Two Federal Courts Strike Down New York's Climate Change Superfund Act on Preemption Grounds; Suncor Looms

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In the span of three weeks, two New York federal courts struck down New York's landmark Climate Change Superfund Act (the "NY Climate Act"). First, on August 31, 2026, in *West Virginia v. James*[1], Chief Judge Brenda K. Sannes of the U.S. District Court for the Northern District of New York struck down the state legislation, which imposes a CERCLA-like retroactive cost recovery program on companies New York State deems responsible for significant greenhouse gas (GHG) emissions. Judge Sannes granted summary judgment to the plaintiffs and held that the NY Climate Act is preempted by federal law.

Just three weeks later, Judge P. Kevin Castel of the U.S. District Court for the Southern District of New York reached the same conclusion in *United States v. New York*.[2] Together, the decisions represent a major development in the rapidly evolving landscape of state-level efforts to hold fossil fuel companies accountable for climate change. The decisions also show that the Clean Air Act may provide a strong tool for defending against claims relating to interstate emissions of GHG.

Background

In 2024, New York enacted the NY Climate Act, establishing a "climate change adaptation cost recovery program" designed to hold major fossil fuel companies financially accountable for their historical contributions to climate change and its effects on the state.[3] The act's legislative findings declared that climate change, resulting primarily from the combustion of fossil fuels, is "an immediate, grave threat to the State's communities, environment, and economy," and that advances in climate attribution science now make it possible "to determine with great accuracy the share of [GHGs] released into the atmosphere by specific fossil fuel

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companies over the last 70 years or more, making it possible to assign liability to and require compensation from companies commensurate with their emissions during a given time period."[4] The NY Climate Act is loosely modeled after the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), known as the Superfund law, which holds companies responsible for the costs of cleaning up hazardous waste sites and establishes a fund to support remediation efforts. But unlike traditional Superfund liability tied to cleanup of specific contaminated sites, the NY Climate Act seeks to fund broader climate adaptation projects through assessments on major GHG emitters.

Under the NY Climate Act, a "responsible party" is defined as any entity that, between January 1, 2000, and December 31, 2024, was engaged in the trade or business of extracting fossil fuel or refining crude oil anywhere in the world (as long as they have sufficient contacts with New York) and was responsible for more than one billion tons of covered GHG emissions.[5] Responsible parties are held strictly liable, without regard to fault, for their proportional share of a $75 billion Superfund, an amount that the NY Climate Act's findings acknowledge is substantially less than what is needed to fund climate adaptation investments.[6] These payments are to be made over a 25-year period and used to fund infrastructure projects that mitigate the impacts of climate change.[7]

New York was the second state, after Vermont, to enact such a climate Superfund law. Since then, similar legislation has been introduced in about a dozen other states, signaling a growing trend in state-level efforts to hold fossil fuel companies accountable for climate-related damages. The NY Climate Act was promptly challenged in two consolidated lawsuits: *West Virginia v. James*, brought by 22 states and fossil fuel industry groups, and *Chamber of Commerce of the United States of America v. James* (No. 1:25-cv-01307), filed by national and state trade associations. Cross-motions for summary judgment followed.

As a threshold matter, the Northern District of New York found that the plaintiffs have Article III standing to challenge the NY Climate Act because they established a "credible threat of imminent

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enforcement" under the act.[8]

Northern District's Preemption Analysis

In *West Virginia v. James*, the heart of the court's decision is its holding that the NY Climate Act is preempted, following the analytical framework established by the U.S. Court of Appeals for the Second Circuit in *City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021). Indeed, New York State conceded that if the court concluded that *City of New York* is not meaningfully distinguishable, then "no set of circumstances exists under which the [NY] Climate Act would be constitutional."[9]

In *City of New York*, New York City brought state common-law claims against five multinational oil companies, seeking compensatory damages for past and future costs of climate-proofing its infrastructure stemming from the producers' "production, promotion, and sale of fossil fuels."[10] The Second Circuit affirmed the district court's dismissal of the case on the basis of conflict preemption, holding that federal common law governs disputes involving interstate GHG emissions because "the overriding need for a uniform rule of decision on matters influencing national energy and environmental policy, and basic interests of federalism" are incompatible with the application of state law (internal citations omitted).[11] The Second Circuit further held that the Clean Air Act (CAA) displaced that federal common law where domestic emissions are involved and does not authorize state-law claims. As for foreign emissions, which fall outside the CAA's reach, the court held that judicial caution and foreign policy concerns independently foreclosed federal common-law claims.

In *James*, before turning to the core preemption analysis, the court rejected New York State's two principal arguments that the NY Climate Act is distinguishable from the *City of New York* framework:

- **State Statute vs. State Common Law.** New York State argued that *City of New York* addressed only preemption of state common-law claims, not statutory claims. The court found no basis for this distinction, noting that U. S. Supreme Court precedent has recognized "'state law' to include

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common law as well as statutes and regulations."[12]

- **Nature of the NY Climate Act.** In *City of New York*, the Second Circuit held that damages claims against fossil fuel producers are effectively regulatory in nature because a substantial award would affect conduct beyond New York's borders. New York State argued that the NY Climate Act was different because it seeks compensation for harms allegedly caused by past GHG emissions, rather than regulating or reducing future GHG emissions. The court rejected this argument, noting that the Second Circuit had rejected New York City's "near-identical attempt to recharacterize the nature of its suit."[13] The court found the NY Climate Act's stated goal was similar to the city's lawsuit because both seek to hold parties strictly liable for damages associated with fossil fuel emissions regardless of where those emissions occurred, while recovering costs tied to the effects of global GHG emissions.

