# Testimony of Kansas Attorney General Kris Kobach Before the Senate Subcommittee on Federal Courts, Oversight, Agency Action, and Federal Rights

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# "Enter the Dragon—Chinese Lawfare Against U.S. Energy Dominance"

#### June 24, 2025

Chairman, Ranking Member, and distinguished Members of the Subcommittee, thank you for the opportunity to testify today about environmental lawfare, which has received what appears to be significant support from the Chinese Communist Party (CCP). As President Trump noted in recent executive orders, environmental lawfare poses a growing challenge for American industry, because it drives up energy costs. It also weakens our national security and places us at a strategic disadvantage with respect to our adversaries in China.

I serve as the Attorney General of Kansas, and in that capacity, I have represented the State of Kansas in multiple legal battles related to climate issues. Because my experience is greatest in the litigation itself, rather than on the connections to the Chinese Communist Party (CCP), I will focus my remarks on those legal conflicts and the issues presented. But it is evident that China's asymmetric warfare against the United States extends to our nation's courtrooms and state legislatures. The CCP plainly has a strategy of driving the United States away from domestic energy sources and increasing U.S. dependence on sources that rely on a Chinese supply of solar panels, electric vehicle batteries, and other technologies.

#### **Past Patterns of Environmental Litigation**

Environmental lawfare typically involves the strategic use of litigation to advance ideological environmental objectives. This is nothing new. In the past we have typically seen three types of lawsuits.

First, for decades, environmental advocacy groups, often financially backed by various wealthy individuals and foundations, have attempted to stop government projects on environmental grounds. These lawsuits often fail by the time the case hits the relevant court of appeals. But they also succeed in delaying those projects for years. In recent decades, Congress has addressed this problem by inserting provisions in the relevant statutes exempting the projects from NEPA claims.

Second and more frequently, instead of targeting the federal government, environmental litigation would target specific industries, particularly the energy sector. This litigation, while sometimes based on valid legal claims, in most instances failed in the courtroom but nonetheless increased costs for consumers and taxpayers.

And third, we have also seen cases in the environmental sphere brought by states against the federal government in instances where the states claim relevant federal agency has overstepped its statutory authority or violated the U.S. Constitution. Those suits often involve challenges to environmental regulations. The most noteworthy recent example of this is *West Virginia v. EPA*, 597 U.S. 697 (2022), a case in which the State of Kansas participated as a co-plaintiff. In that case, the states sued to stop the EPA's Clean Power Plan regulation, which claimed the authority to regulate existing power plants in manner that would force them to switch methods of power generation in order to reduce carbon dioxide emissions. The Supreme Court ruled in the States' favor, holding that the major questions doctrine forbade the EPA from exercising such sweeping authority without express authorization from Congress, which had not been given.

## The First New Threat: States Imposing Extraterritorial Burdens

In the last few years, we have seen new forms of environmental litigation. The first has been prompted by state legislatures or state regulatory bodies attempting to place themselves in the shoes of the federal government adopting draconian environmental standards. These laws are extraterritorial in scope regulating conduct and industries far beyond their borders. They have been enacted both during the Biden Administration and the current Trump Administration. The principal way to stop these actions is for other states or the federal government to sue.

## A. Nebraska v. Cliff: Regulatory Overreach in Trucking

In 2023, the California Air Resources Board (CARB) promulgated California's Advanced Clean Fleet regulation, which attempts to ban internalcombustion engines in medium- and heavy-duty trucks. The regulation mandates a transition to zero-emission electric trucks by 2035 for most medium-duty vehicles and 2042 for all trucks operating within the state. But most fleets would have to start meeting percentage of electric vehicle targets in 2025 and 2027.

The CARB Advanced Clean Fleet regulation masquerades as a rule for instate conduct. But it has a massive national impact because so many companies must travel through California to reach Pacific shipping ports, and because of California's large number of consumers. *It would effectively regulate trucks in all 50 states, 95 percent of which are powered by internal combustion engines*. The cost imposed upon the nation's transportation infrastructure would be so immense that it is difficult to calculate.

In 2024 Nebraska, joined by Kansas and fifteen other States, sued California challenging the California regulations. The States argued principally that California's trucking mandate is expressly preempted by Section 209(a) of the Clean Air Act. 42 U.S.C. 7543(a). In addition, California's regulation is expressly preempted by the Federal Aviation Administration Authorization Act of 1994 at 42 U.S.C. 14501(c)(1), which concerns motor carriers.

