

No. 10-174

IN THE
Supreme Court of the United States

AMERICAN ELECTRIC POWER COMPANY INC., *et al.*,
Petitioners,

v.

CONNECTICUT, *et al.*,
Respondents.

**On Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit**

**BRIEF FOR AMICUS CURIAE
NATIONAL BLACK CHAMBER OF COMMERCE
AND AFFORDABLE POWER ALLIANCE
IN SUPPORT OF PETITIONERS**

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INTERESTS OF *AMICUS CURIAE*¹

Amici respectfully ask the Court to reverse the decision below. *Amici* are representatives of minority groups, senior citizen groups, Black-owned businesses, faith-based coalitions, and other constituencies typically not aligned with industry on many

¹ All parties have consented to the filing of this brief. Their consents are on file with the Clerk of the Court. *Amici* state that no counsel for a party authored this brief in whole or in part and that no person or entity, other than *Amici* and its counsel, contributed monetarily to the preparation and submission of this brief.

issues, but fundamentally concerned about energy and environmental policy, including climate change. Specifically, *Amici* are

- The National Black Chamber of Commerce[®], an association dedicated to economically empowering and sustaining African-American communities through entrepreneurship and capitalistic activity within the United States and throughout the world. The National Black Chamber of Commerce reaches 100,000 Black-owned businesses, which now total more than 1.9 million in the United States and account for over \$137 billion in annual sales. The National Black Chamber of Commerce has been joining the discussions and debate on energy policies since the emergence of the Kyoto Protocol during the first Clinton Administration.
- The Affordable Power Alliance, an *ad hoc* coalition of civil rights, African American, Latino, small business, senior citizens and faith-based advocacy organizations. Its members include:
 - The Congress of Racial Equality, which was founded in 1942 and is the third oldest and one of the “Big Four” Civil Rights groups in the United States;
 - The High Impact Leadership Coalition, a national coalition of faith-based leaders, ministers and churches;
 - The National Hispanic Christian Leadership Conference, the largest Latino Christian organization in America, with 16-million Latino evangelical members and 24,000 member churches;

Amici share a deep appreciation for how energy and environmental policies affect the poor, unrepresented and vulnerable populations throughout the United States. Each recognizes that one judicial decision in the Southern District of New York can materially and forever affect the quality of life of Latino farmers in New Mexico, small businesses in Atlanta, senior citizens on fixed incomes in Alaska, and innumerable others in between.

SUMMARY OF ARGUMENT

At its core, Plaintiffs' lawsuit asks a United States District Court judge to order five utilities, who are all major providers of electricity to the public, to reduce their greenhouse gas emissions to a level that the Court would determine to be "reasonable." Practically, the Court's lowering of these emissions will require an increase in rates to electric consumers, and those rate increases will fundamentally affect the economic and health and welfare of society.

The brunt of the financial implications of the Second Circuit's opinion, if mandated by this Court, would disproportionately and forever impact vulnerable populations throughout the United States. By spending more money on energy, the vulnerable will have less money to spend on food, healthcare and the necessities of life.

The key point in this case is the need for adequate representation. If energy and environmental policy in the United States involving climate change needs reshaping, it should be done by Congress, after meaningful input from all parties and peoples in the United States, rich and poor, of all colors and views and beliefs. But the Second Circuit's decision arrogates to the Judiciary the Congressional role of

developing and implementing energy and environmental policy. The Second Circuit's decision prevents *Amici* from weighing in on the historical issue of climate change policy and the direction of the Country.

ARGUMENT

I. IF ENERGY AND ENVIRONMENTAL POLICY IN THE UNITED STATES IS REWRITTEN, IT SHOULD BE DONE BY CONGRESS, ONLY AFTER MEANINGFUL INPUT BY ALL PARTIES AND PEOPLES THROUGH THE POLITICAL PROCESS, NOT BY JUDGES AND NOT BY JURIES

In support of petitioners in this truly landmark case, the National Black Chamber of Commerce and the Affordable Power Alliance adopt and join in the Amicus brief filed with this Court by the American Farm Bureau Federation and the National Mining Association.

As explained in that Brief, adjudicating Plaintiffs' claims would require a fact-finder to balance the range of social, cultural, and political concerns against an enormous range of governmental industrial, agricultural and individual activities that are only remotely related (if at all) to the alleged harm—and, after this, to assess and assign liability against certain sectors of society. Having one court determine energy policy in the United States would directly usurp the role of Congress. It should be Congress that designs and implements energy and environmental policy, and it should be Congress that determines how laws are made and not made.

The impact of the Second Circuit's decision on vulnerable populations would be far-reaching. The cost of energy substitutes required by a finding that legally permitted air emissions constitute a public nuisance would be passed on to consumers, and those costs would fall disproportionately on the poor. Study after study shows the costs of climate change will ravage the poor, darken dire situations even more, and reshape industrial America.

In a recent study of the health disparities related to climate change by the University of Southern California—supported by The Annenberg Foundation, the Energy Foundation, and the William and Flora Hewlett Foundation—the point was made very clear:

Climate change is an issue of great importance for human rights, public health, and social fairness because of its profound consequences overall and the very real danger that poor neighborhoods and people of color will suffer even worse harms and hazards than the rest of Americans . . . Low-income and minorities already spend as much as 25 percent of their entire income on just food, electricity and water—much more than most Americans.

The Climate Gap: Inequalities in How Climate Change Hurts Americans & How to Close the Gap (*available at*: http://college.usc.edu/pere/documents/The_Climate_Gap_Full_Report_FINAL.pdf).

But that report also made the key point relevant to this case:

Policymakers have a clear choice: ignoring the climate gap could reinforce and amplify current as well as socioeconomic and racial disparities. On the other hand, **policymakers** can proac-

tively close the climate gap through strategies that address the regressive economic and health impacts of climate change, and that lift all boats by ensuring that everyone shares equally in the benefits of climate solutions, and no one is left bearing more than their fair share of the burdens.

The Climate Gap: Inequalities in How Climate Change Hurts Americans & How to Close the Gap (*available at*: http://college.usc.edu/pere/documents/The_Climate_Gap_Full_Report_FINAL.pdf) (emphasis added).

This case is about policymaking. It is a matter of national policy how climate change should be managed in the United States. It is for Congress to decide whether the poor will pay more because of climate change controls, whether Latino incomes will fall as a result, and whether minorities in the United States will bear the burdens of global climate change caused by other nations. Under the political system, *Amici* should have the right to weigh in before Congress on how and when this nation responds to climate change—and on who the costs associated with climate change will ultimately come to rest. Under the Panel's opinion, that decision would be for the Southern District of New York to decide, a result contrary to the structure of American government.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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