



COLUMBIA LAW SCHOOL

SABIN CENTER FOR CLIMATE CHANGE LAW

Climate Change Litigation in the USA: Moving Beyond Statutes

Michael B. Gerrard

Andrew Sabin Professor of Professional Practice
Faculty Director, Sabin Center for Climate Change Law

June 2020

Climate Change Litigation Databases

[U.S. CLIMATE CHANGE LITIGATION](#)

[NON-U.S. CLIMATE CHANGE LITIGATION](#)

This site provides two databases of climate change caselaw. Cases in the databases are organized by type of claim and are searchable. In many cases, links are available to decisions, complaints, and other case documents.



ClimateCaseChart.com

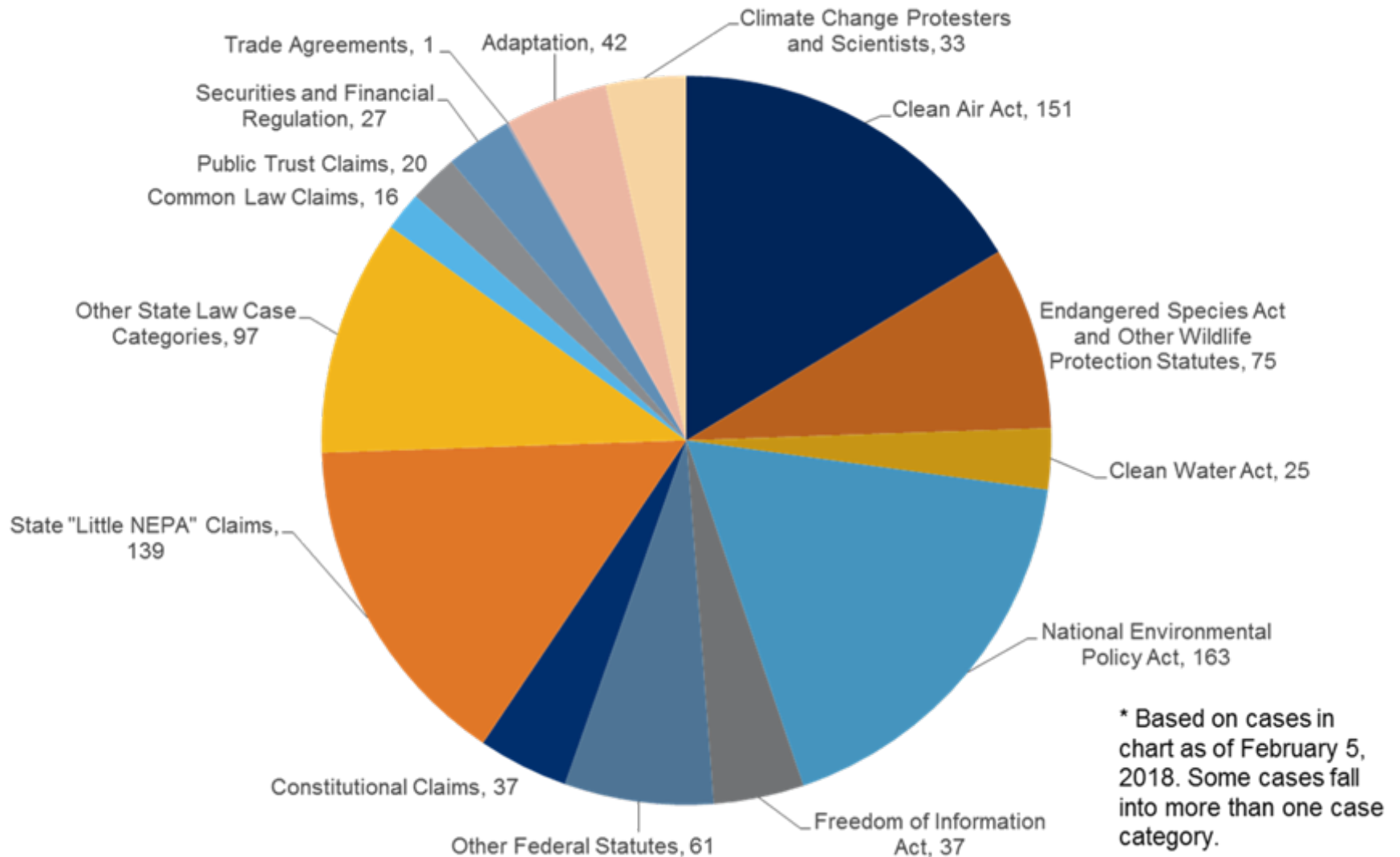
[https://climate.law.columbia.edu
/content/join-our-mailing-lists](https://climate.law.columbia.edu/content/join-our-mailing-lists)

