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Election 2020 could also decide dozens of N.J. lawsuits against Trump over issues that affect millions

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In his career as a real estate magnate, Donald Trump faced a lot of lawsuits. His tenure as commander in chief has been no different — and New Jersey’s attorney general has taken the president to court again and again.

Now dozens of those cases hang in the balance as voters cast ballots in the presidential race between Trump and Joe Biden.

The Garden State has sued the federal government at least 69 times in the last three years, almost always joining other left-leaning states, according to an NJ Advance Media analysis of court records and state data.

The total is more than all the multi-state suits New Jersey joined during the previous four decades, according to a database by a Marquette University professor. New Jersey jointly sued the federal government only 54 times from 1980 through early 2018, when state Attorney General Gurbir Grewal took office.

“I am not viscerally anti-Trump” Grewal said earlier this month. “Our direct goal has always been to push back against illegal actions by the federal government that affect New Jerseyans.”

The lawsuits tackle issues affecting millions in New Jersey and the nation.

The state sued the education department because officials believed new rules would make it harder protect students from sexual harassment. Lawyers dragged labor, treasury and health and human services to court over policies that let employers not cover contraception. Loosened environmental protections triggered repeated challenges.

The complaints targeted at least 20 federal offices and cover most members of Trump’s cabinet. A handful are against agencies not technically part of the Trump administration, like the Federal Communications Commission, which is overseen by Congress.

The majority of cases are still working their way through the courts, but the state has already racked up several victories.

“We’re at the point now that virtually every significant rule that comes out of a federal agency, the states are there to push back,” said Paul Nolette, an expert on the political power of state attorneys general and the chair of Marquette’s political science department, who has partnered with the National Association of Attorneys General to study the phenomenon.

While the administrations of George W. Bush and Barack Obama each faced fewer than 80 multi-state lawsuits, Trump has been hit with more than 130 in just his first term, according to Nolette's data.

Courts have issued decisions in around 100 of those cases, Nolette said, and Democratic attorneys general have won early victories about 80% of the time.

Judges recently ordered the postal service to stop removing sorting machines, told Trump he can't exclude undocumented immigrants from the U.S. Census and blocked the agriculture department from kicking people off food stamps, three cases in which New Jersey was one of the parties.

Republican attorneys general were less successful against Obama, winning about 60% of the time, according to the data.

Mounting challenges

While most states elect their attorney general, New Jersey is one of a few to have the job appointed by a governor — in this case Phil Murphy, a frequent critic of the president.

Grewal has said not having to raise money for an election gives him the independence to only challenge federal actions he believes threaten residents.

"I would much rather focus my attention here, pushing forward policies that promote a fairer and more just New Jersey, but I have to also fend off these attacks," Grewal said Oct. 14 during a virtual appearance at Rowan University.

There are many way to participate in a lawsuit, and his office's internal count is even higher, at 77 cases against the federal government. That's partially because they're counting some lawsuits where the state is not technically suing, but still challenging a federal policy.

For example, New Jersey has gone to court to defend both the Affordable Care Act, commonly known as Obamacare, and the Deferred Action for Childhood Arrivals Program, which protects people brought to the U.S. illegally as children from deportation, after Trump officials backed away from both.

NJ Advance Media's count also doesn't include lawsuits against Trump organizations (like one against the president's transition team), actions taken against Trump businesses (such as a move threatening a golf club's liquor license) or the times Trump's campaign took the state to court (like a recent complaint against New Jersey's mail-in voting plan).

Previous attorneys general have not been as aggressive. The state only joined two multi-state lawsuits against Obama officials when Chris Christie was governor, according to the data, despite Christie's vocal criticism of the administration.

Focusing on the sheer number of suits misses the real story, said James Tierney, a former Maine attorney general who lectures at Harvard Law School.

“This administration has made multiple, multiple, multiple legal errors,” Tierney said. “By trying to get to their view of the world quickly, they’ve stomped all over the law.”

Experts said that was true for one office in particular.

The U.S. Environmental Protection Agency has long been targeted by both Republican and Democratic law enforcement leaders. Grewal has helped sue the EPA at least 23 times, more than any other federal office.

“The Trump administration has taken an approach to energy and environmental statutes and regulations that really is quite shocking,” said Elizabeth Klein, deputy director of the State Energy and Environmental Impact Center at New York University’s law school.

“It’s sort of just a wholesale rollback,” she said.

States have won at least early victories in more than a dozen recent cases, including one where New Jersey successfully argued the EPA was dragging its feet in protecting the Garden State against air pollution blown in from other states.

In contrast, judges so far have only sided with Trump three times, according to the data.

That disparity is a result of the president’s team ignoring the rules when rolling out new policies, experts said.

“They did it all in a hurry, and frankly, they did it all mostly incompetently,” said Steve Gold, a Rutgers University professor who teaches environmental law. “I mean this is really the gang that couldn’t shoot straight.”

A spokeswoman for Trump’s justice department did not respond to a request for comment. Trump representatives have not responded to earlier questions about individual lawsuits, but officials previously said they are only cutting unnecessary red tape while still protecting Americans’ health and safety.

Future costs

When the government sues the government, the taxpayer pays twice.

It’s hard to say how much this all costs. In a statement, Grewal spokesman Leland Moore said it would be “extremely difficult” to calculate how many hours attorneys spent on just federal cases.

State lawyers are paid by salary, not by the hour. The division of law has roughly the same number of attorneys now as two-and-a-half years ago, soon after Grewal took office, and the federal lawsuits had “no effect on the volume or pace of other legal work done on behalf of the State,” Moore wrote.

“We are doing more with the same number of attorneys,” the statement said.

Grewal’s office only flagged one case which used an outside lawyer, and that person worked for free.

In at least five lawsuits, New Jersey either filed alone or was the only state attorney general’s office to sue.

The rest shared the workload with other states. Grewal is a Democrat, and he’s regularly partnered with Democratic attorneys general nationwide, especially California and New York.

California alone has sued the federal government more than 100 times, according to California Attorney General Xavier Becerra’s office, although Becerra has been in office a year longer than Grewal.

The overall surge is part of “maybe the greatest example of state resistance to federal power ... in recent memory,” said Robert Williams, professor emeritus at Rutgers Law School in Camden and a state constitutional law expert.

The complaints almost always cut along partisan lines, and Williams said he doubted that trend would dramatically change under a different president.

“The precedent for this kind of activism by state attorneys general will not be forgotten, particularly if our polarization continues,” he said.

Many of New Jersey’s lawsuits would likely end if Biden is elected and reverses course throughout the government, experts said.

But even a second term for Trump could lead to at least a temporary reduction in complaints, said Gold, the Rutgers environmental law professor.

“The Trump administration could decide to essentially voluntarily lose some of these lawsuits, so as to take another crack at it now that they know they have another four years,” he said.

NJ Advance Media staff writer S.P. Sullivan contributed to this report