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2nd Circuit Panel Set to Rule on Restoration of \$145M to Energy Funds Under Conn. Program

Consumer and environmental activists are pinning their hopes on having the U.S. Court of Appeals for the Second Circuit rule that \$145 million in funds must be restored to clean energy and energy efficiency accounts.

By Robert Storace | December 27, 2019



Connecticut attorney Ben Wattenmaker. Courtesy photo

The attorney representing consumers said he's hopeful the U.S. Court Appeals for the Second Circuit will reverse a district court decision which found that the state's transfer of \$145 million from the energy funds to the general fund was not unconstitutional.

"It was a very spirited discussion and, halfway through my time, Judge [Peter] Hall said he found the case interesting and wanted to give both sides five more minutes to make their case," said Feiner Wolfson's senior attorney Benjamin Wattenmaker (https://www.feinerwolfson.com/profiles_wattenmaker.htm), who represented ratepayers and several environmental groups and clean-energy businesses.

Wattenmaker, who made oral arguments in the case at the New York City-based court on Dec. 20, told the Connecticut Law Tribune Friday the judges "were smart and got directly to the heart of the issue." Representing the state during oral arguments was Phillip Miller with the Connecticut Attorney General's Office.

At issue is the rerouting of \$145 million from three funds for clean energy and energy efficiency programs and putting the money in the state's general fund. The Connecticut Legislature, citing a two-year massive budget gap, did just that: taking the money and putting it in the state's general fund in May 2018.

The environmental groups, including SolarConnecticut and Save the Sound, filed a May 2018 lawsuit in federal court, but lost. U.S. District Judge Janet Hall, siding with the state, argued that the plaintiffs didn't have enforceable contracts with their utility companies.

Wattenmaker advanced two main arguments before the panel. They are, he said, that the energy sweeps approved by the Legislature "violated the contract clause of the U.S. Constitution" and that the contract clause forbade any state from infringing on a private contract.

“Each resident in Connecticut pays \$3 a month toward the [energy] funds in their utility bills. The fund is held by the utilities and is supposed to be spent on clean-energy projects,” Wattenmaker said. “The state took the \$145 million and put it in the general fund, but the contract clause, we believe, forbids any state from infringing on a private contract. Every citizen has a contract with the utility and, as part of that contract, it indicates you pay these fees that goes to the energy funds.”

The state, on the other hand, maintained during oral arguments that while ratepayers had a contract, they did not have the contractual rights on how that \$3 a month was spent.

Samantha Norton, a spokeswoman for the Office of Connecticut Attorney General, said Friday that Miller, the state’s lawyer, would have no comment on the matter.

Wattenmaker said a good portion of the funds in question “are intended to be spent to support the green energy industry, which is an emerging industry in Connecticut and employs hundreds if not thousands of people. This could affect jobs, but, more importantly, it’s the right thing to do for the environment.”

The federal lawsuit (<https://drive.google.com/file/d/1KX-DZwxzfuVXIbIh5kPt0K2WTsnkxSVQ/view?usp=sharing>) was filed in May 2018 under the caption *Colon de Mejias v. Malloy* (i.e., former Gov. Dannel Malloy). In a recent statement, lead plaintiff and ratepayer Leticia Colon de Mejias said, “At a time when over 400,000 Connecticut residents can’t afford to keep their lights on, we must ensure the funds collected on these bills is used for the purposes that they were intended.”

In addition to Hall, Judge Richard Sullivan was also present during the Second Circuit oral arguments. Judge Ralph Winter Jr., who completed the three-judge panel, listened via audio. A decision is expected in the next six months.

Read more:

Connecticut Environmental Groups File Federal Lawsuit to Stop ‘Energy Sweeps’ (<https://www.law.com/ctlawtribune/2018/05/15/connecticut-environmental-groups-file-federal-lawsuit-to-stop-energy-sweeps/>)

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