ROPES & GRAY

Greenwashing Litigation Trends Update

Greenwashing Litigation Update – U.S.

The following is a summary of significant greenwashing litigation developments in the United States during the spring and early summer of 2026. It covers actions by federal and state governmental actors, private plaintiffs, and shareholder activists.

The past few months saw continued momentum in U.S. greenwashing litigation driven primarily by state attorneys general, private plaintiffs, and environmental advocacy organizations as federal enforcement from the United States Federal Trade Commission ("FTC") and United States Securities and Exchange Commission ("SEC") remained muted. Updates of note included (1) the U.S. Supreme Court's pending review in *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*, which looms over many state law climate and consumer protection actions; (2) appellate courts testing the boundaries of consumer protection statutes for corporate versus product-level greenwashing claims; and (3) recyclability representations and "organic" labeling as recurring flashpoints for new filings and significant judicial review. Federal deregulation has not reduced litigation risk, but rather shifted enforcement to state capitals and courthouses.

Government Action

SUPREME COURT MERITS BRIEFING BEGINS IN LANDMARK CLIMATE PREEMPTION CASE

On May 14, 2026, petitioners Suncor Energy and Exxon Mobil Corporation filed their opening merits brief and joint appendix in the U.S. Supreme Court, advancing the case toward argument during the Court's October 2026 sitting.[1] The underlying suit, filed by Boulder County and the City of Boulder in 2018, asserts claims for public nuisance, private nuisance, trespass, and unjust enrichment, alleging that the fossil fuel companies knowingly caused climate change while concealing its dangers. The Colorado Supreme Court held in May 2025 that federal law did not preempt the claims. The Court granted certiorari on February 23, 2026 to consider whether federal law precludes such state law claims and also directed the parties to brief statutory and Article III jurisdiction. The petitioners framed the case as an attempt to "address [an] inherently interstate and international challenge by seeking to impose massive monetary liability through the mechanism of state tort law," arguing that global climate change "results from the accumulation of greenhouse gases emitted from every State in the Nation and every nation in the world — emissions that cannot be unmixed and traced to their individual sources."[2]

The docket reflects substantial amicus activity in support of petitioners between May 15 and May 21, including briefs from 26 states, the U.S. Chamber of Commerce, and the American Tort Reform Association. Respondents' merits brief is due July 27, 2026. The case presents a potentially dispositive question for the future of state law climate litigation nationwide—affecting more than two dozen pending cases—and may also shape preemption arguments in consumer deception climate cases.

NEW YORK CITY OIL INDUSTRY GREENWASHING APPEAL AWAITS APPELLATE DECISION AFTER ORAL ARGUMENT

On April 15, 2026, the New York Supreme Court, Appellate Division, First Department heard oral argument in New York City's appeal of the dismissal of its greenwashing claims against ExxonMobil, BP, and Shell.[3] The City had sued the oil companies in April 2021 under the New York City Consumer Protection Law, alleging that the defendants engaged in both "product greenwashing" (touting the environmental benefits of specific fuel products while failing to disclose their role in causing climate change) and "corporate greenwashing" (overstating investments in clean and alternative energy sources to boost sales of fossil fuel products). The trial court had dismissed the case in January 2025, holding that a reasonable consumer already aware of the link between fossil fuels and climate change could not have been misled and that corporate statements about clean energy investments were not made "in connection with" the sale of consumer goods as required by the statute.[4] On appeal, the City argued that the trial court applied a "rigid standard" inconsistent with the "broad protective goals" of the consumer protection law. The defendants responded that the City "cannot have it both ways" by alleging that consumers are climate conscious while also claiming those same consumers could be duped by advertising that

[1] *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County* (U.S. Supreme Court, No. 25-170).
[2] Brief for the Petitioners, *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*, No. 25-170 (U.S. May 14, 2026).
[3] *City of New York v. Exxon Mobil Corp. et al.* (New York Supreme Court, Appellate Division, First Department, No. 2025-01687).
[4] *City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863 (N.Y. Sup. Ct. 2025).

does not promise fossil fuels have no climate impact. As of July 23, 2026, the Appellate Division had not issued a decision. The appeal presents a significant test of whether corporate greenwashing claims can be challenged under city consumer protection law even when not directly tied to the sale of a specific product, and the outcome may be further shaped by the U.S. Supreme Court's forthcoming decision in *Suncor v. Boulder County* (discussed above) on federal preemption of state law climate claims.

