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## Supreme Court agrees to hear greenhouse gas case

by [Stephanie Hemphill](#), Minnesota Public Radio

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### AUDIO

 [Supreme Court agrees to hear greenhouse gas case \(feature audio\)](#)

St. Paul, Minn. — The U.S. Supreme Court has agreed to hear arguments in a global warming case against Xcel Energy and five other utilities.

Eight states, including Wisconsin, filed suit in 2004. They alleged that greenhouse gas emissions from Xcel utilities and those of other utilities' coal-fired power plants are a public nuisance. U.S. common law allows states to sue private companies whose pollution crosses state lines.

The first judgment went against the states, but last year a federal appeals court ruled the case could proceed. The utilities appealed that ruling, and now the Supreme Court will decide whether the case should be dropped, or sent back to a lower court for trial.

The Cato Institute, a free-market think tank, is one of about a dozen groups that joined the case to help the utilities defend the lawsuit. Ilya Shapiro, a senior fellow in constitutional studies at the institute, said the issue doesn't belong in the courts.

Shapiro said the public nuisance approach works for a specific industry polluting a specific place. But global warming is much broader than that.

"Anything from a cow to a Camry causes global warming to some extent," Shapiro said. "So it really is, I think, trying to fit a round policy peg in a square litigation hole."

If the Supreme Court rules against the utilities, they'll have to produce more green energy and that would raise rates, Shapiro said.

Xcel Energy officials have said they will not comment on the case while it's in litigation. Xcel burns coal at three plants in Minnesota.

The Natural Resources Defense Council represents three conservation groups involved in the case. David Doniger, policy director of the group's climate center, said the lawsuit is a "last-ditch effort" to force utilities to cut down on the gases that contribute to global warming.

He said Congress has been unable to do so and predicted that the next Congress will be unwilling to do so.

"It would be great if the Environmental Protection Agency used the existing law, the Clean Air Act, to curb the pollution from these very power plants," Doniger said. "The EPA says it's thinking about it, but it hasn't happened yet."

The EPA recently announced guidelines for large emitters of greenhouse gases, but they only apply to new sources, not existing plants, he said.

At least two other similar cases have been filed. In Alaska, a native community is suing oil, power, and coal companies, alleging pollutants contribute to violent storms that are dashing their village into the sea. In Mississippi, a group of landowners sued oil and gas companies, alleging pollution they created made Hurricane Katrina worse and destroyed homes. A judge dismissed that case on procedural grounds.

The U.S. Chamber of Commerce is one of the friends of the court in this case against Xcel and the other utilities. The chamber argues that if the case were allowed to go forward, it would lead to a lot of similar cases, which the chamber officials contend would "destabilize our economy and undermine our democratic process."

But some think other court cases on global warming wouldn't be so bad.

"If this lawsuit spawns other lawsuits in other sectors, that may in fact be a really good thing for our environment, for our grandchildren and their children," said Kevin Reuther is legal director at the Minnesota Center for Environmental Advocacy. "Because what we need is to have reductions in greenhouse gas emissions. And this may be the best way to achieve them."

The Supreme Court is scheduled to hear the case early next year.

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