California was never going to win in court. These express preemption provisions of federal law are unambiguous. In addition, the Clean Air Act would require California to obtain a waiver from the EPA, something California at first denied. In November 2023, California changed its mind and applied to the EPA for a waiver. But with the election of President Trump, California withdrew its EPA waiver request in January 2025 and entered into settlement negotiations with the plaintiff States. California is backing down. But not all extraterritorial state law can be defeated so easily.

#### B. West Virginia v. New York: Challenging Climate Superfund Laws

California is not the only state to attempt to regulate the environment on behalf of the entire country. In late 2024 New York enacted the Climate Change Superfund Act. The New York law imposes retroactive fines on fossil fuel producers for their purported *past* contributions to greenhouse gas emissions. It requires major greenhouse gas emitters between 2000 and 2024 to pay \$3 billion annually for 25 years – totaling \$75 billion – to fund climate resiliency infrastructure in New York. If the Act were to go into effect, consumers across the country would suffer. The Act threatens energy producers' ability to meet rising energy demands and would drive up energy costs for all Americans. Once again, a state has taken an action that attempts to regulate on behalf of all fifty states. And once again, a state has attempted to place itself into the regulatory shoes of the federal government. Shortly after New York enacted its superfund law, Vermont followed with a similar superfund law in 2024.

The CCP-backed Chinese-American Planning Council lobbied heavily for the New York superfund law. This is the same organization into which the House Homeland Security Committee launched an investigation concerning the potential use of federal funds to facilitate illegal immigration. That investigation was launched in April 2025.

In February 2025, West Virginia, Kansas, and twenty other states sued in the U.S. District Court for the Northern District of New York to block the New York Superfund Act. We are also seeking to intervene in a case brought by private entities against the Vermont law.

We maintain that New York's superfund law is impliedly preempted by the Clean Air Act, since it attempts to defeat Congress's objective of imposing a single, nationwide standard governing emissions that travel across state lines. We also argue that New York's law is unconstitutional because it violates the constitutional principle of equal sovereignty among the states—it violates the principle that a state may not penalize or regulate the lawful activity of companies in other states. This superfund law has immense impact beyond New York's own territory. This principle of equal sovereignty is reflected in multiple clauses of the U.S. Constitution—including the Republican Guarantee Clause, which guarantees each state a representative form of government wherein voters may elect legislators to pass the laws governing them. This New York law dramatically affects conditions in Kansas, but Kansas legislators never had a voice in its passage.

Our lawsuit brings a number of other constitutional claims as well, including a due process claim and a dormant commerce power claim. But the dormant commerce power is a weaker argument in the wake of the 2023 decision by the U.S. Supreme Court in *National Pork Producers Council v. Ross*.

I am normally a strong opponent of federal preemption: I believe that Congress should exercise its power to preempt sparingly; and courts should be reluctant to find implied preemption by reading between the lines of congressional statutes. Our Constitution was intended to protect the co-equal sovereignty of states in our federal system. But to deal with this threat posed by extraterritorial environmental laws enacted by states, I believe that *Congress must act to expressly preempt these superfund laws and similar state* laws that will undoubtedly follow. The Clean Air Act should be amended to add an express preemption provision along these lines: "no state may penalize, fine, or regulate the emissions of companies engaged in the production of energy or extraction or transmission of fossil fuels."

#### The Second New Threat: Counties and Cities Suing Energy Producers

A second threat that has emerged in recent years comes not in the form of state legislation but in litigation brought by counties, cities, and tribes with the intent of effectively making national environmental policy. In these suits, local governments (usually alongside plaintiff individuals) sue large energy companies, seeking to address climate-related injuries allegedly caused by the production, marketing or sale of fossil fuels and related products. The suits seek massive compensatory and punitive damages. In total, nearly three dozen such cases have been filed.

#### A. Rodriguez v. Exxon Mobil Corp.

In November 2024, Ford County, Kansas—where Dodge City is located filed a class-action lawsuit along with other plaintiffs in the U.S. District Court of Kansas against oil and petrochemical companies alleging a decades-long campaign of deception about plastics recyclability leading to the accumulation of plastic waste and other consequences. They style their case as a public nuisance action and seek damages that would likely total in the hundreds of billions of dollars. But they are not limiting their case to Ford County or even to the State of Kansas. They claim to represent a class consisting of *every* county in the United States and every resident of such counties. In other words, they claim to represent the entire country.