Country	Number of Cases*
United States	1134
Australia	95
United Kingdom	56
European Union	48
Canada	20
New Zealand	17
Spain	13
France	9
Germany	5
Brazil	4
Pakistan	4
Ireland	3
South Africa	3
Chile	2
Colombia	2
India	2
Inter-American Comm'n Human Rights	2
Int'l Court of Justice	2
Japan	2
Netherlands	2
Poland	2
Ukraine	2

*These numbers are current through December 2019. It is possible that some additional cases have not yet come to our attention.

Country	Number of Cases*
Argentina	1
Austria	1
Belgium	1
Czech Republic	1
Ecuador	1
European Comm. Social Rights	1
Indonesia	1
Inter-American Court of Human Rights	1
Kenya	1
Luxembourg	1
Micronesia	1
Nigeria	1
Norway	1
Peru	1
Philippines	1
Romania	1
Slovenia	1
Sweden	1
Switzerland	1
Uganda	1
UN Comm. on Rights of the Child	1
UN Framework Convention on Climate Change	1
UN Human Rights Committee	1
TOTAL	1452

Types of cases filed in U.S.



Massachusetts v. EPA
(2007)

Endangerment finding (2009)

Motor Vehicle
Rule (2010)

New source performance
standards

Prevention of Significant
Deterioration Program (2010)