Having found "very little daylight" between the NY Climate Act and the common-law claims at issue in *City of New York*, the court nonetheless proceeded to determine whether the CAA preempts the NY Climate Act.[14]

Clean Air Act. Following the *City of New York* framework, the plaintiffs in *James* argued that the NY Climate Act is preempted because the CAA displaced federal common law governing GHG emissions without authorizing the type of state-law claims that the NY Climate Act codifies. The court agreed. It rejected New York State's counterarguments that a traditional statutory preemption analysis applied. In a traditional analysis, the presumption against preemption would require plaintiffs to show that the CAA prohibits the NY Climate Act. But the court held that this presumption does not apply where, as here, federal common law governed in the first place. This shifted the analytical framework in the plaintiffs' favor because instead of asking whether the CAA prohibits the NY Climate Act, the question is whether the CAA authorizes it. Applying that standard, the court concluded that claims under the NY Climate Act could not survive because they are not authorized by the CAA.

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The court then rejected two additional arguments New York State raised to avoid the preemptive effect of the CAA.

EPA's Rescission of the Endangerment Finding. The court rejected New York State's argument that the U.S. EPA's February 2026 rescission of its 2009 GHG endangerment finding undermined the preemption analysis. New York State contended that the EPA's determination that it lacks authority to regulate GHG emissions under the CAA cannot be reconciled with the argument that the CAA comprehensively regulates those emissions so as to preempt the NY Climate Act. The court disagreed, stating that the CAA's preemptive force derives from Congress' delegation of authority to the EPA to decide whether and how to regulate GHG emissions, and not from how the EPA exercises that delegated authority at any given moment.

Foreign Affairs Preemption. Finally, the court analyzed whether the NY Climate Act is preempted by the foreign affairs doctrine. The court held that any cost recovery demand under the NY Climate Act against a foreign producer would be preempted because the NY Climate Act intrudes on the federal government's authority over foreign affairs. Again, citing *City of New York*, the court concluded that efforts to impose liability for global emissions would interfere with and complicate U.S. foreign policy.

Southern District Reaches the Same Result

On September 23, 2026, in *United States v. New York*, Judge Kevin Castel reached the same result in a separate action brought by the Trump administration. Because the plaintiff was the United States rather than a coalition of states and industry groups, the court addressed a different standing question, holding that the federal government has standing to sue to protect its sovereign interests in enforcing the CAA and conducting foreign affairs. New York and supporting environmental organizations had argued that while the CAA regulates ongoing conduct, the NY Climate Act only seeks compensation for past GHG emissions, creating no overlap, conflict, or obstacle to federal enforcement of environmental regulations. Judge Castel rejected this argument, finding that the law

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"impermissibly regulates interstate [GHG] emissions and is thus preempted."[15] Applying the *City of New York* framework and citing *James* as a "recent and well-reasoned" decision, Judge Castel held that the NY Climate Act is preempted by both the CAA and the foreign affairs doctrine and permanently enjoined its enforcement. [16]

Key Takeaways

Together, these decisions reinforce the Second Circuit's holding in *City of New York* that disputes involving liability for interstate and global GHG emissions implicate uniquely federal interests, and that states within the Second Circuit cannot use either common-law or statutory claims to seek compensation for interstate and global GHG emissions. The fact that the Northern and Southern Districts of New York have now reached the same result strengthens the preemption framework applied to climate Superfund laws. That could be persuasive to courts outside the Second Circuit considering similar laws or to legislatures proposing similar legislation.

The decisions are expected to be appealed to the Second Circuit. However, the Supreme Court's anticipated decision in another case may overtake those decisions. As the *James* court noted in its decision, the Supreme Court granted certiorari in *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County* to address "[w]hether federal law precludes state-law claims seeking relief for injuries allegedly caused by the effects of interstate and international [GHG] emissions on the global climate."[17] The Supreme Court also directed the parties to brief and argue the threshold question of whether the court has statutory and Article III jurisdiction to hear the case.

Oral argument in *Suncor* took place on October 5, and a decision in that case is expected before any Second Circuit ruling in *James* or *United States v. New York*. If the Supreme Court concludes that it lacks jurisdiction, it may leave the Second Circuit to decide the issue on its own. If the Supreme Court does reach the merits, however, the outcome of *Suncor* could determine whether the analytical framework applied in *James* and *United States v. New*

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York will be the governing standard for the NY Climate Act and other climate Superfund bills across the country.

For guidance on how these decisions and the forthcoming *Suncor* ruling may impact your organization's regulatory exposure and compliance planning, please contact the author or any attorney with FBT Gibbons' Environmental practice group.

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[1] *West Virginia v. James*, No. 1:25-cv-00168 (N.D.N.Y. Aug. 31, 2026).

[2] *United States v. New York*, No. 1:25-cv-03656 (S.D.N.Y. Sept. 23, 2026).

[3] *James*, slip op. at 11.

[4] *Id.* (citation omitted).

[5] *Id.* at 12.

[6] S. 2129-B, 2023-2024 Leg., Reg. Sess. (N.Y. 2023).

[7] *Id.*

[8] *Id.* at 31.

[9] *Id.* at 38.

[10] *Id.*

[11] *City of New York v. Chevron*, 993 F.3d 81, 91-92 (2d Cir. 2021) (citation omitted).

[12] *James*, slip op. at 42.

[13] *Id.* at 44.

[14] *Id.* at 48.

[15] *New York*, slip op. at 14.

[16] *Id.* at 28.

[17] *James,* slip op. at 38 n.18.

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