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As states weigh whether to adopt climate accountability legislation like Vermont’s Climate Superfund Act, some are hesitating out of concern that the Second Circuit’s decision in *City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021), dooms such efforts. That concern is misplaced.

In fact, now is precisely the time for states to act. Not only is *City of New York v. Chevron* limited in scope and geographic reach, but the U.S. Environmental Protection Agency’s (EPA’s) recent move to repeal its foundational climate authority makes bold state action all the more critical.

Here’s why states should not wait:

1. City of New York v. Chevron Does Not Apply to Vermont-Style Superfund Laws

City of New York v. Chevron addresses whether a city can use state tort law to regulate global greenhouse gas (GHG) emissions. In a highly unusual move, the court found such claims displaced by federal common law due to what the court considered to be the federal government’s exclusive and overriding interest in the regulation of GHG emissions. New York City attempted to impose liability (and injunctive relief in the event defendants failed to pay damages) under nuisance law on fossil fuel producers for the downstream use of their products worldwide—a move the court deemed incompatible with federal and international frameworks.

Vermont’s Climate Superfund Act is categorically different. It is not regulatory; it does not seek to curtail emissions or interfere with energy markets. Instead, it establishes a one-time, strict liability cost-recovery framework to secure compensation for climate adaptation costs incurred within the state. Much like the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA—the original Superfund), Vermont’s law assigns financial responsibility based on historical emissions during a defined period and directs funds to locally administered climate resilience projects.

This retrospective, compensatory structure falls well outside the scope of the *City of New York v. Chevron* ruling.

2. *City of New York v. Chevron* Was Wrongly Decided and Is Not Binding Outside the Second Circuit; In Fact, Other Courts Are Charting a Better Path

The *City of New York v. Chevron* ruling is not the supreme law of the land. The court’s aggressive preemption theory (namely, that federal common law displaces state nuisance law claims for remedies from interstate GHG emissions, notwithstanding the fact that federal common law itself in such cases no longer exists due to Clean Air Act displacement) has been soundly criticized by academics, limited by subsequent Second Circuit decisions, and – in any event – is not binding outside the Second Circuit. Other jurisdictions remain free to legislate and litigate

independently.

In fact, many courts have rejected those sweeping preemption arguments in similar contexts. Courts across the country have rejected broad federal preemption arguments in climate accountability cases, affirming that states may pursue state-law claims for deception and local climate harms. For example, both federal and state courts in Minnesota, Colorado, and Hawaii have upheld state tort and consumer protection claims against fossil fuel companies, emphasizing states’ authority to protect their residents and seek damages for climate impacts, even where federal policy is implicated.

If even these more “regulatory” claims can survive *City of New York v. Chevron*-style preemption arguments, then Vermont’s compensatory scheme and other laws modeled after it are on even firmer footing.

3. EPA’s Plan to Repeal the Endangerment Finding Undermines Federal Climate Protections Making State Action Even More Urgent and Defensible

The stakes for state action may soon get higher. EPA Administrator Lee Zeldin recently announced plans to repeal the agency’s endangerment finding, the scientific determination that GHGs pose a threat to public health and welfare which serves as the foundation for federal climate regulations under the Clean Air Act.

If successful, this repeal would:

- Strip EPA of its authority to regulate GHGs under the Clean Air Act, undermining vast swaths of federal climate policy;
- Weaken the legal doctrine of displacement, which, as seen in *City of New York v. Chevron*, previously blocked federal tort lawsuits against major polluters;
- Potentially open the door to sweeping federal common law claims that could result in costly and unpredictable court-ordered emissions reductions; and
- Embolden states to regulate GHGs more aggressively in the absence of federal leadership, as states would no longer be able to rely on EPA to control climate pollution.

Importantly, this potential action from EPA also strengthens the legal justification for state action, as the federal government signals a retreat from climate responsibility. “Upending the endangerment finding might also allow states to regulate greenhouse gases from cars and trucks,” as UCLA Law’s Ann Carlson has written here at Legal Planet. The repeal of the endangerment finding removes one of the key justifications a minority of courts like *City of New York* have used to defer to federal authority. This shift provides greater legal room (and greater moral responsibility) for states to protect their residents and environments through laws like Vermont’s Climate Superfund Act. In short: if EPA won’t regulate, states must step in.

4. States Are—and Must Be—Laboratories of Democracy

The U.S. Constitution envisions states as laboratories of democracy, a role never more vital than in the face of climate breakdown. From civil rights to marriage equality to environmental protection, state leadership has often paved the way for national reform.

Vermont’s Climate Superfund Act exemplifies this principle. It is innovative, constitutionally grounded, and laser-focused on ensuring that those who profit from selling polluting products pay to repair the damage. Other states (including the near dozen that are currently considering similar legislation, from California to Massachusetts) should follow suit.

Waiting for all litigation to resolve will only delay much-needed investments in climate resilience and cede the legal narrative to fossil fuel companies. Waiting is also impractical and irresponsible. Every storm, fire, and flood event underscores the urgency of climate action and the injustice of foisting the cost on taxpayers while polluters profit.

The *City of New York v. Chevron* case does not doom climate superfund laws. It is limited in scope, wrongly decided, and not binding on most states. The legal ground is shifting, and states have both the authority and the imperative to act now.

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