

Webinar: The Climate Crisis and the Role of Justice

# US Justice System and Climate Emergency

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# The dynamism of US climate litigation

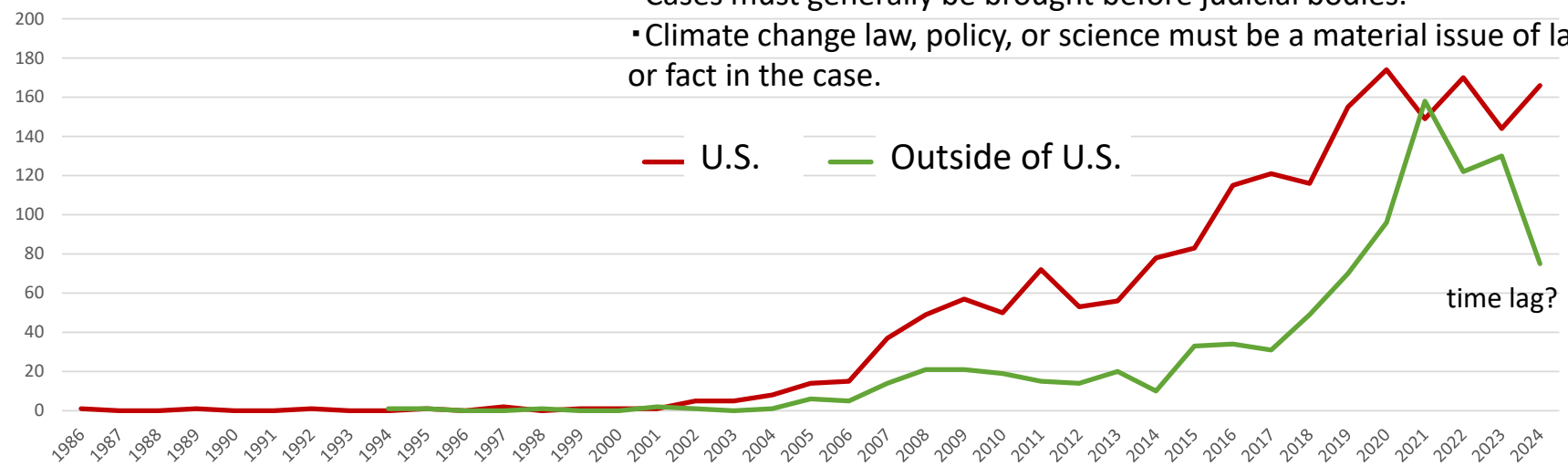
What's behind so many climate lawsuits in the U.S.?

- Institutional Foundation of the U.S. Justice System
- Slow Pace of Federal Climate Policy

Source : Climate Change Litigation Database (Sabin Center for Climate Change Law), <http://climatecasechart.com/>

▪ Cases must generally be brought before judicial bodies.

▪ Climate change law, policy, or science must be a material issue of law or fact in the case.



# Variety of U.S. Climate Litigation

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## Climate-aligned strategic cases

- Government framework cases
  - Juliana v. United States
  - Held v. Montana
  - Navahine F. v. Hawai'i Department of Transportation
- Polluter pays cases
  - City & County of Honolulu v. Sunoco LP
  - State of Hawai'i v. BP    Cf. United States v. Hawaii
- Corporate framework cases
- Climate-washing cases
- Turning off the taps cases    etc.

## Cases not aligned with climate goals

- Cases to delay government climate policy    West Virginia v. EPA
- Others    In re Hawai'i Elec. Light Co.