FEDERAL COURT WEIGHS CONSTITUTIONAL CHALLENGE TO CALIFORNIA'S RECYCLABILITY LABELING LAW

On June 3, 2026, a federal court in the Southern District of California heard argument on a motion for a preliminary injunction seeking to block enforcement of California's "Truth in Recycling" law (SB 343) before its October 4, 2026 compliance deadline.[5] A coalition of 21 trade associations, including the California League of Food Producers, the American Forest & Paper Association, and the California Grocers Association, filed suit on March 17, 2026, alleging that SB 343 violates the First Amendment and the Fourteenth Amendment's Due Process Clause. SB 343 prohibits use of the chasing arrows symbol or any recyclability claim on products or packaging unless the material meets specific criteria, including that it is collected by recycling programs serving at least 60% of California's population and sorted by at least 60% of recycling programs statewide. Plaintiffs contend that the law bans truthful, non-misleading commercial speech and that its criteria are unconstitutionally vague, failing to provide businesses "fair notice of what is prohibited."

In its opposition, the Attorney General's office stated that the "law is not a complete ban on discussion of recyclability" and that certain qualified on-pack claims—such as "Not recyclable in most areas; check locally"—would not violate the statute. Plaintiffs characterized this interpretation as a "post hoc rationalization" that "at best merely spotlights the vagueness of the law." On July 14, 2026, the Court granted a preliminary injunction blocking California from enforcing SB 343, citing likely violations of First Amendment commercial speech rights and Fourteenth Amendment vagueness.

Private Action

NET-ZERO GREENWASHING SUIT RETURNS TO D.C. SUPERIOR COURT

Mighty Earth's greenwashing suit against JBS USA Food Company was formally remanded to D.C. Superior Court on April 3, 2026, after the U.S. District Court for the District of Columbia granted remand and denied the company's motion to dismiss on March 16, 2026.[6] Mighty Earth filed the action on September 29, 2025 under the D.C. Consumer Protection Procedures Act (CPPA), alleging that JBS USA's consumer-facing "Net Zero by 2040" marketing is false and misleading[7] because the commitment covers only Scope 1 and Scope 2 operational emissions (representing approximately 3% of the JBS Group's total emissions) while excluding Scope 3 supply chain emissions, which account for approximately 97% of total emissions, including methane from livestock and CO_2 from deforestation. The complaint also alleges that the parent company raised $3 billion through sustainability-linked bonds tied to these commitments. JBS USA removed the case to federal court, but both parties agreed that Mighty Earth lacked Article III standing; the federal court concluded it was "bound by rulings holding that Article III standing was unnecessary when a case such as this is brought in D.C. court" and remanded. The case follows a November 2025 settlement between the New York Attorney General and JBS USA for $1.1 million over similar net-zero claims. The action now proceeds in D.C. Superior Court and presents a significant test of whether net-zero claims that exclude the vast majority of a company's emissions can withstand consumer protection scrutiny.

"CARBON NEUTRAL" SMARTWATCH CLASS ACTION MOVES TO NINTH CIRCUIT AFTER DISMISSAL

Plaintiffs in a proposed class action challenging an American technology company's "carbon neutral" marketing for certain smartwatch models declined to amend their complaint following a February 20, 2026 dismissal and have appealed to the U.S. Court of Appeals for the Ninth Circuit. The suit was brought by seven purchasers of several smartwatch models, alleging that the company's carbon-neutrality representations were false and misleading because they relied on carbon credits from nature-based offset projects that did not deliver genuine, additional carbon reductions. U.S. District Judge Noël Wise granted the company's motion to dismiss, finding that "every layer of Plaintiffs' allegations about the company's sales of smartwatches are based on unsubstantiated assumptions" and that the plaintiffs failed to support their critiques with "validated and verified methodology." The court credited the company's reliance on Verra, the nonprofit

[5] *California League of Food Producers, et al. v. Bonta*, No. 3:26-cv-01675-WQH-JAC (S.D. Cal.).

[6] *Mighty Earth v. JBS USA Food Company* (D.C. Superior Court, originally No. 2025-CAB-006549; removed to U.S. District Court, D.C., No. 1:2025-cv-04138; remanded to D.C. Superior Court, March 16, 2026).

