

Ninth Circuit Dismisses Federal Nuisance Claim Based on Global Warming

The City of Kivalina sits on the tip of a six-mile barrier reef on the northwest coast of Alaska, about 70 miles north of the Arctic Circle. For decades, the city has experienced serious erosion problems from waves and sea storms. In recent years, the problems have gotten worse, threatening to destroy city buildings and infrastructure and even the city's very existence. Seeking redress in federal court, the city sued multiple oil, energy and utility companies, claiming damages from global warming under the federal common law of public nuisance. The court, however, dismissed the city's claims, ruling they were precluded by the Clean Air Act. As the court explained, federal common law is subject to the paramount authority of Congress – as a result, there is no right to assert a federal common law claim when a federal statute speaks directly to the question at issue. Relying on the Supreme Court's decision in [American Electric Power Co. v. Connecticut](#), 131 S. Ct. 2527 (2011), the court held that the Clean Air Act speaks directly to the issue of greenhouse gas emissions from stationary sources and therefore displaces any claim based on the federal common law of public nuisance, regardless of whether the claim seeks damages or injunctive relief. As a result, the court said, any federal solution to the dire circumstances facing the city lies with the legislative and executive branches of government, not the judiciary. [Native Village of Kivalina v. ExxonMobil Corporation](#) (9th Cir. Sept. 21, 2012)

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