



September 9, 2020

New Jersey State Senate  
Legislative Information and Bill Room  
Room B1  
State House Annex  
P.O. Box 068  
Trenton, NJ 08625-0068

Dear Members of the New Jersey State Senate:

I am writing regarding S.R. 57. The manufacturing community wholeheartedly agrees that fighting climate change must be a priority for this legislature. We are committed to smart, strong environmental protections, improving the lives of all Americans and building a more inclusive future together. Innovation is the way to win this fight, and New Jersey has the capabilities, workforce and resources to lead the fight against climate change. Count us “all in” on this effort.

S.R. 57 chooses a different path, which is why we oppose it. It places blame on a single industry—oil and gas manufacturers—for this shared global challenge. It states climate change is their fault because they studied the impact of energy use on the climate, as governments around the world did at the same time, sold the public the energy we demanded and “plan to continue doing so.” Selling lawful energy necessary to modern society is not a liability-causing event. Their energy products have advanced people’s health and safety, including in New Jersey homes, office buildings, sports arenas, roadways, hospitals and factories.

The reason that opposing S.R. 57 is a priority for the manufacturing community generally is that S.R. 57 is not just about energy manufacturers, but all manufacturers. It sets a dangerous legal and public policy precedent. Many products including those made here in New Jersey—from household cleaners to food—have risks but are still lawful and highly beneficial. Balancing these public benefits and risks, particularly as social values and risk tolerance change, is the job of this body, Congress and regulatory agencies that can set forward-looking policies.

Energy policy, in particular, involves an array of state, national and international concerns, including climate change and the ability of families and businesses to pay more for energy. This is why climate lawsuits have failed. In 2011, the U.S. Supreme Court heard the previous climate suit New Jersey brought with others states and New York City. It unanimously rejected it. Justice Ruth Bader Ginsburg, writing for the Court in *American Electric Power Co. v. Connecticut*, explained that Congress and the EPA are “better equipped” to factor concerns over climate change into the nation’s energy policy “than individual district judges issuing ad hoc, case-by-case” decisions. The court called for a national legislative solution.



This latest round of climate litigation is no different. Just look across the Hudson River. In 2017, New York City became one of the first governments to file the exact type of case S.R. 57 urges this state to bring; it is based on the same allegations. The judge echoed the Supreme Court in dismissing the case, stating that “the serious problems caused [by climate change] are not for the judiciary to ameliorate.” These are public policy issues, and retroactive liability and politicizing the courts, as S.R. 57 would do, is no way to accomplish this critical task.

An op-ed I recently wrote for the [New Jersey Globe](#) (included below) explains some of the history and context for the litigation envisioned by S.R. 57. I encourage you to read it. To be clear, S.R. 57 has no legal foundation and will do nothing to solve climate change.

Where the New Jersey Senate can make a meaningful impact is to work with manufacturers to develop the technologies we need to source and use energy more efficiently. Innovation and collaboration, not litigation, are the proven solutions. We urge the New Jersey Senate to focus its attention on approaches to climate change that will actually make a difference.

Great things can happen when concerned citizens, business and government work together with shared purpose, goals and outcomes. Just as we have all contributed to the problem of climate change, it is our shared responsibility to figure out how to continue economic and societal progress, while reducing emissions. It is neither fair nor productive to scapegoat an industry, especially one already working toward the innovations we need to win this fight.

The manufacturing community cares deeply about climate change, our economy and our way of life. We need to take the steps on climate that will create jobs, spur investment and create a healthier and more sustainable planet for all of us. It is for these reasons that we oppose S.R. 57 and look forward to working with you to solve this shared global challenge.

Sincerely,

A handwritten signature in blue ink, appearing to read "Phil Goldberg".