New fossil fuel plants: Federal
standards

Anyway
sources
83% of
emissions

Newly regulated
sources
3% of emissions

Existing fossil fuel plants:
State plans



COLUMBIA LAW SCHOOL

SABIN CENTER FOR CLIMATE CHANGE LAW

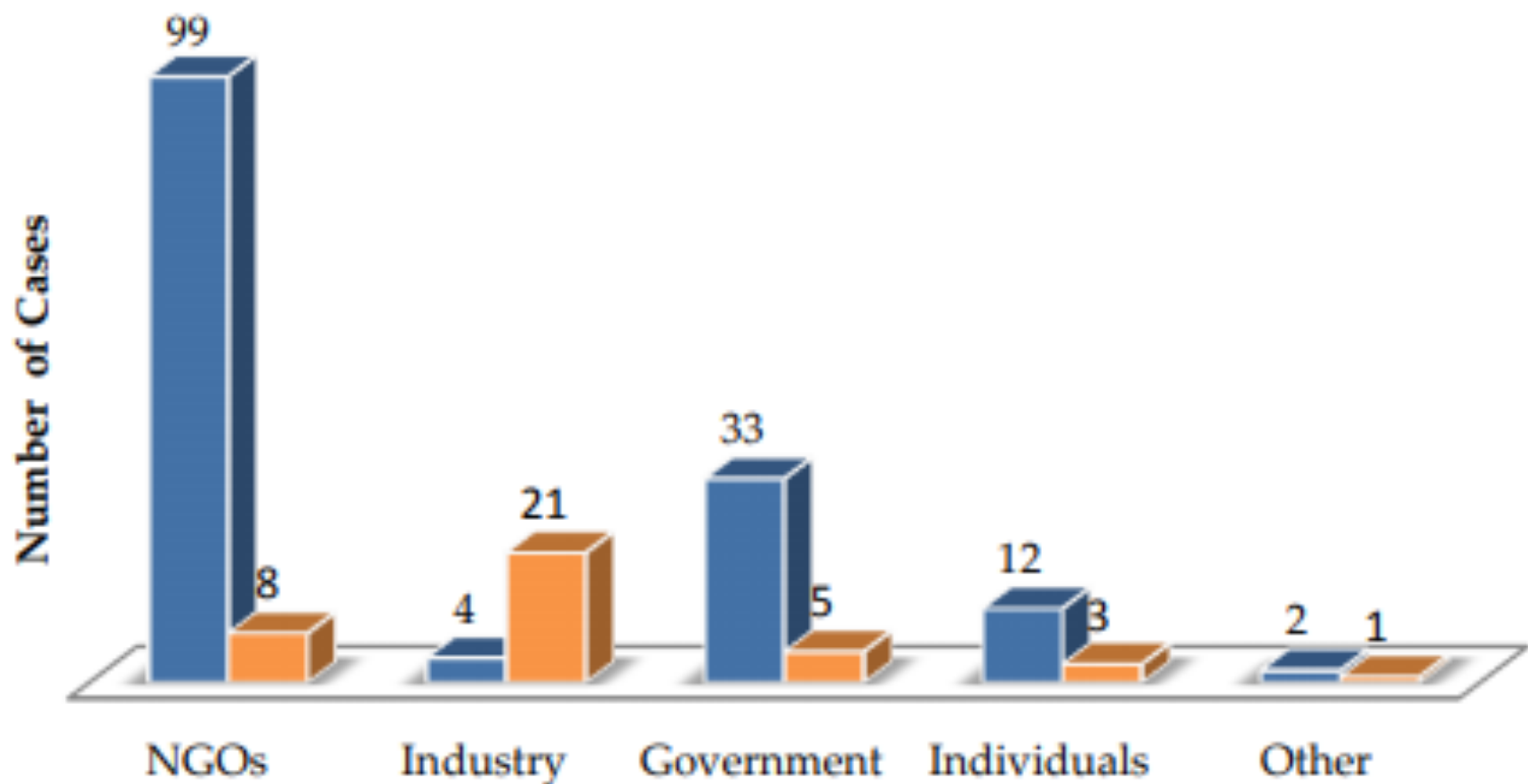
**U.S. CLIMATE CHANGE
LITIGATION IN THE AGE OF
TRUMP: YEAR TWO**

By Dena P. Adler

June 2019

Plaintiff/Petitioner Involvement (2017-18)

■ "Pro" Cases (129) ■ "Con" Cases (30)



Trump Deregulatory Actions Defeated in Court

Delaying EPA methane standards for oil and gas sector – Clean Air Council v. Pruitt, 862 F.3d 1 (D.C. Cir. 2017)

Delaying BLM methane waste prevention rule -- California v. BLM, No. 3:17-cv-03804 (N.D. CA July 5, 2017)

Repealing coal, oil and gas valuation rule – California v. Department of Interior, No. C17-5948 (N.D. CA October 7, 2017)

Weakening sage-grouse protections – Western Watersheds Project v. Schneider, No. 1:16-CV-83-BLW (D. Idaho October 2, 2019)

Revising oil and gas leasing procedures – Western Watersheds Project v. Zinke, No. 1:18-cv-00187-REB (D. Idaho February 27, 2020)

Delaying issuance of energy efficiency standards – NRDC v. Perry (9th Cir. October 10, 2019)

Allowing oil and gas drilling in Arctic and Atlantic Oceans – League of Conservation Voters v. Trump, No. 3:17-cv-00101 I(D. Alaska 2019)

Lifting moratorium on federal coal leasing – Citizens for Clean Energy v. Department of the Interior, 4:17-cv-00030 (D. MT April 19, 2019)

Weakening hydrofluorocarbon regulations – NRDC v. Wheeler (D.C. Cir. April 7, 2020)