# Institutional Foundation of the U.S. Justice System

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## Federal system

- Jurisdiction : federal + 50 states + α

## Sources of law

- West Virginia v. EPA: federal statute, federal rule
- Juliana v. United States: U.S. Constitution, case law (public trust doctrine)
- Held v. Montana: Montana Constitution
- Navahine F. v. Hawai'i Department of Transportation: Hawai'i Constitution, Hawai'i statute ✕fied at Hawaii's Environmental Court
- In re Hawai'i Elec. Light Co.: Hawai'i statute, Hawai'i Constitution
- City & County of Honolulu v. Sunoco LP: Hawai'i case law
- State of Hawai'i v. BP: Hawai'i case law, Hawai'i statute
- United States v. Hawaii: U.S. Constitution

## Human resources

*Changing society through litigation—Brown v. Board of Education, 347 U.S. 483 (1954)*

# Federal Climate Policy and Lawsuits

Bush 2001.1~	<p>Withdrawal from the Kyoto Protocol (2001.3)</p> <p>Massachusetts v. EPA, 549 U.S. 497 (2007)</p> <p>California v. General Motors Corp., 2007 U.S. Dist. LEXIS 68547 (N.D.Cal. Sept. 17, 2007)</p>
Obama 2009.1~	<p>American Clean Energy and Security Act of 2009 (failed)→Climate Action Plan→Clean Power Plan (2015.10)</p> <p>Acceptance of the Paris Agreement (2016.9)</p> <p>American Electric Power Co. v. Connecticut, 564 U.S. 410 (2011)</p> <p>Native Village of Kivalina v. ExxonMobil Corp., 696 F.3d 849 (9<sup>th</sup> Cir. 2012)</p> <p>Utility Air Regulatory Group v. EPA, 573 U.S. 302 (2014)</p>
Trump 2017.1~	<p>Withdrawal from the Paris Agreement (2017.6 announcement→2020.11 official withdrawal)</p> <p>Affordable Clean Energy Rule (2019.6)</p> <p>American Lung Association v. EPA, 985 F.3d 914 (D.C. Cir. 2021)</p>
Biden 2021.1~	<p>Return to the Paris Agreement (2021.1)</p> <p>Inflation Reduction Act (2022.8)</p> <p>West Virginia v. EPA, 597 U.S. 697 (2022)</p>
Trump 2.0 2025.1~	<p>Withdrawal from the Paris Agreement (2025.1)</p>

# Federal Court

“Article III judges” serving on the Supreme Court, Courts of Appeals, and District Courts

- nominated by the President and confirmed by the Senate
- lifetime tenure

Member of the U.S. Supreme Court (As of June 2025)

Justice (birth year)	President	Memo
Roberts (1955)	G. W. Bush	
Thomas (1948)	Bush	
Alito (1950)	G. W. Bush	Owner of stocks in several oil companies
Sotomayor (1954)	Obama	
Kagan (1969)	Obama	
Gorsuch (1967)	Trump	
Kavanaugh (1965)	Trump	
Barrett (1972)	Trump	Daughter of attorney for Shell Oil, also working for and American Petronum Institute
Jackson (1970)	Biden	



*Credit: Fred Schilling, Collection of the Supreme Court of the United States*

West Virginia v. EPA (2022)

Justice Kagan’s dissent, joined by Justices Breyer and Sotomayor

“The Court appoints itself—instead of Congress or the expert agency—the decision-maker on climate policy. I cannot think of many things more frightening.” 597 U.S. 697, 784.

# Overview of the U.S. Climate Cases

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# West Virginia v. EPA, 597 U.S. 697 (2022)

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## Background

- Under the Obama administration, the EPA promulgated the Clean Power Plan (CPP), which regulates greenhouse gas (GHG) emissions from existing coal-fired power plants.
  - Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64661 (Oct. 23, 2015)
- In Feb. 2016, the SCOTUS halted implementation of the CPP following petitions from states and industry groups that opposed the regulation. (West Virginia v. EPA, 577 U.S. 1126 (2016)).
- Under the Trump administration, the EPA promulgated the Affordable Clean Energy Rule, which repealed the CPP and implemented more lenient GHG emissions measures.
  - Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations, 84 Fed. Reg. 32520 (Jul. 8, 2019). (mentioning “Major Questions Doctrine.”)

What is the “Major Questions Doctrine”?

We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast “economic and political significance.” *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324(2014)

# West Virginia v. EPA, 597 U.S. 697 (2022)

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## Background (Cont.)

