The Star-Ledger

N.J. has sued Trump and the feds more than 70 times. So what happens after the president's gone?

By Blake Nelson NJ Advance Media for NJ.com and The Star-Ledger Published Nov. 24, 2020

While voters weighed re-electing President Donald Trump on Election Day, New Jersey filed another lawsuit against Trump's administration.

It was at least the state's 24th complaint against the U.S. Environmental Protection Agency in just three years. After joining another lawsuit Friday, New Jersey has now sued the federal government at least 73 times overall, according to an updated NJ Advance Media analysis of court records and state data.

Most were filed with other left-leaning states, and that total is more than all the multistate suits New Jersey joined during the previous four decades, according to a database by a Marquette University professor.

"This is something we've never done in the past," state Attorney General Gurbir Grewal told NJ Advance Media. "It's something that we had to do."

Grewal said Trump's defeat didn't mean the state would quickly drop dozens of active lawsuits concerning issues affecting millions.

The state needed to evaluate President-elect Joe Biden's policies on a case-by-case basis, Grewal said, and states nationwide needed to prepare to challenge rulings from Trumpappointed federal judges.

Grewal also expressed hope about partnering with Biden officials in the future.

"If I was advising the administration right now, I would really counsel them on trying to coordinate more with state AGs," Grewal said.

Several federal agencies under Trump stopped sharing facts about the environment, student loans and workforce demographics, he said. "What this new administration coming in has an opportunity to do is turn back on that faucet of information," Grewal said.

Both Republican and Democratic state attorneys general have increasingly challenged federal policies in recent decades, according to Paul Nolette, chair of Marquette's political science department who studies state litigation with the National Association of Attorneys General.

When Texas Gov. Greg Abbott was that state's top law enforcement official, the Republican reportedly described his job as "I go into the office, I sue the federal

government and I go home." Michigan's attorney general, Democrat Dana Nessel, told supporters she would sue Trump "all day, every day."

Grewal pushed back against that attitude. Challenging Trump was no different than challenging any company or individual that threatened the state, he said.

Trump was president about a year before Grewal took office. During that time, Grewal said he was partially aware of Trump's rollback of a range of regulations, but he wasn't aware of the scope until he began transitioning into his new job. Staffing decisions were influenced by a desire to challenge the federal government more aggressively than his predecessors, he said.

When a federal office announces a new policy, New Jersey lawyers first ask state agencies if the proposal could hurt residents, Grewal said. If New Jersey's environmental protection department raises concerns about a new EPA rule, for example, Grewal's staff evaluates if federal officials followed the law when rolling out the policy.

They often have not, according to judges that have already ruled against the administration. State attorneys general suing the federal government have won at least early victories about 80% of the time, according to Nolette's data.

In cases New Jersey was a part, courts have told the postal service to stop removing sorting machines, kept Trump from excluding undocumented immigrants from the U.S. Census and stopped the agriculture department from taking away many food stamps.

There are also cases where New Jersey is not technically suing, but it's still challenging a federal policy.

Grewal said his proudest moment was watching staff attorneys defend the Deferred Action for Childhood Arrivals Program, which protects people brought to the U.S. illegally as children from deportation. (A judge recently said the administration's suspension of that program was illegal.)

The state also helped defend the Affordable Care Act, commonly known as Obamacare, before the U.S. Supreme Court earlier this month.

Although Gov. Phil Murphy is a frequent Trump critic, at no point has he pushed for a particular lawsuit, Grewal said.

"There's never, ever been an instance where the governor's office has said: You, OAG, go challenge the administration on this policy or that policy," Grewal said, using the acronym for Office of the Attorney General.

"There's never any coordination when it comes to law enforcement matters," he said.

Biden will likely reverse many of Trump's policies.

For example, recent challenges to the EPA were supported by New York University's State Energy and Environmental Impact Center, and the center's director has already joined Biden's transition team. Biden has also committed to helping communities disproportionately hurt by pollution, a priority shared by Grewal who has repeatedly sued polluters in poor parts of the state.

But even when Biden tries to reverse a Trump rule, he may have to follow the same rule-making process Trump often ignored. Otherwise he risks opening himself up to similar legal challenges.

That meant the state needed to play the long game, Grewal said, especially since many courts had been re-made by the current president.

About a quarter of all active federal judges nationwide were appointed by Trump, according to the Pew Research Center.

As a result, "progressive states" needed to prepare to both challenge and pre-empt rulings from those courts, Grewal wrote in a recent New York Times op-ed.

"The positions that conservatives have been taking for years can sometimes serve progressive aims," Grewal and State Solicitor Jeremy Feigenbaum said. For example, "when states restrict police from being part of the federal government's immigration machinery, they can rely on conservative decisions that promote state independence from the heavy hand of Washington."

NJ Advance Media staff writer Michael Sol Warren and The Associated Press contributed to this report.