Setting aside the merits of their environmental claims, which are dubious at best, the plaintiffs in this case are attempting usurp the authority of the fifty states, as states. Only a state attorney general can bring a case of this nature, which seeks to remedy an alleged injury to the health, safety, or welfare of the public at large. It is an exercise of the common law doctrine of *parens patriae* (Latin for "parent of the country"), which has long been recognized by the U.S. Supreme Court. *See Late Corp. of the Church of Jesus Christ of Latter-Day Saints, et al. v. United States* 136 U.S. 1, 57 (1890); *Alfred L. Snapp & Sons, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592,600 (1982). It was under this authority that state attorneys general undertook the tobacco litigation of the 1990s. Cities and counties, however, "are not themselves sovereign" in our constitutional system; they are

creations of the states and do not possess *parens patriae* authority themselves. *City of Lafayette v. Louisianna Power & Light Co.*, 435 U.S. 389, 412 (1978).

Shortly after filing the case in Kansas concerning plastics, Ford County joined a separate group of plaintiffs filing a lawsuit in New Mexico federal court against a list of defendant companies involved in shale oil extraction. The legal claims in the New Mexico case are different, but the usurpation of the states' *parens patriae* authority is the same.

As Kansas Attorney General, I have intervened in both cases and am seeking to have Ford County dismissed. The County does not possess the authority to bring a case of this nature. Only the State of Kansas does. We expect to succeed. But even if we do, it is unlikely to stop the thousands of other counties from attempting similar litigation. It will take attorneys general across the country intervening to defend their *parens patriae* authority.

# B. Mayor and City Council of Baltimore v. BP

As noted above, the Ford County case is one of more than thirty such environmental lawsuits brought by localities across the country. The suit that is at the most advanced stage is *Mayor and City Council of Baltimore v. BP*, Maryland Case No. 24-C-18-004219, which is currently pending before the Maryland Supreme Court. In that case, Baltimore filed suit against 25 major fossil fuel companies seeking massive damages for the burning of fossil fuels and climate change writ large. The Maryland trial court dismissed all of the plaintiffs' claims and particularly rejected their attempt to stretch public nuisance doctrine to cover "the result of fossil fuel usage and gas emissions by third parties located all over the world." *Id.*, slip op. at 23 (Circ. Ct. Baltimore City, July 10, 2024). We now await the Maryland Supreme Court's decision. By the way, Baltimore is also one of the plaintiffs in the New Mexico shale oil case. In that case, they (along with San Diego and San Jose, California) claim to represent all cities in the United States, just as Ford County (along with San Mateo County, California) claims to represent all counties in the United States.

It is important to point out that these city and county cases have been underway for many years now. The *Baltimore* case was filed in 2018 and has already been through many stages of litigation. *Importantly, the cities and counties have yet to prevail in a single case*. Not a penny in damages has been recovered to date. This begs the question: who has been funding the millions of dollars in attorney hours spent on these cases for the past seven years? Because most states do not require the disclosure of third-party litigation funding, we do not have a precise answer. But it is reasonable to suspect that the CCP, with its pervasive and multifaceted efforts to hamstring American energy production in every way imaginable, may be funding some of the foundations and organizations that are in turn funding this nationwide litigation.

Congress can help deal with this threat too. There is already a bill in the House of Representatives to disclose third-party litigation funding in federal courts. It is H.R. 1109, the "Litigation Transparency Act of 2025." I urge you to support a narrower, amended version of this bill that would require the disclosure of funds coming from foreign sources. While third-party funding of litigation plays a legitimate role in advancing some public interest cases, foreign funding of such litigation is highly problematic and undermines our national interests.

We state attorneys general we will continue the fight in court. Whether it be stopping a federal agency from illegally seizing power from Congress, or stopping a state from usurping Congress's power to regulate interstate activity in the environmental sphere, the state attorneys general are often the last line of defense. But support from Congress is needed, especially when this lawfare is being supported by the CCP. I hope that these modest legislative suggestions are useful. Environmental lawfare threatens not only American economic prosperity and energy security; it its latest forms, it also threatens the American constitutional order.