- In *American Lung Association v. EPA*, 985 F.3d 914 (D.C. Cir. 2021), filed by states and environmental protection groups, the U.S. Court of Appeals for the D.C. Circuit overturned the EPA's decision to revoke the CPP, also overturned the ACE rule, and called on the EPA to conduct further review on January 19, 2021.
- Under the Biden administration, the EPA has begun work on developing a new rule to replace the CPP. On the other hand, states and trade groups supporting the repeal of the CPP have filed a petition for certiorari with the SCOTUS regarding the D.C. Circuit decision. The SCOTUS granted four of those cases, including *West Virginia v. EPA*.



The Opinion of the Court of the SCOTUS (Roberts, C.J. delivered the opinion, in which Thomas, Alito, Gorsuch, Kavanaugh, Barrett, JJ., joined) on June 30, 2022

- Under the Major Questions Doctrine, the “best system of emission reduction”\* identified by EPA in the Clean Power Plan was not within the authority granted to the Agency in Section 111(d) of the Clean Air Act.

\*emissions caps based on the generation shifting approach

# Juliana v. United States

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## Background

- On August 12, 2015, 21 youth plaintiffs, Earth Guardians, and future generations (represented by climate scientist Dr. James Hansen) filed a lawsuit in the United States District Court for the District of Oregon, suing the United States, the President, federal departments and agencies, and others.
- Prayer for Relief: (1) Declare that Defendants have violated and are violating Plaintiffs' fundamental constitutional rights as well as Defendant have violated and are violating the public trust doctrine; (2) Enjoin Defendants from further violations of the Constitution and the public trust doctrine underlying each claim for relief; (3) Order Defendants to prepare and implement an enforceable national remedial plan to phase out fossil fuel emissions and draw down excess atmospheric CO2 to stabilize the climate; and so on.
- Violation of the Due Process Clause of the Fifth Amendment
  - Increasing the concentration of carbon dioxide in the atmosphere endangers the life, liberty, and property of the plaintiffs and future generations, without due process of law.
- Violation of Equal Protection Principles Embedded in the Fifth Amendment
  - The plaintiffs and future generations will be more affected by climate change than the current generation of adults (intergenerational inequity)
- The Unenumerated Rights Preserved for the People by the Ninth Amendment
  - The plaintiffs and future generations are being violated in their right to be sustained by natural systems, including the climate system.
- Violation of Public Trust Doctrine
  - If we think of the atmosphere as a trust property, then if the government, as the trustee, neglects to take measures against climate change, the citizens, as the beneficiaries, can become plaintiffs and demand that the government fulfill its obligations.

# Juliana v. United States

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217 F. Supp. 3d 1224 (D. Or. 2016) Nov. 10, 2016

- Judge Aiken denied motions to dismiss filed by the federal government, the American Petroleum Institute, and other interveners.
- “I have no doubt that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society.” 217 F. Supp. 3d 1250.

947 F. 3d 1159 (9th Cir. 2020) Jan. 17, 2020

- Judgement Reversed and remanded to the district court with instructions to dismiss for lack of Article III standing. (2:1)
  - Injury in fact: YES
  - Traceability: YES
  - Redressability: NO
- Cf. Dissent by Judge Staton: “Such relief, much like the desegregation orders and statewide prison injunctions the Supreme Court has sanctioned, would vindicate plaintiffs' constitutional rights without exceeding the Judiciary's province.” 947 F.3d 1176.

# Juliana v. United States

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On remand, the parties engaged in settlement negotiations following Judge Aiken's recommendation, but the negotiations failed on November 1, 2021.



2023 U.S. Dist. LEXIS 95411 (D. Or. June 1, 2023)

- Judge Aiken allowed the plaintiffs to amend their complaint to seek a declaratory judgment that the federal government violated their constitutional rights and allowed the case to proceed to trial.
- *See Held v. State*, No. CDV-2020-307 (Mont. 1st Dist. Ct., Aug. 4, 2021).

