

Fourth Circuit Silences Maryland's Electricity Greenwashing Ban

by Jim Wedeking

The U.S. Court of Appeals for the Fourth Circuit recently reversed a district court's denial of a preliminary injunction, holding that Maryland's law against so-called "greenwashing" by electricity suppliers likely offends the First Amendment.

Background

Maryland's 1999 law allowing customers to choose their electricity supplier introduced competition into a monopolistic system.¹ With competition, however, comes advertising. Maryland's electricity market features both a demand from some consumers to purchase electricity generated by renewable sources and a legal requirement for suppliers to increase their procurement of electricity generated by renewables.² This means that several electricity suppliers declare that at least a portion of their electricity is sourced from renewables, defined in Maryland as primarily solar, wind, and hydroelectric power but can include others, such as waste incineration.³

With Maryland generating little renewable energy of its own,⁴ suppliers import most of the state's renewable energy. This means purchasing electricity from wholesale power markets managed by a regional transmission organization.⁵ For Maryland, the regional transmission organization is the PJM Interconnection, which manages the ins-and-outs of electricity transmission for "a noncontiguous section of the country centering on Pennsylvania, New Jersey, Delaware, Maryland, West Virginia, Virginia, and Ohio with outlying portions in North Carolina, Indiana, Michigan, and Illinois."⁶

Once a generator's electricity enters the PJM grid, power generated by coal power is indistinguishable from that generated by wind or solar power.⁷ "To resolve this problem, numerous states use renewable energy credits (RECs), which are intangible instruments representing one megawatt-hour of generated renewable energy" that may be sold by renewable energy producers in other States

¹ See *In re Smart Energy Holdings, LLC*, 311 A.3d 919, 926-927 (Md. 2024) (discussing the Electric Customer Choice and Competition Act of 1999, Md. Code Ann., Pub. Util. § 7-501, *et seq.*).

² See Md. Code Ann., Pub. Util. § 7-703 (renewable energy portfolio standard).

³ Md. Code Ann., Pub. Util. § 7-701(s), (t) (defining Tier 1 renewable sources as solar, wind, and various other sources, such as geothermal, ocean wave, poultry litter-to-energy, and waste-derived energy and Tier 2 as hydroelectric).

⁴ See, U.S. Energy Information Administration, Maryland, Analysis (Mar. 19, 2026) (renewable energy accounted for 14% of in-state electricity generation), www.eia.gov/MD/analysis.

⁵ *Retail Energy Advancement League v. Brown*, __ F.4th ___, 2026 WL 1355569, at *1 (4th Cir. May 15, 2026).

⁶ *Id.*

⁷ *Id.* at *2.

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to “non-renewable energy suppliers in Maryland.”⁸ This accounting fiction allows power purchasers to describe their procured power as “renewable.”

The Maryland legislature believed that consumers struggle to understand this system. “The State found consumers were increasingly unaware that despite selecting and paying a premium for a supplier they believed to be providing renewable energy, the electricity introduced to the grid from that supplier was not derived from solely renewable sources.”⁹ The result was S.B. 1, a law regulating electricity suppliers through a mix of both speech prohibitions and compelled disclosures purportedly necessary to combat the scourge of greenwashing.¹⁰

On the prohibition side, an electricity supplier is barred from using a slew of listed terms, such as “clean, green, eco-friendly,” and “environmentally friendly,” or describing their electricity as “100%” renewable, wind, solar, *etc.*, “or similar claims” unless it meets certain criteria. First, a provider’s electricity must be 51% renewable (or equivalent to one percentage point above the current year’s renewable energy portfolio standard) based on either generation or RECs.¹¹ Under Maryland law, RECs include a geographic limitation. Suppliers may only use them for renewable generation (1) within the PJM region, (2) from an area outside the PJM region but “in a control area that is adjacent to the PJM region,” and (3) on certain portions of the Atlantic Ocean’s outer continental shelf.¹² Thus, an electricity supplier with enough RECs to meet the renewable generation threshold is still prohibited from advertising its power as “green” or “eco-friendly” if its RECs were generated in the wrong part of the country. Second, electricity suppliers may not use the verboten marketing terms unless the Maryland Public Service Commission (“PSC”) approves the electricity prices or, if the suppliers opt not to seek such approval, they may only charge prices equivalent to non-renewable electricity offered by the State’s monopoly provider.¹³

On the compulsion side, S.B. 1 requires electricity suppliers to include extensive disclosures explaining (1) what RECs are, how they are sold, and that “a REC does not indicate that renewable electricity itself has been purchased by the entity that purchased the REC,” (2) whether a customer will be paying for renewable generation or RECs, (3) how the electricity the customer purchased was generated, (4) “how the green power will benefit the environment,” (5) what portion of the electricity supplier’s power is eligible for meeting Maryland’s renewable energy portfolio standard, and (6) the State where the customer’s electricity is generated.¹⁴ However, the PSC was charged with formulating the exact language electricity providers are compelled to provide.

