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Progressives urge Biden to ramp up climate lawsuits

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Progressive groups are calling on presumptive Democratic nominee Joe Biden to take fossil-fuel companies to court if he claims the White House in November.

And they're not stopping at civil penalties akin to the array of ongoing climate cases at the state and local level nationwide. Some youth activists and veteran climate hawks are taking an aggressive step further, urging Biden to charge fossil-fuel executives criminally.

So far, the Biden campaign isn't distancing the former vice president from those calls. In fact, Biden last week enlisted one of the most vociferous youth activists to serve on his climate task force in a move that many observers are labeling a lurch leftward.

Sunrise Movement Executive Director Varshini Prakash will be serving on the task force alongside heavyweight Washington veterans like former Secretary of State John Kerry and former Environmental Protection Agency chief Gina McCarthy, as well as Rep. Alexandria Ocasio-Cortez and other lawmakers.

Prakash's organization, a nationwide coalition of youth activists credited with bringing the Green New Deal to the forefront of American politics, recently exhorted criminal charges for fossil-fuel interests as part of a wide-ranging list of progressive demands.

"We need you to champion the bold ideas that have galvanized our generation and given us hope in the political process," the Sunrise Movement and other progressive groups told Biden in April following Sen. Bernie Sanders's exit from the primary.

"Commit to take on and prosecute the fossil-fuel executives and lobbyists who have criminally jeopardized our generation," the letter said.

Justice Democrats, the group that put its weight behind Ocasio-Cortez's unlikely insurgency against the Democratic establishment in 2018, signed onto the letter, as did the Alliance for Youth Action and March for Our Lives Action Fund.

Some more mainstream groups—such as [350.org](https://www.350.org), which was founded by longtime environmentalist Bill McKibben—are also calling for criminal prosecution.

"Real action on the climate crisis should hold the fossil-fuel industry accountable for their climate deception," said Thanu Yakupitiyage, spokesperson for 350 Action, the group's lobbying arm. "In demanding bold climate action, we have specifically called for a phaseout of fossil fuels and we have supported efforts to hold the fossil-fuel industry criminally liable."

Climate activists are often vague on specific legal strategy.

Some attorneys and environmental advocates say that increasingly aggressive climate lawsuits at the state and local level, many of which are still active, could pave the way for federal civil charges, under Racketeer Influenced and Corrupt Organizations law or other statute, with a Democrat in the White House.

A judge with the Court of Appeals for the 10th Circuit heard oral arguments earlier this month in Boulder County, Colorado's suit against Suncor Energy and ExxonMobil, where the plaintiff is seeking relief from climate-change damages. Attorneys representing Boulder added a conspiracy charge to the suit in 2018.

Climate suits often slog on for years.

“They really, really don’t like these cases,” said Richard Wiles, executive director of the Center for Climate Integrity, a branch of the Institute for Governance and Sustainable Development that specializes in climate legal analysis. “They don’t care about the Clean Power Plan or any of that other stuff. They know how to win all those games. This is much scarier.”

During a primary debate in February, Biden said companies and executives are both reasonable potential targets for litigation.

“This is an industry we should be able to sue; we should go after. Just like we did with the drug companies. Just like we did with the tobacco companies,” Biden said.

His campaign website opens the door even further. “Biden will direct his EPA and Justice Department to pursue these cases to the fullest extent permitted by law and, when needed, seek additional legislation as needed to hold corporate executives personally accountable—including jail time where merited,” it says.

But New York state, and fossil-fuel critics writ large, just suffered an embarrassing defeat at the New York Supreme Court. The panel ruled in December that New York Attorney General Letitia James failed to prove that ExxonMobil committed securities fraud.

Some analysts say that ruling bodes poorly for climate litigation moving forward.

“If you’re going to jail someone, you’ve got to say what they did that was illegal,” Walter Olson, a constitutional scholar at the Cato Institute, said. “In the case of running gas stations and running refineries and so forth, not only were these things probably legal, but there are all sorts of laws on the books regulating how [people] can do them, which is another reason to think it was not intended to be banned.”

Supporters of the suits, meanwhile, point to success in federal tobacco prosecution as a potential roadmap. Sharon Eubanks, who spearheaded a federal civil RICO victory against Philip Morris and other tobacco companies in 2006, urged Congress last year to investigate grounds for civil and criminal prosecution of fossil fuel companies.

“The behavior and goals of the tobacco industry and the petroleum industry are quite similar, and for this reason, there are many similarities in their liabilities. Both industries lied to the public and regulators about what they knew about the harms of their products,” Eubanks testified.

“The fossil fuel industry’s understanding of climate science and their actions to conceal that information from the public in order to increase its profits and avoid regulation, throughout a

pattern of racketeering activity involving other entities, is sufficient to plead a RICO cause of action,” she said.

In the meantime, Democrats on Capitol Hill are actively opposing fossil-fuel legal immunities, which the business community generally is angling for during the coronavirus crisis. And both sides are girding for pitched battles in the months and years to come.

“I think the hardest part of a RICO case is finding a plaintiff who would want to file it because this industry makes the tobacco industry look like, you know, kindergarten,” Wiles said. “The guys are the biggest, arguably, the largest industry in the history of mankind, I think you could say. Nobody’s ever been bigger. So if you’re going to file that kind of a case against them, you really better be ready.”