

**Immediate Release**  
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## **Energy Funds: Brief filed as ratepayers, energy businesses, and environmental advocates continue push for review of decision**

*U.S. District Court had ruled against ratepayers, energy efficiency and clean energy businesses, environmental orgs, and consumer groups; allies continue appeal and demand legislative action*

New Haven, Conn. – Attorneys for ratepayers, efficiency and clean energy businesses, and environmental organizations [filed an appeal brief today](#) urging the U.S. Court of Appeals for the Second Circuit in New York to reverse a U.S. District Court decision that denied plaintiffs a remedy in their lawsuit to force the State of Connecticut to restore \$145 million in ratepayer dollars intended to save families money on energy bills and reduce climate pollution.

The businesses and nonprofits [filed a federal lawsuit](#) in May 2018 seeking to stop the state legislature’s 2017 sweep of Connecticut’s energy efficiency and clean energy funds, and to prevent future diversions of ratepayer funds. That complaint argued that diverting ratepayer funding to plug a budget deficit instead of using the dedicated funds for their intended purpose violates the Contract Clause and Equal Protection Clause of the United States Constitution and functions as an illegal tax on tax-exempt organizations like churches and nonprofits.

While the case moves through the courts, the energy, environmental, and ratepayer advocates are also pushing for legislative action to remedy the ongoing harms caused by the raids on ratepayer funds. A total of 170 organizations, business leaders, energy workers, and environmental advocates have joined recent letters circulated by [Efficiency for All](#) and [Connecticut Fund for the Environment](#) urging action in the current legislative session, before the next round of fund sweeps of \$67.5 million expected to occur on June 25, 2019.

**“Efficiency doesn't just make dollars, it also makes sense,” said lead plaintiff Leticia Colon de Mejias, chair of Efficiency For All (EFA) and president of Energy Efficiencies Solutions. “Over 380,000 Connecticut households can't afford their energy bills. Energy efficiency has the unique ability to lower these bills, close the affordability gap, protect our planet, protect our health, and improve our living conditions, all while supporting 34,000 local jobs. Our legislators and our new Governor can take action today to help the residents of Connecticut by restoring the C&LM efficiency funds which have a \$1 to \$7 return on investment, and help all ratepayers and businesses in our state. These funds are not tax dollars. When they are *not* swept they create 1.4% in annual Gross State Product and hundreds of millions more in Connecticut tax revenue, and lower our energy costs.”**

After oral arguments before the U.S. District Court in New Haven, [Judge Janet C. Hall found in October](#) that the state’s 2017 budget that swept ratepayer funds did not impair contracts between ratepayers and their electric distribution companies because neither utility tariffs nor state law ever promised ratepayers that their dollars would *not* be transferred to the General Fund for unrelated purposes. Plaintiffs appealed that ruling.

In the appeal brief, the plaintiffs’ attorneys argue that

- 1) the district court wrongly concluded Plaintiffs do not have enforceable contracts based on the tariff charges ratepayers pay their utilities. While the district court decided “there is no basis to conclude that the Act impairs any contractual relationship between the plaintiffs and the [electric utilities],” the tariff gives ratepayers the contractual right to protect the efficiency funds.
- 2) the plaintiffs have a valid Equal Protection claim because the Act wrongfully taxes all ratepayers of electric utilities whereas customers of municipal utilities are not subject to the tax.

Plaintiffs are Leticia Colon de Mejias; Connecticut Fund for the Environment; New Haven-based Fight the Hike; Energy Efficiencies Solutions, LLC; Best Home Performance of CT, LLC; Connecticut Citizen Action Group; New England Smart Energy Group, LLC; CT Weatherproof Insulation, LLC; Steven C. Osuch of East Windsor; Jonathan Casiano of Windsor; and Bright Solutions, LLC. The plaintiffs are represented by attorneys from the firms of Holland & Knight in New York City and Hartford-based Feiner Wolfson. Defendants are the Governor, Treasurer, and Comptroller of the State of Connecticut.

“Plaintiffs have about 100 years of legal precedent supporting the notion that utility tariffs are enforceable contracts and mean what they say—here that energy efficiency funds and renewable energy funds paid by customers should be spent on their intended purposes,” **said Stephen J. Humes, a partner at Holland & Knight and co-counsel on the case.** “The shameful reality is that the State is defending conduct that—if anyone else in Connecticut tried to do it—would face serious criminal and civil punishment. If it’s illegal for anyone else to seize millions dedicated for specific purposes, how can the State get away with this deceptive conduct? We look forward to making these arguments at the Second Circuit and await the day when the Court holds the State accountable. It will be an expensive day of reckoning.”

This case raises an important legal issue that is relevant beyond Connecticut in that it is the first time ratepayers argued in court that when they pay their utility bills with surcharges dedicated for specific programs or services—such as energy efficiency and renewable energy—enforceable contracts arise that cannot be invaded by any state. The practical effect of Judge Hall’s October decision, however, was to deny judicial relief and send the problem back to the Connecticut General Assembly.