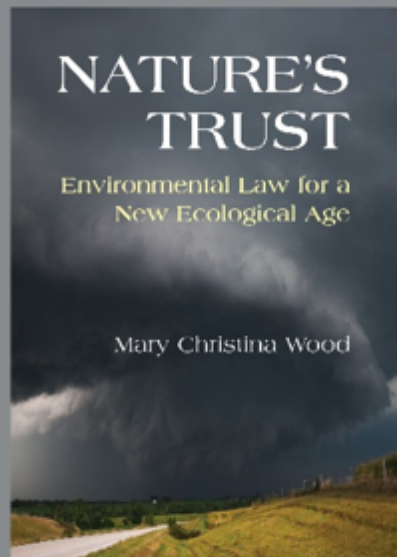
Removing grant-funded scientists from EPA scientific advisory boards – NRDC v. EPA, No. 19cv5174 (SDNY April 15, 2020)

BOOK LAUNCH EVENT

TUESDAY, NOVEMBER 19, 2013 4:30 TO 6 P.M. WAYNE MORSE COMMONS, KNIGHT LAW CENTER

NATURE'S TRUST

ENVIRONMENTAL LAW FOR A NEW ECOLOGICAL AGE



"Our children are trusting us to protect their Earth. Our governments are on trial for failing that trust. This is the trial that should rivet the public's attention, for all life depends on its outcome. This book puts the people—all of us—in the jury box."

—James Hansen, author of *Storms of My Grandchildren* and former director, NASA's Goddard Institute for Space Studies

MARY WOOD

Mary Christina Wood is the Philip H. Knight Professor of Law and founding faculty director of the school's Environmental and Natural Resources Law Program. She teaches property law, natural resources law, public trust law, and federal Indian law.



Sponsored by the Environmental and Natural Resources Law Center and the Wayne Morse Center for Law and Politics.

ENR
Environmental and
Natural Resources
Law Center

wm
Wayne Morse Center
for Law and Politics

O UNIVERSITY OF OREGON
School of Law



Our

**Children's
Trust**

Our Children's Trust Litigation

Year Filed	Name of Case	Court	Status
2011	Barhaugh v. Montana	Montana Supreme Court	Petition denied, 06/15/11
2011	Chernaik v. Brown (originally Chernaik v. Kitzhaber)	Oregon Circuit Court	The Oregon Court of Appeals directed a declaratory judgment in favor of the State defendants, 01/09/19; Appeal pending
2011	Sanders-Reed v. Martinez	New Mexico District Court	Summary judgment in favor of the State aff'd by New Mexico Court of Appeals, 03/12/15
2011	Bonser-Lain v. Texas Commission on Environmental Quality	Texas District Court	The Texas Court of Appeals vacated the District Court's judgment and dismissed for lack of subject-matter jurisdiction, 07/23/14
2011	Svitak v. State of Washington	Washington Superior Court	Dismissal aff'd by Washington Court of Appeals, 12/16/13
2011	Blades v. California	California Superior Court	Voluntarily dismissed by plaintiffs, 02/07/12
2011	Filippone v. Iowa Department of Natural Resources	Iowa District Court	The Iowa Court of Appeals aff'd Department's decision to deny rulemaking petition,

