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## Climate Change Suit Defeated

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Yesterday, a California federal court dismissed Oakland's climate change lawsuit against five of the world's largest oil and gas producers, holding that Oakland failed to state an actionable claim for public nuisance. The court's analysis raises serious questions as to the viability of similar lawsuits, such as Boulder's climate change action filed earlier this year.

Oakland alleged that the producers' extraction of fossil fuels is directly responsible for climate change, which in turn has raised sea levels and threatened coastal lands in Oakland and San Francisco. On this theory, Oakland pursued a claim for public nuisance against five major oil and gas producers.

The court took a dim view of the city's attempt to use the common law as a means to "place the blame for global warming on those who supplied what we demanded[.]" The court described Oakland's theory as "breathtaking," "sweeping," and a challenge to "otherwise lawful and everyday sales of fossil fuels." The court stated Oakland's suit also ignored the fact that "the development of our modern world has literally been fueled by oil and coal," and without it, "our monumental progress would have been impossible."

In dismissing Oakland's claim, the court's central holding turned on the doctrines of displacement and extraterritoriality. The court held that the Clean Air Act displaces any federal common law claim for nuisance. By enacting the Clean Air Act, "Congress has vested in the EPA the problem of greenhouse gases and has given it plenary authority to solve the problem at the point of emissions."

To the extent the city relied on international production of fossil fuels as the basis for its nuisance claim, which are outside the reach of the EPA, the court refused to extend federal common law. "This shift to foreign lands," the court explained, "runs counter to another cautionary restriction, the presumption of extraterritoriality." Expanding federal common law would interfere with "the balancing" of environmental, energy development, and national security interests "best left to Congress (or diplomacy)."

Oakland's claim was based on federal common law. Other city and county governments, such as Boulder, are pursuing public and private nuisance claims under state law. The court's analysis, however, applies to many aspects of nuisance theories under state law, particularly its conclusion that "the problem at hand clearly deserves a solution best addressed by... the legislative and executive branches." Balancing the benefits of energy production against the effects of global warming "demand[s] the expertise of our environmental agencies, our diplomats, our Executive, and at least the Senate." The court observed that common law is too blunt an instrument, "far less likely to solve the problem," and "could interfere with

reaching a worldwide consensus.”

For more information about Oakland's climate change lawsuit, and similar suits in other jurisdictions, please contact Chris Chrisman.

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