“There are multiple routes to resolve this problem. We are pursuing the legal case, but legislators could take action right now to halt the damage the raids are doing to Connecticut families and businesses,” **said Roger Reynolds, senior legal counsel at Connecticut Fund for the Environment.** “Many Connecticut legislators and administration officials have committed to avoiding further funding diversions in this year’s budget cycle. They need to go a step further, though, and clarify state law to prevent such raids in the future. Residents trusted that their ratepayer dollars would go where their electric bills said they would—towards energy efficiency and clean energy programs that save money and cut climate pollution—but instead those hard-earned dollars were used to plug a hole in the state budget. We believe the appellate court will see that the state’s action violated the federal constitution’s contracts and equal protection clauses, and ask them to correct that mistake. In the meantime, we ask our state senators and representatives to put Connecticut back on the path to a healthier energy future and a stronger economy.”

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**What Connecticut’s clean energy, efficiency, environment, and consumer advocacy communities are saying:**

“The short-sighted raid on the energy efficiency and clean energy funds in 2017 was based upon the assumption of a large budget deficit. The deficit has become a large surplus. The Governor and legislature could address the issues raised in our suit by using some of the surplus to restore these funds, and if they invested in energy efficiency upgrades to public facilities they could help save money in future budgets.”

- Tom Swan, executive director, Connecticut Citizen’s Action Group (plaintiff)

“My company has worked in CT’s energy efficiency programs for almost ten years and not only do they provide good paying jobs for thousands of CT residents but are the best and cheapest investment we can make for the future of our economic security. Furthermore, we have no more effective weapon to fight the impending damage of climate change than investing in our states energy efficiency and renewable programs.”

- Stephanie Weiner, CEO-Founder, New England Smart Energy Group, LLC (plaintiff)

“Countless families in Connecticut struggle to pay their energy bills, and efficiency programs can mean the difference between making that payment or trying to choose between paying for heat and paying for groceries. Investing in energy efficiency is key to bringing down energy costs and protecting our state’s most vulnerable residents, all while helping us cut carbon emissions, protect public health, and create jobs in a growing field.”

- Amanda Schoen, deputy director, Connecticut League of Conservation Voters

“Programs made possible by the funds are why hundreds of families in my town rave about utility bill savings or the satisfaction of reducing their carbon footprint. For any Senator or Representative that has spoken of the need to create jobs, boost our economy, mitigate climate change, or put more money in people’s pockets, restoring the funds should be an easy YES vote.”

- Andy Bauer, chair, Portland Clean Energy Task Force

“Clean Water Action is deeply concerned about the devastating impact the raids of energy efficiency and clean energy funds had on the environment, highly skilled jobs, Connecticut's economy, and public health. We work to protect water and prevent pollution by ramping up energy efficiency and renewable energy projects in towns across the state, in collaboration with business leaders. The raids of these funds dramatically reduced residents’ access to use these funds for their intended purpose, initiatives that would reduce energy costs to residents and promote healthier homes. We fully support the restoration and long-term protection of these funds for their intended purpose. Doing so assures that we reduce energy demand, achieve legally mandated carbon reduction goals, and equitably address the energy needs of all residents of Connecticut.”

- Anne Hulick, Connecticut director, Clean Water Action

“As a former State Representative (House Vice Chair of Energy Committee) as well as former Technical Coordinator and then Board member of the Energy Efficiency Fund, I have seen three raids on this fund by the state legislature. As a fund set up to reduce energy use, it benefits Connecticut citizens in many ways, including energy security, and ought to be kept sacrosanct and made whole from past raids; particularly this most recent one. Given the repeated history of raids, it’s clear the legislature must take steps to protect ratepayer funds going forward.”

- Joel Gordes, energy and environmental security strategist

“The raid on energy efficiency and clean energy funds by the General Assembly has hurt ratepayers, energy efficiency jobs, and the environment. It is essential that the funds are restored and protected from further raids. Sierra Club Connecticut supports legal and legislative action to ensure that ratepayer funds are used for what they were intended—to reduce energy consumption and costs, and climate-destroying greenhouse gas emissions.”

- Ann Gadwah, chair, Sierra Club Connecticut

“Connecticut’s budget woes partially reflect a broader economic crisis that continues to hit working families the hardest. Taking action to address the looming climate crisis will also allow us to respond to that economic crisis by putting people to work protecting the climate. Our energy efficiency programs do exactly that: they help struggling communities by creating new local jobs, they grow our state’s economy and tax base, and they move us toward a clean energy future that protects the climate for our grandchildren.”

- John Humphries, lead organizer for the CT Roundtable on Climate and Jobs, and member of the Governor’s Council on Climate Change

**Background:**

- [May 15 Complaint](#)
- [Press release on filing of lawsuit](#)
- [July 20 Motion for Summary Judgment](#)
- [August 13 Response brief](#)
- [October 25 Ruling on Motions for Summary Judgment](#)
- [November 26 appeal](#)

To speak with contractors who are experiencing direct harm or staff who were let go, please contact Leticia Colon de Mejias at 860-690-5522.