Our Children's Trust Litigation Cont'd

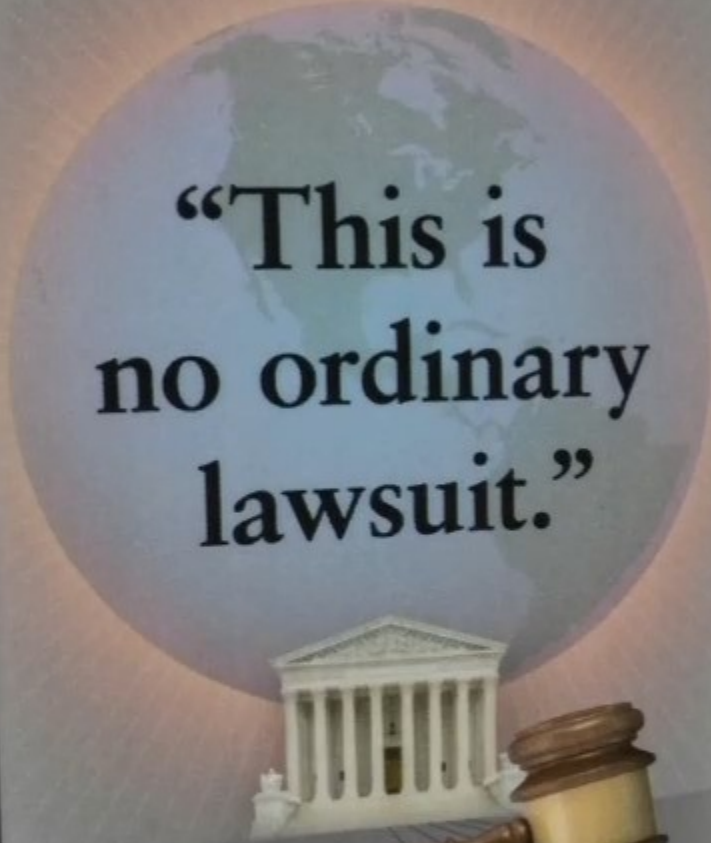
Year Filed	Name of Case	Court	Status
2011	Aronow v. Minnesota	Minnesota District Court	Dismissal aff'd by Minnesota Court of Appeals, 10/01/12
2011	Kanuk v. Alaska	Alaska Superior Court	Dismissal aff'd by Alaska Supreme Court, 09/12/14
2011	Butler v. Brewer	Arizona Superior Court	Dismissal aff'd by Arizona Court of Appeals, 03/14/13
2012	Funk v. Commonwealth of Pennsylvania	Pennsylvania Commonwealth Court	Dismissed, 07/03/13
2012	Farb v. Kansas	Kansas District Court	Dismissed, 06/04/13
2014	Foster v. Washington Department of Ecology	Washington Superior Court	The Washington Court of Appeals reversed the Superior Court's order requiring the Department of Ecology to set greenhouse gas standards by end of 2016, 09/05/17
2015	Turner v. North Carolina Environmental Management Commission	North Carolina Superior Court	Petition denied, 11/27/15

Our Children's Trust Litigation Cont'd

Year Filed	Name of Case	Court	Status
2015	Funk v. Wolf	Pennsylvania Commonwealth Court	Dismissal aff'd by Pennsylvania Supreme Court, 03/28/17
2015	Juliana v. United States	District of Oregon	The Ninth Circuit reversed the District of Oregon and remanded with directions to dismiss for lack of standing, 01/17/20; Petition for rehearing en banc pending
2017	Sinnok v. Alaska	Alaska Superior Court	Dismissed, 10/30/18; Appeal pending
2018	Aji P. v. State of Washington	Washington Superior Court	Dismissed, 08/14/18; Appeal pending
2018	Reynolds v. Florida	Florida Circuit Court	Pending
2020	Held v. Montana	Montana District Court	Pending

Juliana v. United States





**“This is
no ordinary
lawsuit.”**

produced by
Draggan Mihailovich

Of all the cases that come their way through the federal courts, none is more interesting or more life changing than Julian Assange's case in the United States. To quote one of the attorneys, "This is no ordinary lawsuit." In 2015 on behalf of a group of individuals, we are trying to get the courts to block the government from continuing to prosecute Assange. They say it's causing a lot of damage to Assange's life.



Juliana v. US – relief sought

“Order Defendants to prepare and implement an enforceable national remedial plan to phase out fossil fuel emissions and draw down excess atmospheric CO₂ so as to stabilize the climate system and protect the vital resources on which Plaintiffs now and in the future will depend.”