Challenging Maryland’s “Greenwashing” Law

In October 2024, before the PSC issued the disclosure language, the Retail Energy Advancement League, an advocacy group that includes renewable electricity suppliers as members, and Green Mountain Energy Company, which claims to “suppl[y] 100% clean energy to its customers, including

⁸ *Id.*; see also Md. Code Ann., Pub. Util. § 7-701(m) (defining Renewable Energy Credits under Maryland law).

⁹ *Retail Energy Advancement League*, 2026 WL 1355569 at *2.

¹⁰ Codified at Md. Code Ann., Pub. Util. § 7-707. “Greenwashing” is a colloquial term generally referring to “the act of misleading consumers regarding the environmental benefits of a product or service to trick customers who want to make environmentally conscious choices into buying” those products or services. *In the Matter of Maryland Office of People’s Counsel*, 306 A.3d 712, 720 (2023) (internal quotations omitted).

¹¹ Md. Code Ann., Pub. Util. § 7-707(c)(1).

¹² *Id.* § 7-701(m).

¹³ *Id.* § 707(c), (d). Unfortunately, the court did not examine this strange arrangement where a company’s speech is restricted unless it meets certain conditions completely unrelated to the speech itself.

¹⁴ *Id.* §§ 7-510(d)(2)(i); 7-707(f)(2), (g).

renewable residential electricity to customers in Maryland,” filed suit challenging S.B.1.¹⁵ The plaintiffs moved for a preliminary injunction, arguing that S.B. 1 violates the First Amendment through both prohibiting truthful speech and compelling the recitation of government-mandated opinions without adequate state interests or tailoring the regulations toward such an interest.¹⁶ Further, because the PSC had not yet established a process for approving renewable electricity rates under S.B. 1, it was impossible for providers to comply with the law even if they accepted the speech restrictions that came with it.¹⁷

Maryland’s defense of S.B. 1 was similar to how States often defend speech restrictions: isolated instances of purportedly misleading language or consumer confusion are transformed into claims of industry-wide fraud warranting industry-wide regulation, the law regulates mere commercial speech (not *real* speech) by compelling purely factual disclosures subject to intermediate scrutiny (not strict scrutiny), and intermediate scrutiny should be applied in such a loose manner as to be indistinguishable from rational basis review.¹⁸ The district court agreed, denying the preliminary injunction from the bench. The plaintiffs appealed to the Fourth Circuit.

On appeal, plaintiffs argued that S.B. 1 regulated speech, not the narrow band of “commercial speech” receiving the lesser protection of intermediate scrutiny, meaning that the district court should have applied strict scrutiny.¹⁹ The Fourth Circuit declined to consider this argument, holding that S.B. 1 violated the First Amendment even under intermediate scrutiny. Applying the four-part *Central Hudson* test, courts ask (1) whether the speech involved is misleading, (2) whether the government has a “substantial” government interest justifying regulation, (3) whether the regulation directly advances that interest, and (4) whether the regulation is more extensive than it need be to remedy the problem.²⁰

With respect to the first factor, the Fourth Circuit rebuffed Maryland’s argument that S.B.1 regulates misleading speech. Because terms like “100% solar” or “clean, green, eco-friendly, environmentally friendly or responsible” can have multiple different meanings, “Maryland fails to demonstrate how the use of these terms is inherently misleading.”²¹ Thus, S.B. 1 “does not meet the high bar to establish that the regulated terms are inherently misleading because the targeted speech includes phrases that may be presented in ways that are not deceptive.”²² Even if common marketing claims seem confusing given the mismatch between RECs and the actual operation of the power system, “the State cites no authority for the proposition that potentially confusing speech is not protected by the First Amendment, and the

¹⁵ *Retail Energy Advancement League*, Case No. 1:24-cv-02820 (D. Md.), Complaint at ¶¶ 12-14 (Oct. 1, 2024) (“Compl.”).

