court decision once again highlights the vital role of EPA. When Congress wrote the Clean Air Act, it gave EPA the
critical responsibility to act when science identifies new threats to health and the environment. Curbing the two billion tons of carbon
pollution belching from our power plants is long-overdue. The Court has confirmed again that this is EPA’s job. It’s time for EPA to act.

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Ning Rowley — Jun 20 2011 04:07 PM
This is good.