2024 U.S. App. LEXIS 31945 (9th Cir. May 1, 2024)

- The court requires the U.S. District Court for the District of Oregon to enforce the 2000 decision.

145 S. Ct. 1428 (2025) Mar. 24, 2025

- The U.S. Supreme Court denied the petition for writ of certiorari.

# Held v. Montana

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## Background

- On March 13, 2020, 16 Montana youth plaintiffs filed a lawsuit in Montana's First Judicial District Court, Lewis and Clark County, naming the State of Montana, its Governor, and related agencies as defendants.
- Prayer for Relief: (1) Declare that the State Energy Policy and MEPA's Climate Change Exception provision violate the Montana Constitution and the Public Trust; and that youth plaintiffs' fundamental constitutional rights are being violated, (2) Order requiring Defendants to prepare a complete and accurate accounting of Montana's GHG emissions, including those emissions caused by the consumption of fossil fuels extracted in Montana and consumed out of state, and Montana's embedded emissions; and requiring Defendants to develop a remedial plan or policies to effectuate reductions of GHG emissions in Montana; and so on.
- The Constitution of the State of Montana
  - Art. II Sec. 3 **Inalienable rights.** All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.
  - Art. II Sec. 4 **Individual dignity.** The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. ...
  - Art. II Sec. 17 **Due process of law.** No person shall be deprived of life, liberty, or property without due process of law.
  - Art. II Sec. 15 **Rights of persons not adults.** The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article....
  - Art. IX Sec. 1 **Protection and improvement.** (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

# Held v. Montana

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2023 Mont. Dist. LEXIS 2 (Mont. 1st Dist. Ct., Aug. 4, 2021)

- The court affirmed the plaintiffs' standing, declared the MEPA's climate change exception provision unconstitutional on its face because it violated the plaintiffs' constitutional right to a clean and healthy environment, and granted an injunction against the provision.

560 P.3d 1235 (Mont. 2024) Dec. 18, 2024

- Affirmed (6:1).
- “We reject the argument that the delegates—intending the strongest, all-encompassing environmental protections in the nation, both anticipatory and preventative, for present and future generations—would grant the State a free pass to pollute the Montana environment just because the rest of the world insisted on doing so.” ¶ 30.

# Navahine F. v. Hawai'i Department of Transportation

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## Background

- On June 1, 2022, Hawaii 13 youth plaintiffs filed a lawsuit in the Hawaii Environmental Court suing the state government and the Hawai'i Department of Transportation.
- Prayer for Relief: (1) Declare that defendants have violated Article XI, Sections 1 and 9 of the State Constitution by establishing, operating, and maintaining a transportation system that fails to conserve, preserve, and maintain the public trust resources of the State; (2a) Order Defendants to cease establishing, maintaining, and operating the state transportation system in a manner that breaches Defendants' mandatory duty under the constitution; (2b) Compelling Defendants to take concrete action steps under prescribed deadlines to conform the state transportation system with Defendants' constitutional duties and Youth Plaintiffs' constitutional rights; (2c) Exercising continuing jurisdiction and oversight as necessary on including the Defendants' compliance and progress; and so on.
- The Constitution of the State of Hawaii
  - Art. 11 Sec. 1 CONSERVATION AND DEVELOPMENT OF RESOURCES
    - For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.
    - All public natural resources are held in trust by the State for the benefit of the people.
  - Art. 11 Sec. 9 ENVIRONMENTAL RIGHTS
    - Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.

# Navahine F. v. Hawai'i Department of Transportation

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On June 20, 2024, the settlement agreement was reached.

