Sabin Center Releases Second U.S. Climate Change Litigation Report

June 7, 2019 – The Sabin Center published a new report, entitled “U.S. Climate Change Litigation in the Age of Trump: Year Two,” in which climate law fellow Dena Adler analyzes climate change cases filed during 2017 and 2018 to shed light on how litigation is counterbalancing – and at times complementing – the Trump Administration’s efforts to undermine climate change protections.

This report sorts cases into 5 categories: 1. Defending Obama Administration Climate Change Policies and Decisions; 2. Demanding Transparency and Scientific Integrity from the Trump Administration; 3. Integrating Consideration of Climate Change into Environmental Review and Permitting; 4. Advancing or Enforcing Additional Climate Protections through the Courts; 5. Deregulating Climate Change, Undermining Climate Protections, or Targeting Climate Protection Supporters. From reviewing the U.S. Climate Change Litigation database, a collaboration between the Sabin Center and Arnold & Porter, this analysis identified a total of 159 climate change cases from 2017 and 2018 shaping federal climate change policy.

Key takeaways from this report’s analysis include:

• The “pro” cases (i.e. if the plaintiffs or petitioners are successful they will advance climate change protections) outweigh the “con” cases (i.e. if the filing party or parties are successful, they will undermine climate protection or support climate policy deregulation) roughly 4:1.

• Direct defense of the Obama Administration’s climate policies is supplemented by a wide range of other lawsuits supporting climate protections. Only twenty of the 129 pro cases concerned “Defending Obama Administration Climate Change Policies and Decisions.” The other 109 pro cases support climate protection by increasing transparency around scientific misinformation and external stakeholder influence on government policies, upholding requirements to consider climate change impacts during environmental review and permitting, and seeking to compel additional or enforce existing climate protections.

• Thus far, the courts have not upheld any attempts by the Trump Administration to delay or roll back regulatory climate protections. Rather, lawsuits to date have stopped the executive branch from destabilizing duly promulgated regulations and acting without regard for proper procedure.

• Courts have halted Trump Administration policies to promote fossil fuel extraction on public lands and public waters for inadequate environmental review and executive overreach.

The Trump Administration’s efforts to bypass the requirements of administrative and statutory law to delay and expedite reversal of climate change policies have fared poorly in court thus far. As climate change cases develop, the courts will continue to be an important arena for enforcing administrative, statutory, and other legal obligations.

The report can be found here and the executive summary here.

The Sabin Center also published a previous report, “U.S. Climate Change Litigation in the Age of Trump: Year One.”

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