First Amended Complaint, Prayer for Relief

Chronology – Juliana v. United States

September 10, 2015 – Lawsuit filed

November 10, 2016 – Judge Ann Aiken denies motions to dismiss

January 13, 2017 – DOJ answers complaint

June 2017 – Fossil fuel defendants released as defendants; trial set for February 2018

December 11, 2017 – 9th Circuit hears argument in DOJ motion for mandamus

March 7, 2018 – 9th Circuit denies mandamus motion

July 30, 2018 – Supreme Court denies DOJ motion for stay

November 2, 2018 – Supreme Court denies second DOJ motion for stay; implies 9th Circuit should consider merits

June 4, 2019 – 9th Circuit hears argument

January 17, 2020 – 9th Circuit dismisses suit, 2-1

March 2, 2020 – Plaintiffs petition for en banc rehearing

Juliana v. United States
Plaintiffs' expert witnesses

Frank Ackerman – economist

Peter A. Erickson – greenhouse gas accounting

Howard Frumkin – physician and epidemiologist

James E. Hansen – climate scientist

Mark Z. Jacobson – environmental engineer

Lee Gunn – retired US Navy vice admiral

Ove Hoegh-Guldberg – coral reef expert

Akilah A. Jefferson – allergist-immunologist

Susan E. Pacheco – pediatric immunologist

Jerome A. Paulson – pediatrician

Juliana v. United States

Plaintiffs' expert witnesses -- continued

Eric Rignot – geoscientist, glaciologist

G. Philip Robertson – ecosystem ecologist

Steven W. Running – forest ecologist

Catherine Smith – law professor (anti-discrimination law)

James Gustave Speth – former US and UN official

Joseph Stiglitz – economist

Kevin E. Trenberth – geophysicist

Lise Van Susteren – psychologist

Karrie P. Walters -- psychologist

Harold R. Wanless – geologist

James H. Williams – energy systems

Andrea Wulf -- historian

Juliana v. United States
Defendants' expert witnesses

Howard Hezog – energy systems

Norman Klein – allergist-immunologist

Arthur Partikian – pediatric neurologist

Jeffrey Sugar – child psychiatrist

James Sweeney – energy engineering and policy

David Victor – law professor (environmental policy)

John Weyant – energy modeling

Juliana v. US – Majority Opinion

David Hurwitz & Mary Murguia, JJ

The plaintiffs have made a compelling case that action is needed; it will be increasingly difficult in light of that record for the political branches to deny that climate change is occurring, that the government has had a role in causing it, and that our elected officials have a moral responsibility to seek solutions. We do not dispute that the broad judicial relief the plaintiffs seek could well goad the political branches into action...We reluctantly conclude, however, that the plaintiffs' case must be made to the political branches or to the electorate at large, the latter of which can change the composition of the political branches through the ballot box. That the other branches may have abdicated their responsibility to remediate the problem does not confer on Article III courts, no matter how well-intentioned, the ability to step into their shoes.

Juliana v. US – dissent

Josephine L. Staton, J

Plaintiffs' claims are based on science, specifically, an impending point of no return. If plaintiffs' fears, backed by the government's *own studies*, prove true, history will not judge us kindly. When the seas envelop our coastal cities, fires and droughts haunt our interiors, and storms ravage everything between, those remaining will ask: Why did so many do so little?

I would hold that plaintiffs have standing to challenge the government's conduct, have articulated claims under the Constitution, and have presented sufficient evidence to press those claims at trial. I would therefore affirm the district court.

American Electric Power v. Connecticut

Dismissed, 406 F.Supp.2d 265 (SDNY 2005)
(Preska, J.)

Reversed, 582 F.3d 309 (2d Cir. 2009) (Hall
and McLaughlin, JJ.)

Reversed, 564 U.S. 410 (2011) (Ginsburg,
J.; 8-0)

Native Village of Kivalina v. ExxonMobil Corp.

Dismissed, 663 F.Supp.2d 863 (ND CA)
(Armstrong, J.)

