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Opponents of renewable energy law ask for U.S. Supreme Court hearing

By Mica Rosenberg
June 25, 2014

(Reuters) - Fuel producers are urging the U.S. Supreme Court to hear a challenge to California's landmark low carbon fuel standard, the first of a series of cases seeking to roll back state renewable energy laws around the country.

The court could decide in the next few days whether to take up a lawsuit brought by a coalition of ethanol and gasoline producers trying to overturn a 2009 California rule mandating cuts to carbon emissions.

The measure, created by an executive order from former Governor Arnold Schwarzenegger, calculates emissions throughout the lifecycle of a fuel by including pollution from production and transportation as well as ultimate use.

Under the regulation, fuel blenders and distributors must reduce the "carbon intensity" of their products by up to 10 percent over the next decade or risk being shut out of California's lucrative vehicle market.

Out-of-state fuel producers claim the standard penalizes their products by calculating long transportation distances as part of their overall carbon footprint.

In an effort led by the Rocky Mountain Farmers Union that grows corn and soybeans for ethanol in western states, the suit argues California is violating the U.S. Constitution by interfering with interstate commerce.

After a loss in the 9th U.S. Circuit Court of Appeals, they hope the Supreme Court will take up the case.

"The California regulation is really cutting into the bottom line of these companies that are producing the exact same product" as California fuel manufacturers, said Ilya Shapiro from the libertarian Cato Institute.

California says the standard is successfully cutting emissions from cars and helping to combat climate change.

The high court's yes or no decision could have implications for cases making similar arguments against renewable energy programs in other states.

In Colorado, a conservative non-profit group called the Energy & Environment Legal Institute sued to repeal a state law limiting the sale of electricity from fossil-fuel-fired power plants by saying it cramped the interstate market for coal.

A federal judge in Colorado dismissed that case in May but the group is appealing to the 10th U.S. Circuit Court of Appeals.

Another suit brought by North Dakota challenged a Minnesota law to cut carbon emissions from electricity generation. A federal court in April found Minnesota's law violated the Commerce Clause of the Constitution. The decision is also being appealed.

The Supreme Court may wait for the outcome of these two appeals before deciding to take up the California case, said Jane Montgomery, an environmental lawyer at Schiff Hardin.

In the meantime, the courts will continue to face these state-by-state disputes in the absence of an overarching federal rule, said law professor Steven Ferrey from Suffolk University.

Ferrey said 29 states and the District of Columbia have renewable programs promoting greener energy sources such as wind and solar.

"States are going to be the primary actors in the near term," said Ferrey. "As the opinions stand today there is mixed guidance."