

The oil industry and its allies are attempting a full-court press to convince the Supreme Court justices they should shield them from climate liability lawsuits brought by cities and states throughout the U.S—and that they should do so now, before they face any court trials over climate-related damages.

This unusual full-court press comes in the case of *City & County of Honolulu v. Sunoco LP,* which is the public nuisance lawsuit filed by Honolulu in 2020 against the major oil companies for allegedly knowing about the dangers of their product and concealing that information from the public for decades. (It is well documented that they've known for years.)

The Supreme Court discussed whether to take the Honolulu case in its conference on June 6. The high court has now asked the Biden administration to share its view on the issues involved in the appeals by the oil and gas companies. In a one-line order from June 10, the justices invite the U.S. Solicitor General to submit a brief in the case. This "invitation" will mean a delay in the decision by the justices of whether to take up the case. As my Legal Planet colleague Richard Frank notes below in the comments, that means the petition is very much on their radar and we can expect a decision in fall.* It's worth noting that Justice Samuel Alito did not

participate with the other justices in considering the petition. CBS News reports that is “likely because Alito owned stock in ConocoPhillips, one of the companies named in the suits.”

The Honolulu case is just one of dozens of such cases, but it’s likely to be the first to go to trial given that the Hawai’i Supreme Court gave it the green light last October. That ruling launched a flurry of activity that is coming to a head this week. It’s not just the oil industry asking the U.S. Supreme Court to protect them; 20 Republican attorneys general have filed briefs on their side. Right-wing advocacy groups have launched a public messaging campaign. And conservative editorial pages are urging the justices to intervene.

“Can a single state or locality dictate energy policy for the rest of the U.S.?” asks the Wall Street Journal editorial board in hyperbolic fashion. “The Supreme Court has an opportunity to stop these unconstitutional coups.” Conservative scholar John Yoo took it several steps further, implausibly connecting the Honolulu case to Donald Trump’s 34 felony convictions handed down by a Manhattan jury. “Even if [the Supreme Court justices] can’t intervene immediately to correct the errors of the Trump trial, justices can address the misuse of the courts in a crucial climate-change case,” Yoo writes in the National Review. “As in the recently concluded Trump case, Honolulu and other cities have constructed a complicated but tissue-thin legal claim to conceal a political agenda,” writes Yoo, who co-authored an amicus brief in the case.

Then there’s the PR campaign by the Alliance for Consumers, an organization that defines its mission as “fighting efforts to divert consumers’ money toward class-action lawyers and bureaucracy.” The group claims that the expansion of public nuisance litigation is a way for “left-wing officials” to go after beef, cars, and air conditioners. Rolling Stone reports that the influential group has run a series of Facebook ads since April, encouraging the justices to take action. “Should a city like Honolulu be able to set energy policy for the rest of the United States?” the ad says. If that language sounds familiar it’s because the Wall Street Journal editorial board posed the exact same question. “A case before the Supreme Court would let that happen if they don’t intervene,” the ad goes on.

Asking whether a single city should set energy policy for the nation is a powerful but disingenuous rhetorical question. The real questions before the justices are basically: Should the U.S. Supreme Court really be reviewing a State Supreme Court decision at this early stage, where it is simply denying a motion to dismiss and

letting a case proceed to trial? And does the Clean Air Act, or any federal statute, really preempt state court consumer deception claims?

If the Supreme Court interjects here, it could impact a growing number of cases. Attorneys general in at least nine states—California, Connecticut, Delaware, Massachusetts, Minnesota, New Jersey, Rhode Island, Vermont, and the District of Columbia—as well as dozens of municipal governments in California, Colorado, Hawai'i, Maryland, New Jersey, New York, Oregon, South Carolina, and Puerto Rico, have filed lawsuits. Chicago was the latest city to join the pack this February. Michigan's AG said in May that the state was planning to file a similar lawsuit. The biggest and potentially the most impactful case is the one filed in September 2023 by California Attorney General Rob Bonta and Gov. Gavin Newsom.

These plaintiffs make clear that they are not chasing international greenhouse gas emissions or crafting a national energy policy, but rather enforcing their consumer protection laws. State courts are, of course, perfectly normal venues for holding defendants accountable to such laws and providing compensation to victims. As my colleague Cara Horowitz points out, this was the case for Big Tobacco and lead paint litigation. At this stage, what we have is a wave of climate lawsuits simply moving through the court system, like any other litigation. What would be abnormal is for the Supreme Court justices to short circuit that process just because powerful defendants appear to fear a trial.

I've referred to this pressure campaign a couple of times as a full-court press, but perhaps the right sports metaphor is a "Hail Mary."

This post was updated on Monday June 10 to include the Supreme Court's request that the U.S. Solicitor General submit a brief in the case.