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Maryland Supreme Court appears wary of case against fossil fuel companies

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Maryland Supreme Court justices on Monday morning appeared wary of local jurisdictions’ argument that oil companies pay damages for climate change due to alleged deceptive marketing.

The lawyer representing Baltimore City, Annapolis and Anne Arundel County was pressed at the hearing by justices on what deceitful actions the oil companies did and whether changes to the marketing could have sufficiently decreased the impact of climate change as claimed, in a way that is not related to regulating emissions on a federal level.

“You do in your complaints identify concealment and misrepresentation, but it’s often wrapped up in allegations that are, it seems to me, separate from that,” Chief Justice Matthew Fade said, while questioning the lawyer for the cities and county.

The jurisdictions each separately sued fossil fuel companies, starting in 2018, over the impact greenhouse gas emissions have had on their communities. Lower-court judges dismissed all three cases within the past two years.

The cities and county are jointly asking the Maryland State Supreme Court to overturn those dismissals. The court was asked to decide whether state law can apply to requests for financial compensation for damages caused by out-of-state greenhouse gas emissions.

If the cases go to trial, the jurisdictions are pushing for clearer product warnings by the companies related to their influence on climate change and payments, so jurisdictions can address the local impacts of climate change.

The lawsuits are part of a movement involving 35 states and municipalities that have sued fossil fuel companies over the local impact of greenhouse gas emissions. Only two other State Supreme Courts have considered such cases, in Hawaii and Colorado, both of which sided with the cities suing the fossil fuel companies. The Trump administration has been working alongside the oil industry to push against this type of litigation and legislation, according to reporting from The New York Times, including opposing a bill in New York that would have required oil companies to pay for projects to protect from damages caused by climate change.

The U.S. Environmental Protection Agency identifies greenhouse gases produced by human activity as the most significant driver of rising global temperatures and climate change since the mid-20th century. Global temperatures have been increasing faster than typical since at least 1982, according to the U.S. National Oceanic Administration, and 2024 was the warmest year since temperature records began in 1850.

The residents of the county and cities have and will continue, their lawyers wrote in briefs, to “suffer severe harm” caused by greenhouse gas emissions, including flooding, extreme heat and sea-level rise.

The lawyer for the fossil fuel companies sued by the jurisdictions — which include major corporations Chevron, BP, Shell, Exxon and Marathon Oil — argued that the case presented by the cities and county is a matter of federal law and regulation beyond the state’s jurisdiction. The attorney representing the companies, Theodore Boutrous, said the damages sought by the cities and county would effectively regulate the companies internationally and could impact global customers because of the financial damages sought by the cities and county.

“They’re using the lawsuit to try to change market forces to reduce emissions. They’re using the force of law, state law, to try to reduce emissions below levels that the EPA has found are acceptable,” Boutrous said. “We’re talking about a product that is essential to running our lives, to national security, to our economy.”

Boutrous added that while the cities are not directly asking to regulate the emissions of the sued companies, a ruling in favor of the cities and county could alter the global marketplace and spread state law beyond its intended scope, calling the warning requirement sought by the jurisdictions “a breathtakingly broad duty.”

The lawyer representing the cities and county, Victor Sher, argued that the companies have waged a “campaign of disinformation” and failed to warn customers about the possible impact of their products.

“These cases are causally tethered to that deception,” Sher said. “Our burden [in court] will be to show that the deception and the failure to warn made a difference, and the case is entirely about that difference in these communities. It’s not about climate change writ large.”

While questioning Sher’s argument, justices emphasized a lack of specific examples of deception by the companies; limited sense of the impact better warning customers in Maryland would have had on local climate change impacts; and the global scope of the companies and the changing climate. Justice Steven Gould questioned the assumption that Maryland consumers were unaware of the effects of greenhouse gases, noting that the information has been available in the public sphere for decades.

At trial, if allowed to proceed by the Maryland Supreme Court, Sher said the jurisdictions’ counsel would present evidence that the companies knew the harms their products could cause and denied that information to the public. Sher argued that the companies initially publicly denied their impact on the environment and later engaged in “greenwashing,” a marketing tactic in which companies attempt to appear more environmentally friendly.

More notification to Maryland customers about the risk of greenhouse gases would have prevented only “some portion” of the impact of climate change in Maryland, Sher argued. There is no reason why, Sher said, companies can’t adhere to both federal emission regulations, like the Clean Air Act, and comply with issuing climate-centered warnings.

The justices also questioned Boutrous’ argument, pointing out that the municipalities are not seeking regulation of production, as Boutrous argued that the Clean Air Act prevents states from regulating out-of-state greenhouse gas emissions. Justice Brynja Booth questioned Boutrous’ argument by asking the lawyer if the problems he foresees are a result of market forces course-correcting, how the lawsuit could violate the prioritization of federal regulations, and pointed out the two other state Supreme Courts that ruled against the oil companies.

The lawsuits, Boutrous argued, would effectively regulate emissions by imposing financial burdens on the companies, overriding the federal standards.

As the third state supreme court to hear this case, the Maryland court’s ruling might help set a precedent for state and city-run climate change litigation across the country. Lawyers for ExxonMobil and Suncor asked the U.S. Supreme Court this year to review the decision by Colorado’s highest court in favor of Boulder’s case against the oil companies.

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