Aff'd, 696 F.3d 849 (9th Cir. 2012) (Thomas,
Clifton; Pro, concurring)



Table 1 – Plaintiffs and Original Courts

CASE NAME	COURT	DATE FILED
County of San Mateo v. Chevron Corp., et al.	San Mateo County Superior Court (CA)	July 17, 2017
County of Marin v. Chevron Corp. et al	Marin County Superior Court (CA)	July 17, 2017
City of Imperial Beach v. Chevron Corp. et al	Contra Costa Superior Court (CA)	July 17, 2017
People of the State of California, acting by and through the Oakland City Attorney, vs. BP P.L.C.	Alameda County Superior Court (CA)	Sep. 19, 2017
People of the State of California, acting by and through the San Francisco City Attorney, vs. BP P.L.C., et al.	San Francisco County Superior Court (CA)	Sep. 19, 2017
City of Santa Cruz v. Chevron Corp. et al.	Santa Cruz County Superior Court (CA)	Dec. 20, 2017
County of Santa Cruz vs. Chevron Corp., et al.	Santa Cruz County Superior Court (CA)	Dec. 20, 2017
City of New York vs. BP P.L.C., et al.	Southern Dist. of New York	Jan. 9, 2018
City of Richmond vs. Chevron Corp., et al.	Contra Costa County Superior (CA)	Jan. 22, 2018
Board of County Commissioners of Boulder County; Board of County Commissioners of San Miguel County; City of Boulder. vs. Suncor Energy (U.S.A.), Inc., et al.	Boulder Dist. Court of Colorado (CO)	Apr. 17, 2018
King County (WA) v. BP et al.	King County Superior Court (WA)	May 8, 2018
State of Rhode Island v. Chevron Corp. et al.	Providence / Bristol County Superior Court (RI)	Jul. 2, 2018
Mayor and City Council of Baltimore v. BP P.L.C. et al.	Circuit Court for Baltimore City (MD)	Jul. 20, 2018

Table 2 – Issues Raised in the Complaints

CASE NAME	Sea Level Rise	Hydrologic Cycle	Public Health	Other
San Mateo, Marin, Imperial Beach	X			
San Francisco, Oakland	X			
Santa Cruzes, Richmond (CA)	X	X	X	X
New York City	X	X		
Boulder County		X		X
King County (WA)	X	X	X	X
State of Rhode Island	X	X	X	X
Baltimore	X	X	X	X

Table 3 – Parties

CASE NAME	Exxon	Chevron, BP, Shell, ConocoPhillips	Other Defendants	Suncor
San Mateo, Marin, Imperial Beach	X	X	X ⁶⁶	
San Francisco, Oakland	X	X		
Santa Cruzes, Richmond (CA)	X	X	X	
New York City	X	X		
Boulder County	X			X
King County (WA)	X	X		
State of Rhode Island	X	X	X ⁶⁷	
Baltimore	X	X	X ⁶⁸	

Table 4 – Summary of Legal Claims

CASE	Public Nuisance (People)	Nuisance (Public / Private)	Trespass	Product Defect	Negligence	Failure to Warn	Other
San Mateo, Marin, Imperial Beach	X	X	X	X	X	X	
San Francisco, Oakland (original) ⁶⁹	X						
Santa Cruzes, Richmond (CA)	X	X	X	X	X	X	
New York City		X	X				
Boulder County		X	X				X ⁷⁰
King County (WA)		X	X				
Baltimore		X	X	X	X	X	X ⁷¹
State of Rhode Island		X	X	X	X	X	X ⁷²

Cases belong in federal or state court?

City of New York v. BP P.L.C. (SDNY, July 19, 2018) – federal court, and dismissed; appeal pending, 2d Circuit

Mayor & City Council of Baltimore v. BP P.L.C. (4th Cir., March 2, 2020) – state court; certiorari petition to Supreme Court pending

County of San Mateo v. Chevron Corp. (9th Cir., May 26, 2020) – state court

City of Oakland v. BP PLC (9th Cir., May 26, 2020) – maybe state court; and Clean Air Act does not preempt state common law nuisance claims for GHGs

Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers, 1854–2010

Richard Heede

Received: 5 March 2013 / Accepted: 14 October 2013 / Published online: 22 November 2013

© The Author(s) 2013. This article is published with open access at Springerlink.com