Phil Goldberg

Special Counsel, National Association of Manufacturers' Manufacturers' Accountability Project  
Member of the New Jersey Bar



## **Innovation, Not Baseless Litigation, Is the Right Path for Climate Solutions**

<https://newjerseyglobe.com/opinion/innovation-not-baseless-litigation-is-the-right-path-for-climate-solutions/>

By Phil Goldberg  
August 27, 2020

COVID-19 is grabbing headlines, but climate change remains a pressing challenge here in New Jersey and around the world. The good news is that New Jersey has the manufacturing capabilities, workforce and resources to lead this challenge. The bad news is that rather than focus on policies to foster this innovation, the New Jersey Senate is invoking another time-honored American tradition: litigation.

Our Senate is considering a resolution asking the state to sue energy manufacturers for “causing” climate change. The Environment and Energy Committee recently approved it, and it now awaits floor action. This blame game is a counterproductive distraction.

I have deep respect for the resolution’s sponsor, Senator Weinberg. I worked with her in Bergen County politics in the 1990s, helping to elect President Clinton and advance issues of state and national importance when I worked in the congressional office in Hackensack. She is wrong, though, about the value and legitimacy of this litigation.

Climate lawsuits have been around for years and have always failed—for good reason. The first lawsuits seeking to blame energy companies for climate change targeted utilities, auto manufacturers and energy producers in the early 2000s. The courts dismissed these cases, with the case against utilities reaching the U.S. Supreme Court in 2011.

In a unanimous ruling written by Justice Ruth Bader Ginsburg, the Supreme Court explained that setting national energy policy to account for climate change is not a liability issue for courts, but a complex matter of “national legislative” concern. Congress and the EPA are “better equipped to do [this] job than individual district judges issuing ad hoc, case-by-case” decisions.

What the Supreme Court understood is these lawsuits are not about legal theories, but our way of life and setting American energy policy. Today’s lawsuits are no different. The people behind the litigation got together in 2012 to make today’s cases look different from the one the Supreme



Court rejected, but as two federal judges have already held, they aren't. Making and selling energy are not liability-causing events.

Now, the litigation's organizers are promoting an industry-blaming narrative, saying the companies had information about climate change but did not tell us. The U.S. Securities and Exchange Commission launched and dropped its investigation into their public disclosures on climate risks. Also, when New York's Attorney General pursued such a lawsuit last year, the judge called the allegations of deceit, fraud and misrepresentations "hyperbolic."

So, what then is this about? Politics and public relations. A few weeks ago, a Texas court called out this litigation as "lawfare." The case uncovered internal emails from the litigation's organizers explicitly stating its purpose was to "delegitimize" energy companies, their workers and supporters as political actors. The judge said this litigation is an "ugly tool" for trumped up charges of wrongdoing.

Nevertheless, the organizers are still appealing to elected leaders like those in New Jersey to file lawsuits that reinforce this narrative. As I learned in Bergen County 25 years ago, repetition is the mother's milk of politics.

The New Jersey Senate resolution is based on these same allegations. In essence, it states that energy manufacturers are to blame because they knew energy use causes climate change, still sold us the energy we demanded and "plan to continue doing so." The truth is, we all knew and still know. This does not make them or us liable for climate change.

It can be gratifying to pass the blame, but that is not how to get things done. If you live down the shore, in low-lying areas or elsewhere, you know the importance of this moment. Those of us who care deeply about climate change, our economy and our way of life must focus our elected leaders on game-changing innovations, not these politically-driven litigations. For 150 years, oil, gas and other energy sources transformed our society, powering homes and businesses, giving people historic economic independence and allowing each of us to live better, healthier and longer lives. What we need now are urgent, widespread efforts to mitigate the impacts of modern society on our planet.

This approach works. Over the last decade, innovation has allowed manufactures to reduce their carbon footprint by 21 percent, with the U.S. making greater GHG reductions in the past decade than any other nation.

Lawyers and lawsuits cannot develop the technology we need to source and use energy more efficiently. It is time for governments to stop wasting valuable time and resources on this litigation ploy and take steps that will actually address this shared challenge.

*Phil Goldberg hails from North Jersey and is a member of the New Jersey Bar. He is now Special Counsel to the Manufacturers' Accountability Project and Office Managing Partner of Shook Hardy & Bacon, LLP in Washington, D.C.*