[7] Memorandum Opinion and Order, *Mighty Earth v. JBS USA Food Co.*, No. 1:2025-cv-04138 (D.D.C. Mar. 16, 2026).

that administers the Verified Carbon Standard, as a "globally recognized" verification body, and the Environmental Defense Fund filed an amicus brief supporting dismissal. The appeal will test whether the district court's demanding pleading standard for carbon-offset substantiation claims is correct, with potential implications for the growing body of consumer litigation challenging corporate reliance on voluntary carbon markets.

NEW CLASS ACTION TARGETS KEURIG'S "RECYCLABLE" K-CUP POD MARKETING

A New York consumer filed a proposed class action on April 11, 2026 alleging that Keurig Dr Pepper Inc. deceptively labels and advertises its K-Cup single-serve coffee pods as "recyclable" in violation of New York General Business Law §§ 349 and 350. The complaint alleges that Keurig prominently displays "Recyclable K-Cup Pods" alongside the chasing arrows recycling symbol on product packaging, its website, and online retail listings, despite the fact that the majority of U.S. recycling facilities do not accept K-Cup pods due to their small size, irregular shape, multi-material construction, and contamination issues. The plaintiff contends that Keurig "relies on a purely theoretical definition of recyclability that ignores the fundamental principles outlined in the FTC's Green Guides and does not align with consumer understanding." They also contended that any qualifying language, such as disclosures that K-Cup pods are "not recycled in many communities," appears in fine print that is "visually separated from the primary recyclability claim and blends into the background."[8]

A separate proposed class action raising similar claims was filed in California federal court on April 7, 2026. The complaint notes that Keurig's recyclability representations have been the subject of prior litigation and regulatory action: federal class actions filed between 2018 and 2020 were settled in 2023 for $10 million with minor label modifications; Keurig Canada paid a $3 million penalty in 2022 to resolve claims by Canada's Competition Bureau; and the SEC concluded a cease-and-desist proceeding in September 2024 with a $1.5 million civil penalty after finding that Keurig made inaccurate statements regarding pod recyclability to investors. The new filings underscore the continued exposure companies face when recyclability claims do not appear to align with real-world recycling infrastructure, particularly where the FTC Green Guides provide that products should not be marketed as "recyclable" unless recycling facilities are available to at least 60% of consumers.[9]

CALIFORNIA SUPREME COURT ORGANIC LABELING CASE PROCEEDS THROUGH MERITS BRIEFING

Merits briefing is underway in Environmental Democracy Project v. Rael, Inc., in which the California Supreme Court will decide whether the California Organic Food and Farming Act (COFFA) applies to personal care products marketed as "organic."[10] Environmental Democracy Project, a frequent plaintiff in California environmental consumer litigation, sued Rael, Inc., a manufacturer of feminine hygiene products, alleging that marketing the products as "organic" or "made with organic" violated COFFA because the products contained far less than the minimum required percentage of certified organic materials and included synthetic or non-organic components not permitted under state and federal organic standards. The Court's April 17, 2026 civil-pending-issues list formally framed the question presented: "Does [COFFA] apply to personal care products marketed as organic?" Minutes from May 14, 2026 reflect that the Court granted an extension of time for briefing. The Superior Court of Alameda County granted judgment on the pleadings for the defendant, but the California Court of Appeal reversed on November 26, 2025, holding that COFFA applies broadly to all products sold as "organic" or containing "organic" materials in California unless specifically exempted. The California Supreme Court accepted review during the week of March 16, 2026. If affirmed, the decision could significantly expand the reach of California's organic labeling enforcement beyond its traditional application to agricultural products, cosmetics, and pet food, creating new exposure for manufacturers of personal care, household, and textile products that use "organic" in marketing or labeling.

For more information on any of these issues, or if you would like to speak with someone with particular experience in any of these areas, please email

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[8] *Dixon v. Keurig Dr Pepper, Inc.*, No. 3:2026cv02172 (S.D. Cal. filed April 7, 2026).
[9] *Sulli v. Keurig Dr Pepper Inc.*, No. 6:26-cv-06420 (W.D.N.Y. filed Apr. 11, 2026).
[10] *Environmental Democracy Project v. Rael, Inc.* (California Supreme Court, No. S294668; originally Cal. Ct. App., First Dist., Div. Two, No. A170385).