Abstract This paper presents a quantitative analysis of the historic fossil fuel and cement production records of the 50 leading investor-owned, 31 state-owned, and 9 nation-state producers of oil, natural gas, coal, and cement from as early as 1854 to 2010. This analysis traces emissions totaling 914 GtCO₂e—63 % of cumulative worldwide emissions of industrial CO₂ and methane between 1751 and 2010—to the 90 “carbon major” entities based on the carbon content of marketed hydrocarbon fuels (subtracting for non-energy uses), process CO₂ from cement manufacture, CO₂ from flaring, venting, and own fuel use, and fugitive or vented methane. Cumulatively, emissions of 315 GtCO₂e have been traced to investor-owned entities, 288 GtCO₂e to state-owned enterprises, and 312 GtCO₂e to nation-states. Of these emissions, half has been emitted since 1986. The carbon major entities possess fossil fuel reserves that will, if produced and emitted, intensify anthropogenic climate change. The purpose of the analysis is to understand the historic emissions as a factual matter, and to invite consideration of their possible relevance to public policy.

1 Introduction

It is now broadly accepted that anthropogenic climate change presents a serious threat to the health, prosperity, and stability of human communities, and to the stability and existence of non-human species and ecosystems (IPCC 2007; World Bank 2012b; Hoeppe 2011; Busby 2007). The international legal framework established in 1992 to prevent “dangerous anthropogenic interference” with the climate system has focused attention on the role of nation-states, and has led to commitments by many nation-states (particularly the Annex I or highly developed nations) to cut their greenhouse gas (GHG) emissions. However, current climate change is primarily driven by historic emissions (Allen et al. 2009b; Matthews et al. 2009; Wei et al. 2012; IPCC 2013), and the parties responsible for the dominant sources of historic emissions are not necessarily the same as those responsible for the dominant share of current emissions. This paper provides an original quantitative analysis of historic emissions by

Table 3 Top twenty investor- & state-owned entities and attributed CO₂ & CH₄ emissions

Entity	2010 emissions MtCO ₂ e	Cumulative 1854–2010 MtCO ₂ e	Percent of global 1751–2010
1. Chevron, USA	423	51,096	3.52 %
2. ExxonMobil, USA	655	46,672	3.22 %
3. Saudi Aramco, Saudi Arabia	1,550	46,033	3.17 %
4. BP, UK	554	35,837	2.47 %
5. Gazprom, Russian Federation	1,371	32,136	2.22 %
6. Royal Dutch/Shell, Netherlands	478	30,751	2.12 %
7. National Iranian Oil Company	867	29,084	2.01 %
8. Pemex, Mexico	602	20,025	1.38 %
9. ConocoPhillips, USA	359	16,866	1.16 %
10. Petroleos de Venezuela	485	16,157	1.11 %
11. Coal India	830	15,493	1.07 %
12. Peabody Energy, USA	519	12,432	0.86 %
13. Total, France	398	11,911	0.82 %
14. PetroChina, China	614	10,564	0.73 %
15. Kuwait Petroleum Corp.	323	10,503	0.73 %
16. Abu Dhabi NOC, UAE	387	9,672	0.67 %
17. Sonatrach, Algeria	386	9,263	0.64 %
18. Consol Energy, Inc., USA	160	9,096	0.63 %
19. BHP-Billiton, Australia	320	7,606	0.52 %
20. Anglo American, United Kingdom	242	7,242	0.50 %
Top 20 IOCs & SOEs	11,523	428,439	29.54 %
Top 40 IOCs & SOEs		546,767	37.70 %

Right column compares each entity's cumulative emissions to CDIAC's global emissions 1751–2010. Excludes British Coal, whose production and assets have not been attributed to extant

Restatement of Torts, Second

§ 821B. **Public Nuisance**

(1) A public nuisance is an **unreasonable** interference with a right to the general public.

(2) Circumstances that may sustain a holding that an interference with a public right is unreasonable include the following:

(a) Whether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience, or

(b) whether the conduct is proscribed by a statute, ordinance or administrative regulation, or

(c) whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right

Supply chains

Coal

Coal mine



Power plant



Distribution utility



Electricity user

Oil

Oil well



Refinery



Gasoline station



Vehicle



Driver