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Biden Administration Agrees Landmark Climate Case Against Suncor and Exxon Should Stay in Local Courts



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Communities harmed by fossil fuel-driven climate change applaud recommendation

In a key development for climate accountability lawsuits around the U.S., the Office of the Solicitor General recommended today that the Supreme Court reject Exxon Mobil and Suncor's petition for certiorari and allow the City of Boulder and Boulder County's case against the fossil fuel companies to proceed in Colorado state court.

In June 2022, the companies sought Supreme Court review on two questions – whether federal common law actually governed the municipalities' state law tort claims and whether federal courts thus have exclusive jurisdiction over the case – after the Tenth Circuit decided that the case belonged in state court. In October, the Supreme Court requested the views of the U.S. Government on whether the Supreme Court should hear the case and how it should ultimately decide the questions presented. The Supreme Court will now decide whether to follow the Solicitor General's recommendation and allow the Tenth Circuit's decision to stand or grant certiorari and hear the case.

EarthRights General Counsel Marco Simons issued the following statement:

"We are encouraged by the Solicitor General's recommendation that the Supreme Court decline the fossil fuel companies' petition for certiorari in this case, and we hope the Supreme Court ultimately follows the U.S. government's advice and allows this crucial climate litigation to move forward without further delay.

"Since the Colorado communities filed this case in 2018, Exxon Mobil and Suncor have consistently sought to delay the litigation—moving the case from court to court and losing each step along the way. Today's development brings these communities one step closer to holding fossil fuel companies accountable for their misconduct and obtaining remedies for the serious climate harms Colorado residents are facing.

“This is not a situation in which the Supreme Court needs to settle disagreements among appellate courts around the country. On the narrow questions presented for the Supreme Court’s consideration, there is already a uniform interpretation of the law. Each of the circuit courts of appeal that have considered the questions Exxon Mobil and Suncor asked the Supreme Court to weigh in on has reached the same conclusion in rejecting the companies’ position.

“The argument defendants put forth in their petition for certiorari seeks to circumvent settled law, and if accepted, would radically expand the scope of federal courts’ jurisdiction. The Solicitor General’s office correctly concluded that this case presents state-law claims, which state courts regularly hear and decide without issue, and that this litigation thus belongs in state court.”

Boulder County Commissioner Ashley Stolzmann issued the following statement:

“The devastating impacts of the climate crisis are not a distant possibility; we are already experiencing them in the communities we call home. Last year’s mid-winter Marshall Fire destroyed over a thousand homes in Boulder County and upturned the lives of thousands of families. The Marshall Fire *alone* cost upwards of \$2 billion in damage — and that is just one of the many impacts we have seen locally since this case launched in 2018. As our communities suffer, Exxon and Suncor continue to take in record profits while taxpayers shoulder the burden created by Big Oil.”

City of Boulder Mayor Aaron Brockett issued the following statement:

“The Boulder community is already feeling the effects of the climate crisis. Fires, floods, and extreme weather not only pose threats to our community, but they are also very costly to taxpayers. The companies responsible for these costs must pay.”

San Miguel County Commissioner Hilary Cooper issued the following statement:

“San Miguel County continues to face rapidly increasing challenges from the changing climate. Our economy relies on a snowpack whose timing is no longer reliable. Our lower-elevation municipal drinking and irrigation water systems, dependent on the snowpack, are under immediate threat of becoming unreliable. And our high-elevation desert ecosystems are facing aridification, impacting ranching and wildlife. This week, the Town of Norwood experienced sudden,

unprecedented flooding in homes and businesses due to a combination of increased snow, suddenly warming temperatures, and a stormwater drainage system that was not designed for today's changing climate. While fossil fuel companies like Exxon and Suncor make record profits, we face mounting costs and increasing uncertainty over what to expect next."

Niskanen Center Chief Counsel David Bookbinder issued the following statement:

"We're pleased that, like every appellate court to consider the issue, the United States recognizes that these cases belong in state court, and we believe that the Supreme Court will reach the same conclusion."

Background:

In 2018, Boulder County, San Miguel County, and the City of Boulder—with legal support from EarthRights International, the Hannon Law Firm, the Niskanen Center, and other co-counsel—filed a lawsuit against Exxon and Suncor for their decades of misinformation and other contributions to the climate crisis. The communities, which are already experiencing significant climate change impacts, demanded that these companies pay their fair share of the costs associated with these impacts so that the costs do not fall disproportionately on taxpayers.

Shortly after the communities filed their case in Colorado state court, defendant fossil fuel companies sought to remove the case to federal court. Both the federal district court and Tenth Circuit Court of Appeals agreed that the case should proceed, as filed, in state court. However, following its 2020 decision in the *County of Boulder* case, the Tenth Circuit needed to revisit these jurisdiction questions in light of the Supreme Court's decision in *BP v. Baltimore*.

In February 2022, the Tenth Circuit ruled that the Colorado climate case should indeed proceed in state, not federal, court. Defendants Exxon Mobil and Suncor then filed a petition for a writ of certiorari, asking the Supreme Court to hear the case and answer two narrow questions related to federal removal jurisdiction.

In October 2022, the Supreme Court invited the Solicitor General to file a brief expressing the views of the United States. Though the Supreme Court is not required to follow the Solicitor General's recommendation, it has chosen to do so in the vast majority of cases in which it has expressly invited the Solicitor General's views. If the

Supreme Court rejects the petition, the Tenth Circuit's 2022 decision stands, and the litigation will proceed in Colorado state court.

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