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ENERGY IN THE LAW

NEWS ALERT

February 28, 2025

Supreme Court Declines to Address Threshold Issue in Climate Change Lawsuit



In January, the United States Supreme Court decided not to weigh in on a climate change lawsuit between the City of Honolulu and Sunoco. The lawsuit alleges that oil companies made misleading statements about the impacts of their fossil fuel products in creating human-induced climate change. However, the Supreme Court's decision says nothing about the merits of the underlying claims. The resulting headlines spelled out "doom" for the industry's defenses, but what does the Supreme Court's denial actually mean?

The issue before the Supreme Court only pertained to which court should hear the case. Sunoco and other defendants, including ExxonMobil, BP, Shell, ConocoPhillips, BHP Group, Marathon Petroleum, and Chevron, sought trial in federal court, instead of state court in Hawaii where the plaintiffs filed. After the federal district court denied the request to move the case to federal court and remanded the case to state court, the petitioners appealed that decision to the Ninth Circuit Court of Appeals. The Ninth Circuit agreed with the City of Honolulu, holding that the case must remain in state court. Sunoco then appealed to the U.S. Supreme Court, asking the Court to answer whether the case must be heard in state court or federal court.

Does the Supreme Court's decision not to hear the case signal its approval of litigation seeking to hold oil and gas companies accountable for climate change? Not necessarily. Only about 1% of petitions for writ of certiorari are granted. There are several reasons why the Court may have decided not to hear the case. Several arguments made by the parties are "issues of first impression," or arguments that have never been made before. The Court may want the lower courts to weigh in on the issues of first impression. This allows review after full briefing in the district and lower appellate courts. Declining to review a preliminary issue also decreases the chance that the Supreme Court must hear multiple appeals of the same case.

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Regardless of its reasoning, the Supreme Court's refusal to hear this limited interlocutory issue was not a decision on the merits of any party's case. And, the fact that it denied certiorari without explanation means that the Court could have done so for purely procedural or jurisdictional reasons. Because it did not specify, we will have to wait for the next time a climate change case goes before the Court to ascertain its appetite for these cases.

The next opportunity for the Supreme Court to weigh in on climate change litigation may come sooner rather than later. The parties in *Alabama v. California*, No. 22O158, have petitioned the Supreme Court to hear their similar case. Alabama, joined by 18 other Republican attorneys general, filed a bill of complaint with the Supreme Court in May 2024, arguing that the Supreme Court has original and exclusive jurisdiction over the action. They ask the Court to block climate change liability lawsuits against various companies in the traditional energy sector, brought by California and four other Democratic states. Read more about this lawsuit [here](#). The Supreme Court has not determined if it will hear the case.

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