



11-2020

A Shift in Environmental Accountability

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Recommended Citation

Nicholas Wolf, *A Shift in Environmental Accountability*, 2 Fordham Undergrad. L. Rev. (2020).
Available at: <https://research.library.fordham.edu/fulr/vol2/iss1/3>

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NOTE

A SHIFT IN ENVIRONMENTAL ACCOUNTABILITY*Nicholas Wolf**

When counties and cities across the United States have sought compensation for environmental damages, they have taken legal action against large oil companies and other corporations. The courts have almost exclusively ruled in favor of the defendants. Plaintiffs have often accused the defendants of deliberately spreading inaccurate information regarding climate change. Additionally, plaintiffs have asserted that a variety of infrastructural damages have been directly caused by environmental malpractice¹⁵¹ from energy corporations. The expansive legal power that companies such as BP, Chevron, Exxon Mobil, Shell, and ConocoPhillips possess have allowed them to dodge allegations of primordial environmental conduct. These companies' extensive utilization of fossil fuels has been the primary contributor to the global climate change, yet they have not been compensated for these damages. Whether these victories of being unaccountable of the damages have been achieved due to lack of direct evidence or exploitation of legal loopholes in federal environmental policy, these corporations have emerged relatively unscathed.

BP P.L.C. v. Mayor and City Council of Baltimore¹⁵² has recently changed this narrative. The fourth circuit court of appeals has allowed this case to remain in Maryland state courts, a large victory for the city of Baltimore. Allowing an environmental case of this magnitude to endure in state court is a drastic swing from traditional environmental proceedings. This decision signifies a shift in how environmental policy can be reviewed in civil law, and how it no longer may be a purely federal and legislative issue. Moreover, this ruling displays the potential for environmental damages to be held with the same legal weight as other forms of property destruction. Thus, this ruling will reshape the legal implications of how energy companies can be held legally accountable for ecological negligence.

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¹⁵¹ Harper Neidig, *Supreme Court allows climate case targeting Big Oil to proceed, The Hill* (10/22/19 02:02 PM), <https://thehill.com/homenews/news/466937-supreme-court-rejects-oilcompanies-request-to-intervene-in-state-lawsuit-over> (Discussing a district court ruling to keep Baltimore's case in state court).

¹⁵² 18-2357 - *Mayor and City Council of Baltimore v. BP P.L.C., et al.*

I. INTRODUCTION

Regarding *BP P.L.C. v. Mayor and City Council of Baltimore*, the plaintiffs' allegations concluded that Chevron and a slew of other energy companies deliberately communicated inaccurate information regarding anthropogenic global climate change. Moreover, they stated that by denying the existence of anthropogenic greenhouse gas emissions, imprudent energy companies should be held fiscally responsible for the various damages associated with global warming. As Baltimore witnessed catastrophic levels of flooding in the early summer of 2019,¹⁵³ the city sought to hold large oil and energy companies fiscally accountable. More specifically, the plaintiff sought compensation for the infrastructure-related costs brought by the aforementioned flooding, which they cite were directly generated by a sharp rise in greenhouse gas emissions triggered by the defendants.¹⁵⁴ To achieve this, "Baltimore asserted causes of action for public nuisance, private nuisance, strict liability failure to warn, strict liability design defect, negligent design defect, negligent failure to warn, and trespass, as well as a cause of action under Maryland's Consumer Protection Act."¹⁵⁵

II. *THE CITY OF OAKLAND V. BP P.L.C. AND AMERICAN ELECTRIC POWER COMPANY V. CONNECTICUT*

A variety of other cases, like *The City of Oakland v. BP P.L.C.*,¹⁵⁶ have been founded on similar premises, but have yielded less effects for the plaintiffs. This is largely due to federal regulations regarding gas emissions and other environmental restrictions passed by the federal government. Under the federal environmental policy, the EPA and the executive branch delegate punishment for environmental malpractice, as opposed to state or local governments. The aforementioned case, and many others like it, were swiftly ruled in the defendant's favor in federal court.¹⁵⁷ Oakland's lawsuit was

¹⁵³ Jason Samenow and Jeff Halverson, *How a stalled storm over Baltimore unleashed flooding rain and 70 mph winds Tuesday*, The Washington Post (8/7/19) <https://www.washingtonpost.com/weather/2019/08/07/how-stalled-storm-over-baltimore-unleashedflooding-rain-mp-h-winds/> (Discussing floods in the city of Baltimore in August of 2019).