¹⁶ Memorandum in Support of Plaintiffs’ Motion for Preliminary Injunction (“P.I. Motion”), Case No. 1:24-cv-02820, Doc. 2-1 (Oct. 1, 2024) at 1-2, 18-23.

¹⁷ *Id.* at 8-9.

¹⁸ Defendants’ Joint Opposition to Plaintiffs’ Motion for Preliminary Injunction, Case No. 1:24-cv-02820, Doc. 14 (Oct. 29, 2024) at 6-7 (recounting a legislative hearing where an activist group complained that Maryland does not regulate RECs generated in other states and two witnesses believed that paying premiums for electricity backed by RECs was deceptive); 14-15 (speech prohibitions and compelled speech requirements are subject to very limited constitutional protections because they are directed at economically motivated corporations); 22 (compelled description of renewable electricity as “a social good” is purely factual, uncontroversial, and a mere suggestion of what suppliers must say); 20-23 (S.B. 1 need only have a reasonable relationship to its stated goals and the State is not required to consider less restrictive means).

¹⁹ *Retail Energy Advancement League*, 2026 WL 1355569 at *4.

²⁰ *Id.* (citing *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557, 566 (1980); *W. Va. Ass’n of Club Owners & Fraternal Servs., Inc. v. Musgrave*, 553 F.3d 292, 301 (4th Cir. 2009)).

²¹ *Id.*

²² *Id.* Notably, the plaintiffs argued in their motion for a preliminary injunction that S.B. 1 not only prohibits the use of marketing terms in accordance with common industry practice but also in compliance with the Federal Trade Commission’s guidance on the issue. P.I. Motion at 19-20.

Supreme Court has in fact provided guidance to the contrary.”²⁵

The court agreed that consumer protection is a valid substantial government interest,²⁴ but this only sets up the dual inquiries of whether (1) S.B. 1 directly advances Maryland’s consumer protection interest and (2) it is more extensive than necessary to protect consumers.²⁵ This requires an examination of whether the speech regulations address a real and substantial problem—as opposed to some pretextual or conjectural concern that might arise—and that the speech regulations provide a good “fit” between the legislature’s ends and the means chosen to accomplish those ends.”²⁶ The Fourth Circuit held that S.B. 1 lacked the necessary “fit.”

First, it rejected the district court’s modification of the standard. That court denied the motion for a preliminary injunction because it believed Maryland provided “a direct link” between “the harm” of consumer confusion and S.B. 1’s speech regulations.²⁷ “But a ‘direct link’ is not enough.”²⁸ Second, although the Fourth Circuit accepted that legislative “testimony demonstrates general confusion about the REC system” it held that “the [speech] restriction” on advertising like “100% wind energy” “does not address any of this confusion.”²⁹ S.B. 1 allows electricity suppliers to use terms like “100% wind energy” if the RECs are generated within the PJM region—an area as far away from Maryland as Chicago.³⁰ Yet, “a supplier purchasing RECs generated from renewable sources in Texas (outside the PJM region) may not.”³¹ This “problematically allows for confusing marketing to persist—defeating the State’s asserted interest in protecting consumers from misleading information, rather than advancing it.”

In other words, Maryland allowed certain electricity suppliers to continue misleading Maryland consumers so long as they were part of a marginally localized interconnection while imposing speech restrictions on their competitors.³² Although Maryland attempted to save S.B. 1’s speech restrictions by coupling them with S.B. 1’s compelled disclosures on how RECs work, the court noted that “all of the work of resolving consumer confusion is done by the disclosures, not the restriction.”³³

As for the law’s compelled disclosures, the PSC did not issue the language required under S.B. 1 until after the district court denied the plaintiffs’ motion for a preliminary injunction.³⁴ Because the

²⁵ *Id.* at *5 (citing *In re R.M.J.*, 455 U.S. 191, 203 (1982)).

²⁴ *Id.* at *5. The Fourth Circuit declined to consider the state’s asserted interest in promoting the development of renewable energy generation within Maryland because it was raised for the first time before the district court during oral argument on the motion for a preliminary injunction and never mentioned in the legislative record. *Id.*

²⁵ *Id.* at *6 (citing *Central Hudson*, 447 U.S. at 569; *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 486 (1995)).

