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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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AMERICAN ELECTRIC POWER CO., INC., ET AL. *v.* CONNECTICUT ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 10–174. Argued April 19, 2011—Decided June 20, 2011

In *Massachusetts* v. *EPA*, 549 U. S. 497, this Court held that the Clean Air Act authorizes federal regulation of emissions of carbon dioxide and other greenhouse gases, and that the Environmental Protection Agency (EPA) had misread that Act when it denied a rulemaking petition seeking controls on greenhouse gas emissions from new motor vehicles. In response, EPA commenced a rulemaking under §111 of the Act, 42 U. S. C. §7411, to set limits on greenhouse gas emissions from new, modified, and existing fossil-fuel fired power plants. Pursuant to a settlement finalized in March 2011, EPA has committed to issuing a final rule by May 2012.

The lawsuits considered here began well before EPA initiated efforts to regulate greenhouse gases. Two groups of plaintiffs, respondents here, filed separate complaints in a Federal District Court against the same five major electric power companies, petitioners here. One group of plaintiffs included eight States and New York City; the second joined three nonprofit land trusts. According to the complaint, the defendants are the largest emitters of carbon dioxide in the Nation. By contributing to global warming, the plaintiffs asserted, the defendants' emissions substantially and unreasonably interfered with public rights, in violation of the federal common law of interstate nuisance, or, in the alternative, of state tort law. All plaintiffs ask for a decree setting carbon-dioxide emissions for each defendant at an initial cap, to be further reduced annually.

The District Court dismissed both suits as presenting nonjusticiable political questions, but the Second Circuit reversed. On the threshold questions, the Circuit held that the suits were not barred by the political question doctrine and that the plaintiffs had ade-

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quately alleged Article III standing. On the merits, the court held that the plaintiffs had stated a claim under the "federal common law of nuisance," relying on this Court's decisions holding that States may maintain suits to abate air and water pollution produced by other States or by out-of-state industry, see, *e.g.*, *Illinois* v. *Milwaukee*, 406 U. S. 91, 93 *(Milwaukee I)*. The court further determined that the Clean Air Act did not "displace" federal common law.

Held:

1. The Second Circuit's exercise of jurisdiction is affirmed by an equally divided Court. P. 6.

2. The Clean Air Act and the EPA action the Act authorizes displace any federal common-law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired power plants. Pp. 6–16.

(a) Since *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 78, recognized that there "is no federal general common law," a new federal common law has emerged for subjects of national concern. When dealing "with air and water in their ambient or interstate aspects, there is a federal common law." *Milwaukee I,* 406 U. S., at 103. Decisions of this Court predating *Erie*, but compatible with the emerging distinction between general common law and the new federal common law, have approved federal common-law suits brought by one State to abate pollution emanating from another State. See, *e.g.*, *Missouri* v. *Illinois*, 180 U. S. 208, 241–243. The plaintiffs contend that their right to maintain this suit follows from such cases. But recognition that a subject is meet for federal law governance does not necessarily mean that federal courts should create the controlling law. The Court need not address the question whether, absent the Clean Air Act and the EPA actions it authorizes, the plaintiffs could state a federal common-law claim for curtailment of greenhouse gas emissions because of their contribution to global warming. Any such claim would be displaced by the federal legislation authorizing EPA to regulate carbon-dioxide emissions. Pp. 6–9.

(b) "[W]hen Congress addresses a question previously governed by a decision rested on federal common law the need for such an unusual exercise of law-making by federal courts disappears." *Milwaukee* v. *Illinois*, 451 U. S. 304, 314 *(Milwaukee II)*. Legislative displacement of federal common law does not require the "same sort of evidence of a clear and manifest [congressional] purpose" demanded for preemption of state law. *Id.*, at 317. Rather, the test is simply whether the statute "speak[s] directly to [the] question" at issue. *Mobil Oil Corp.* v. *Higginbotham*, 436 U. S. 618, 625. Here, *Massachusetts* made plain that emissions of carbon dioxide qualify as air pollution subject to regulation under the Clean Air Act. 549 U. S., at 528–529. And it is equally plain that the Act "speaks directly" to

emissions of carbon dioxide from the defendants' plants. The Act directs EPA to establish emissions standards for categories of stationary sources that, "in [the Administrator's] judgment," "caus[e], or contribut[e] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." §7411(b)(1)(A). Once EPA lists a category, it must establish performance standards for emission of pollutants from new or modified sources within that category, §7411(b)(1)(B), and, most relevant here, must regulate existing sources within the same category, §7411(d). The Act also provides multiple avenues for enforcement. If EPA does not *set* emissions limits for a particular pollutant or source of pollution, States and private parties may petition for a rulemaking on the matter, and EPA's response will be reviewable in federal court. See §7607(b)(1). The Act itself thus provides a means to seek limits on emissions of carbon dioxide from domestic power plants—the same relief the plaintiffs seek by invoking federal common law. There is no room for a parallel track. Pp. 9–11.

(c) The Court rejects the plaintiffs' argument, and the Second Circuit's holding, that federal common law is not displaced until EPA actually exercises its regulatory authority by setting emissions standards for the defendants' plants. The relevant question for displacement purposes is "whether the field has been occupied, not whether it has been occupied in a particular manner." *Milwaukee II,* 451 U. S., at 324. The Clean Air Act is no less an exercise of the Legislature's "considered judgment" concerning air pollution regulation because it permits emissions until EPA acts. The critical point is that Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from power plants; the delegation displaces federal common law. If the plaintiffs in this case are dissatisfied with the outcome of EPA's forthcoming rulemaking, their recourse is to seek Court of Appeals review, and, ultimately, to petition for certiorari.

The Act's prescribed order of decisionmaking—first by the expert agency, and then by federal judges—is yet another reason to resist setting emissions standards by judicial decree under federal tort law. The appropriate amount of regulation in a particular greenhouse gas-producing sector requires informed assessment of competing interests. The Clean Air Act entrusts such complex balancing to EPA in the first instance, in combination with state regulators. The expert agency is surely better equipped to do the job than federal judges, who lack the scientific, economic, and technological resources an agency can utilize in coping with issues of this order. The plaintiffs' proposal to have federal judges determine, in the first instance, what amount of carbon-dioxide emissions is "unreasonable" and what level of reduction is necessary cannot be reconciled with Congress' scheme.

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Pp. 12–15.

(d) The plaintiffs also sought relief under state nuisance law. The Second Circuit did not reach those claims because it held that federal common law governed. In light of the holding here that the Clean Air Act displaces federal common law, the availability *vel non* of a state lawsuit depends, *inter alia*, on the preemptive effect of the federal Act. Because none of the parties have briefed preemption or otherwise addressed the availability of a claim under state nuisance law, the matter is left for consideration on remand. Pp. 15–16.

582 F. 3d 309, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, BREYER, and KAGAN, JJ., joined. ALITO, J., filed an opinion concurring in part and concurring in the judgment, in which THOMAS, J., joined. SOTOMAYOR, J., took no part in the consideration or decision of the case.