- Immediate and ongoing action steps by HDOT:
  - Establishing a Greenhouse Gas Reduction Plan within one year of the agreement, laying the foundation and roadmap to decarbonize Hawai'i's transportation system within the next 20 years.
  - Creating a lead unit and responsible positions within HDOT to coordinate the mission of GHG reduction throughout the agency; oversee climate change mitigation and adaptation for the highways program; and ensure implementation of the Complete Streets policy of building and upgrading public highways for all users, ages, and abilities.
  - Improving the state transportation infrastructure budgeting process to prioritize reduction of GHG and vehicles miles traveled (VMT) and transparently analyze and disclose the GHG and VMT impacts of each project and the overall program.
  - Making immediate, ambitious investments in clean transportation infrastructure, including completing the pedestrian, bicycle, and transit networks in five years, and dedicating a minimum of \$40 million to expanding the public electric vehicle charging network by 2030.
- The court will maintain continuing jurisdiction over their agreement for purposes of resolving any disputes relating to the implementation of the agreement by 2045.

By 2045, the State of Hawaii will achieve:

- 100% clean renewable energy for electricity (HRS § 269-92)
- Zero emission target (HRS § 225P-5)

# In re Hawai'i Elec. Light Co., 526 P.3d 329 (Haw. 2023)

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On March 13, 2023, the Hawaii Supreme Court unanimously upheld the PUC's decision not to approve HELCO's PPA with a biomass power producer.

- Opinion of the Court
  - HRS Chapter 269 defines the Hawai'i Constitution's article XI, section 9 right to a clean and healthful environment, which encompasses the right to a life-sustaining climate system. In re Maui Elec. Co., 150 Hawai'i at 538 n.15, 506 P.3d at 202 n.15. Commanding a public agency charged with protecting the right to a life-sustaining climate system to disregard GHG emissions from a particular type of fuel source would undermine HRS Chapter 269. We don't think the legislature intended to go there, much less through a minor amendment bill. 526 P.3d 335.
- Concurring Opinion by Justice Wilson
  - The PUC's consideration of the Project's greenhouse gas emissions and denial of the amended PPA fulfilled its duty to protect the fundamental right to a life-sustaining climate system arising under the due process clause of Article I, section 5 of the Hawai'i Constitution, the public trust doctrine enumerated in Article XI, section 1 of the Hawai'i Constitution, and the right to a clean and healthy environment enumerated in Article XI, section 9 of the Hawai'i Constitution. 526 P.3d 336.
  - Article I, section 5 of the Hawai'i Constitution\* protects both procedural and substantive due process rights. Substantive due process safeguards fundamental rights which are "implicit in the concept of ordered liberty." The identification and protection of fundamental due process rights is inherent in the judicial duty of all judges of the State of Hawai'i. *Id.*
  - \*The Constitution of the State of Hawaii Art. 1 Sec. 5 DUE PROCESS AND EQUAL PROTECTION
    - No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.
  - It is beyond cavil that a life-sustaining climate system is implicit in the concept of ordered liberty and lies "at the base of all our civil and political institutions. *Id.*
  - Without an "effective response to climate change" that prevents catastrophic climate change impacts, "the integrity of the rule of law" itself is subject to collapse." *Id.*

# Battle over oil majors' liability

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On March 9, 2020, the City and County of Honolulu filed a lawsuit in the First Circuit Court of Hawaii against Sunoco and other oil majors (City & County of Honolulu v. Sunoco LP). They requested a jury trial.

- Arguments
  - The defendants are aware of the dangers associated with the use of fossil fuel products, but have concealed and obfuscated that information, waged anti-regulation campaigns, sought to increase profits through the continued use of fossil fuel products, and concealed the impacts of fossil fuel products on climate change through greenwashing campaigns and false advertising, thereby causing damage to the plaintiffs.
- Cause of Action
  - Public nuisance, private nuisance, strict liability failure to warn, negligent failure to warn, trespass
- Prayer for Relief
  - Compensatory damages, equitable reliefs including abatement of the nuisances, punitive damages, disgorgement of profits, etc.

On April 30, 2025, the United States filed a lawsuit in the United States District Court for the District of Hawaii, seeking a declaration that Hawaii's state law claims against the oil majors are unconstitutional and an injunction against the claims. (United States v. Hawaii).

On May 1, 2025, the State of Hawaii filed a lawsuit in the First Circuit Court of Hawaii against BP and other oil majors, seeking damages under state law (State of Hawai'i v. BP). The state requested a jury trial.

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## References

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