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****MEDIA ALERT****

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EPA Global Warming Litigants – Flawed Science and Public Nuisance Law
“HOW MUCH IS ENOUGH TO BE A ‘CONTRIBUTING FACTOR?’”

U.S. SUPREME COURT AMICI BRIEF

SUBMITTED BY SOUTHEASTERN LEGAL FOUNDATION

American Electric Power Company, Inc., et al. v. State of Connecticut, et al. (No. 10-174)

WASHINGTON, DC: The **Southeastern Legal Foundation** (SLF), one of the lead litigants in the ongoing multi-party challenges against the U.S. Environmental Protection Agency’s (EPA) greenhouse gas emissions regulations, today submitted an *amici curiae* brief to the Supreme Court of the United States in *AEP, Inc., et al. v. State of Connecticut, et al.* (No. 10-174). SLF filed on behalf of itself and three distinguished scientists (**Ross McKittrick**, Ph.D., University of Guelph Economics Professor specializing in international climate analysis; **Laurence I. Gould**, Ph.D., University of Hartford Physics Professor and climate analysis expert; and **Patrick J. Michaels**, Ph.D., in his individual capacity, and serves as Distinguished Senior Fellow, George Mason University School of Public Policy and Senior Fellow in Environmental Studies at the Cato Institute).

The plaintiff States allege that the power companies’ carbon emissions constitute a legally redressable “public nuisance” contributing to global warming. A U.S. District Court dismissed the complaint under the political question doctrine. The U.S. Court of Appeals for the Second Circuit reversed, holding that the plaintiffs met the standing requirements of traceability and redressability because the “injury” would be less if the defendants’ emissions were reduced, a basic “every little bit counts” argument that SLF alleges has no basis in jurisprudence.

In its *amici*, SLF argues that the infinitesimally small global percentage of emissions by the power companies involved in the Supreme Court appeal cannot possibly be an actionable “cause” for public nuisance and global warming. SLF, which continues to compile scientific data exposing the “assumptions” underlying the new EPA regulatory regime as baseless in fact, makes several key points for the high court’s consideration:

- The defendant power companies' carbon emissions make such a *de minimis* contribution to the global temperature that they cannot possibly be traced or redressed as required by definitive case law. From the SLF brief:

“The ‘relief’ plaintiffs seek would accomplish a temperature reduction of 0.00071 degrees Celsius, or 7.1 ten-thousandths of a degree, 70 times smaller than the smallest change that can be detected.” (p. 9)

“. . . the annual emissions reductions prayed for by plaintiffs in the first year would be replaced by growth in China alone in 13 days.” (p. 16)

- Though it is assumed by many that there is no meaningful scientific controversy surrounding human-caused global warming, the UN Intergovernmental Panel on Climate Change (IPCC) reports on which the plaintiffs rely *plainly disclose substantial scientific uncertainty about multiple climate processes, raising serious doubts about the extent to which global warming can be attributed to human emissions*. Therefore, the Court should proceed with caution about the plaintiffs' "every little bit counts" argument.
- The political question doctrine, invoked by the federal district court in this case, is perfectly suited to protect the judiciary from controversies that are best decided in a more specific legislative and judicial environment – and not in this case.

“The level of precision in measurement of global average surface temperature is 5/100 of the degree Celsius, so the plaintiffs' argument falls apart because it would be impossible to even measure whether the complete reduction of defendants' carbon emissions had any effect whatsoever,” said Shannon L. Goessling, SLF Executive Director and Chief Legal Counsel. **“Can this possibly be the legal basis on which to find that any one of the 6 million U.S. ‘major emitters’ as defined by the EPA – which includes the EPA buildings and the Supreme Court building itself – are legally liable for ‘causing’ global warming?”**

“This demonstrates what the EPA itself has described as ‘absurd’ results in this entire global warming regulatory debacle,” Goessling added.

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