# American Electric Power Company, Inc. v. Connecticut, 131 S.Ct. 2527, 180 L.Ed.2d 435 (U.S. 06/20/2011)

## What does the Court assume EPA is going to do in response to Mass v. EPA that is relevant to this case?

## Has EPA finished yet?

## Who is being sued?

## Why power generating companies?

## What is the law for the legal claims?

## What law did the 2nd Cir allow the case to go forward on?

## What is the Erie problem?

## Does the court recognize that there is an exception to Erie?

## Does the court have to resolve whether this is allowed under the new federal common law?

## Discuss area preemption v. conflicts preemption.

## Hearing aid and medical device examples v. drug examples. - Floors/ceilings

## Radio waves - uniformity

## Why do GHGs make a strong case for area preemption?

## Does congress have to explicitly say that the federal law preempts the state law?

## What is the test?

## What is the evidence that the act speaks directly to the question? [16]

## What is the critical point for determining if there is preemption?

## What should plaintiffs do if they do not like this?

## Where does expertise come into this?

## Who would plaintiffs substitute for the expert agency?

## What remedy do the plaintiffs want?

## Why is this a direct conflict with the EPA?

## Why aren’t they asking for money? [not available under the post-Erie federal common law]

## What did EPA do after Mass v. EPA that affects this case?

## What injuries did plaintiffs claim to justify standing?

## There is a 4-4 split on whether plaintiffs have standing at all. How is that the opinion is going forward? [a split affirms the lower court, which found standing]

## Does EPA have to regulate to displace/preempt?

## How does this preserve the executive’s policy making power?

## What if EPA decides not to regulate greenhouse gases?

## Could plaintiffs challenge a decision to not regulate?

## What about cooperation with the states?

## How might this cause a problem with the GHG rule for powerplants?

## What is the argument that state common law remedies are not preempted?

## Does the court rule on the state remedies?

## What if the endangerment finding is withdrawn?