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[Oops! Katrina Global Warming Lawsuit Backfires](#)

Remember back to [October 2009](#), when the 5th [Circuit Court](#) ruled that a lawsuit against [companies](#) that produce [greenhouse](#) gases could go forward from folks who say these companies made Hurricane Katrina worse. Yeah, [about that](#)

After an unusual about-face prompted by a late recusal, a federal [appeals court](#) has scrapped a ruling that said the nation's largest producers of greenhouse gas emissions could be sued for the damage caused by global warming.

The case, *Comer v. Murphy Oil*, started with a lawsuit by Gulf Coast residents affected by Hurricane Katrina. Claiming that global warming contributed to the severity of the storm, the plaintiffs sued dozens of the nation's largest polluters — a veritable who's who of utilities, chemical companies and the oil industry.

The *Comer* case is one of several pioneering climate change cases based on claims of public nuisance, a centuries-old mainstay of common law that allows people to sue their neighbors for nuisances such as foul smells, loud noises or overgrown trees. A three-judge panel from the 5th U.S. Circuit Court of Appeals ruled last year that the plaintiffs could proceed with their lawsuit, but that ruling is now out of play unless the plaintiffs appeal to the Supreme Court and the justices decide to intervene.

Basically, it is a muddle case of recusals, with seven originally being recused. An 8th was recused in April, and, because they did not have a quorum to make the decision, they had to retroactively say "our bad!" and vacate the original decision. As the [Cato Institute points out](#)

The upshot of all this is that the plaintiffs ended up botching their strategy of suing companies whose shares are owned by Fifth Circuit judges. This clever legerdemain successfully removed seven judges, but that left a quorum of nine. Of course, had the late-recusing eighth, Jennifer Elrod — who would've been expected to rule against the plaintiffs — recused when the first seven did, the court could not have vacated the panel opinion in the first place. We'll never know what happened after the court's prior decision to grant rehearing that caused Judge Elrod to recuse, but at least we're left with the second-best result: no strong decision from an important federal appellate court, but the reinstatement of the correct decision below.

Actually, as I wrote back in 2009, I would prefer that the lawsuit go forward. Unlike over heated un-factual feelings based dialogue on left wing programs, these alarmists would actually have to provide hard facts in a court of law. They would have to prove their case in front of the public, with the defense team shooting down all the hysterical and over-wrought talking points the plaintiffs put out there. Alarmists rarely debate, as they know their actual [evidence](#) doesn't hold water. Perhaps, once and for all, we could have put anthropogenic global warming in the graveyard.



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Posted by [William Teach](#) on June 3, 2010 11:11 am

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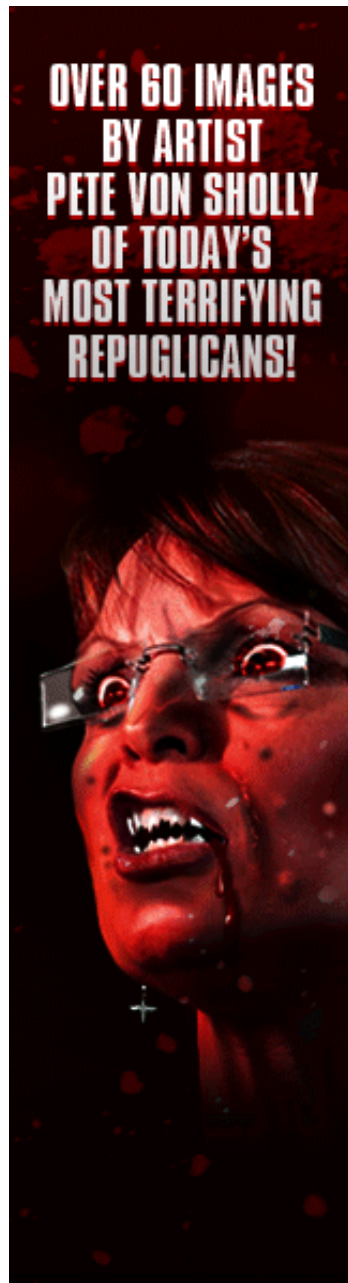
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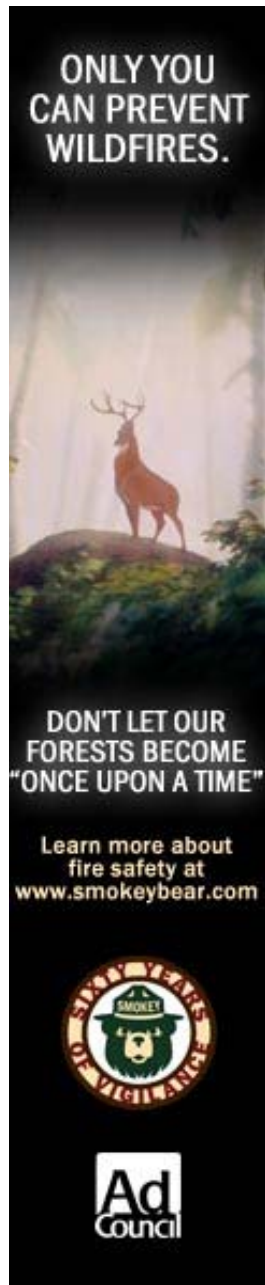


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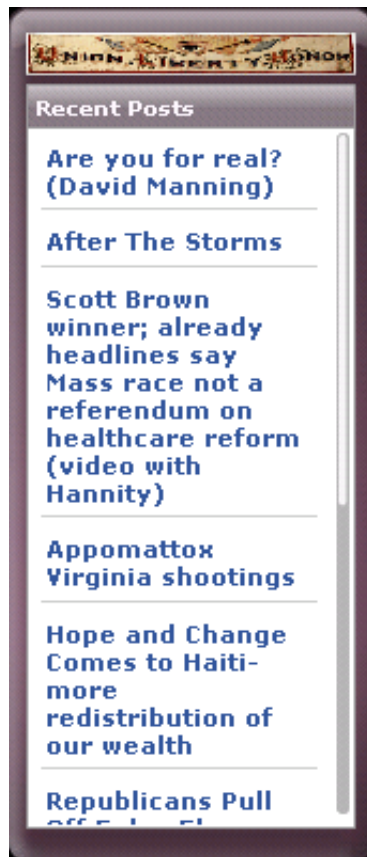


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