¹⁵⁴ 18-2357 - *Mayor and City Council of Baltimore v. BP P.L.C., et al.*

¹⁵⁵ *Id.*

¹⁵⁶ 18-16663 - *The City of Oakland vs. BP P.L.C., et al.*

¹⁵⁷ Jack Flynn Mogensen, *San Francisco vs. Big Oil: Climate Case Dismissed*, Wired (6/27/2018 03:07 PM) <https://www.wired.com/story/san-francisco-vs-big-oil-climate-case-dismissed/> (Discussing the proceeding leading *The City of Oakland vs. BP P.L.C.* to be dismissed).

rejected on the grounds that a variety of the defendants' contracts with the federal government only permitted such issues to be resolved through legislative or executive authority. Similarly, *American Electric Power Company v. Connecticut*¹⁵⁸ was dismissed due to federal restrictions regarding regulations of greenhouse gas emission. Specifically, the Supreme Court of the United States cited The Clean Air Act of 1970¹⁵⁹ as proof that Congress had delegated responsibility of greenhouse emission to the EPA, stating, "the Act's prescribed order of decision making—first by the expert agency, and then by federal judges—is yet another reason to resist setting emissions standards by judicial decree under federal tort law."¹⁶⁰ Whether due to contractual relations or legislation concerning environmental regulations, federal courts have almost exclusively ruled in favor of the defendants in these cases of this nature.

III. A NEW APPROACH TO ENVIRONMENTAL LAW IN BALTIMORE

In direct contrast to the two aforementioned cases, Baltimore saw their lawsuit survive federal courts in a fourth circuit ruling,¹⁶¹ allowing the case to remain in Maryland state court. Circumventing the complex relationship between greenhouse gas emissions and the federal government gives testament to a shift in legal outlook regarding the accountability of big oil companies in damages wrought by climate change. While all plaintiffs pressed similar charges, (citing the defendants were guilty of unlawful public nuisance due the effects of their greenhouse emission) Baltimore's case has seen a vastly different judicial interpretation. Rather than deliberating environmental indemnification to the federal government, this ruling allowed the city of Baltimore to seek compensation through state court. This potentially can allow other courts to hold environmental destruction in the same legal context as other forms of infrastructural and property damage in tort law.

¹⁵⁸ *10-174 - American Electric Power Company v. Connecticut.*

¹⁵⁹ § 7401 et seq. (1970) The Clean Air Act.

¹⁶⁰ *American Electric Power Company v. Connecticut* 564 U.S. 3 (2011)

¹⁶¹ David Y. Loh, *Fourth Circuit Affirms Remand of Climate Change Lawsuit Back to Maryland State Court*, American Bar Association (April 3, 2020), <https://www.americanbar.org/groups/litigation/committees/admiralty/practice/2020/mayor-and-city-council-of-baltimore-v-bp-plc-et-al/> (discussing Federal Fourth Circuit Court of Appeals affirming to keep *BP P.L.C. v. Mayor and City Council of Baltimore* in state courts).

IV. CONCLUSION

Baltimore's case dictates a radical shift in judicial interpretation regarding oil companies' legal liability for climate change damages. While the case remains ongoing, the federal court's fourth circuit ruling can alter how large oil companies and other corporations are held legally accountable for environmental malpractice. While merely enduring in state court does not guarantee a victory for the plaintiff, it does represent a broader shift in judicial interpretation. By rendering large corporations vulnerable to civil lawsuits for environmental malpractice, other parties may be more inclined to take legal action.

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