²⁶ *Id.* (quoting *Rubin*, 514 U.S. at 486); see also *id.* (“Yet ‘the regulation may not be sustained if it provides only ineffective or remote support for the government’s purpose.’”) (quoting *Central Hudson*, 447 U.S. at 564).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at *7.

³¹ *Id.*

³² Maryland’s motion for a preliminary injunction proclaimed that, “[n]o longer will Maryland customers pay higher monthly rates only to find out that the ‘green’ electricity they were promised is derived from non-renewable or out-of-state sources.” P.I. Motion at 19. But S.B. 1 specifically allows this. Not only does the law permit electricity suppliers purchasing RECs from certain out-of-state sources to advertise their products as “green,” “renewable,” or “eco-friendly,” but they may advertise them as “100% renewable” or “100% wind” even when their generation consists of as little as 51% renewable energy. Md. Code Ann., Pub. Util. § 7-707(c)(1). Unfortunately, the Fourth Circuit did not consider how Maryland’s endorsement of patently misleading information resolves customer confusion.

³³ *Retail Energy Advancement League*, 2026 WL 1355569 at *7.

³⁴ *Id.* at *9 (citing Md. Code Regs. 20.53.07.07(B)(4)).

PSC’s “language is materially different from the model language” used in S.B. 1, “and the district court has not yet had the opportunity to evaluate the constitutionality of this now-mandatory language,” the Fourth Circuit remanded the matter back to the district court.³⁵

Issues for Remand

Given the PSC’s compelled disclosure language, the district court will have much to consider on remand. Among other things, the PSC compels companies to state that a “REC represents *the environmental and social good* associated with 1 megawatt hour of renewable electricity generation.”³⁶ The notion that renewable generation is an unalloyed “environmental and social good” is a highly controversial opinion, not the type of “purely factual and uncontroversial information about the terms under which [the suppliers’] services will be available,” typical of permissible commercial speech case restrictions.³⁷ This means that the compelled disclosures are likely to face strict scrutiny instead of an intermediate scrutiny standard under *Zauderer*.

Further, the PSC’s compelled statements about regional effects should face judicial skepticism. To begin, the Fourth Circuit had “serious concerns regarding the sufficiency of Maryland’s evidence supporting” the “contention that consumers are confused about where RECs originate” as the State “offer[ed] only a single consumer comment submitted to the [Federal Trade Commission] from 2010.”³⁸ That comment merely claimed that consumers may believe that the renewable energy they purchased “is generated in their geographic location, when, in fact, the utility may have purchased RECs generated in a distant location.”³⁹ “Such a comment borders on ‘mere speculation or conjecture,’ which is insufficient” under *Central Hudson*.⁴⁰

However, if Maryland consumers were not already “confused about where RECs originate,” they will be due to the PSC’s highly misleading compelled language on regional effects: “By purchasing RECs that qualify for Maryland’s renewable portfolio standard, you are supporting renewable energy development in the region;” “Increased demand for, and generation of, renewable electricity: ... (ii) May also have other environmental benefits such as reducing regional air pollution.”⁴¹ As the Fourth Circuit explained—but the PSC’s compelled disclosure language does not—“the region” runs as far afield as Michigan, New Jersey, Illinois, and North Carolina and there was “no benchmark showing how Maryland residents conceive of ‘local’ versus ‘distant’ locations for RECs.”⁴²

Thus, “[i]t does not seem reasonable to conclude that, in the absence of any other evidence, a resident of Baltimore is likely to consider a wind farm in northern Illinois as a ‘local’ geographic location rather than a distant one.”⁴³ Under the same logic, it is also unreasonable to tout purported “reductions in regional air pollution” when the PSC is actually referring to places like Elizabeth City, North Carolina or Sandusky, Ohio. Therefore, it seems unlikely that the PSC’s highly opinionated and misleading compelled “disclosures” will fare better than S.B. 1.

³⁵ *Id.* at *9-10.

³⁶ Md. Code Regs. 20.53.07.07(B)(4)(a)(i) (emphasis added).

³⁷ *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985).

³⁸ *Retail Energy Advancement League*, 2026 WL 1355569 at *7, n.8.

³⁹ *Id.* (quoting 75 Fed. Reg. 63,552, 63,590 (Oct. 15, 2010)).

⁴⁰ *Id.*

⁴¹ Md. Code Regs. 20.53.07.07(B)(4)(b), (c)(ii).

⁴² *Retail Energy Advancement League*, 2026 WL 1355569 at *1, *7.

⁴³ *Id.* at *7.