

# Trump Administration Files Preemptive Lawsuits Against Hawaii and Michigan to Block Climate Change Litigation

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Recently, both the State of Hawaii and the State of Michigan had announced that they would be pursuing litigation against fossil fuel companies concerning alleged damages stemming from the companies' contribution to climate change. (These lawsuits were expected to be similar to the approximately three dozen lawsuits currently pending in state and federal court where other states and local governments have sued the major fossil fuel companies under various tort theories for damages associated with climate change.) Before either Hawaii or Michigan could file suit, however, the Trump Administration struck first, filing complaints against both states that seek to preclude such lawsuits.

Such a procedural maneuver is highly unusual, to say the least. While the arguments raised by the Trump Administration have been featured before--both by the fossil fuel companies themselves and various amici (e.g., that the lawsuit under state tort law is preempted by federal law, including the foreign affairs doctrine)--these legal points were typically argued as a response to a filed lawsuit, including as part of a motion to dismiss. To act preemptively, as the Trump Administration did, may cause these arguments to be rejected on procedural grounds alone.

Nonetheless, this action by the Trump Administration--which specifically relies upon President Trump's [recent executive order concerning American energy production and criticizing climate-focused state action](#)--demonstrates the degree to which the Trump Administration is prepared to exercise the power of the federal government in support of its favored constituencies, including fossil fuel companies.

On Wednesday, the Trump administration sued Hawaii first, seeking to block the lawsuit before it could even be filed. The Justice Department also filed a nearly identical suit against Michigan, where Attorney General Dana Nessel has retained three private law firms to pursue climate change litigation but has not yet sued. The main thrust of the administration's argument is that the federal government should determine national energy policy, not individual states. Legal experts said it was highly unusual to sue to block other lawsuits that have yet to be filed.

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