

Judicial Remedies for Climate Disruption: A Preliminary Analysis

Executive Summary¹

Plaintiffs' causes of action in climate litigation influence their requested remedies, and these requested remedies, in turn, affect the outcomes of climate cases, both in terms of plaintiffs' ability to obtain favorable rulings and the real-world impacts of the court's decision. Remedies available in climate litigation run the gamut from frequently used options like injunctions, damages, and declaratory relief, to more uncommonly sought relief such as accounting, civil penalties, or writs of mandamus. Appellate courts may additionally grant remand or vacatur when they do not affirm a lower court's holdings. This module explores the remedies available in climate litigation and how they are applied.

As equitable remedies, injunctions – court orders that a defendant must take or refrain from specified actions – can take a variety of forms, so long as they are closely tied to the defendant's specific violations or breaches of their legal duties. Injunctions in climate cases are most often granted to require that a defendant complies with a statute, such as when an agency is enjoined from taking an action without first conducting proper environmental review under the National Environmental Policy Act. Youth plaintiffs have also brought several constitutional cases in federal and state courts that (so far unsuccessfully) have sought sweeping injunctive relief requiring government officials to reduce greenhouse gas emissions. The Ninth Circuit notably held in 2020 that youth plaintiffs' requested relief in *Juliana v. United States* – injunctive relief requiring the United States government to create an enforceable national plan to reduce U.S. greenhouse gas emissions – was beyond the power of the judiciary to redress. Outside the United States, requests for broad injunctive relief have seen greater success.

Where climate plaintiffs are not allowed to seek injunctive relief, they will often request declaratory relief, a binding judicial statement of the parties' rights that is intended to put defendants on notice of their legal violations so they can take independent remedial measures. Declaratory relief is available even when a court declines to grant an injunction or mandamus, as illustrated by the *Juliana* plaintiffs' amended complaint. State-court climate plaintiffs, like those in *Held v. Montana*, have also sought declaratory relief. If plaintiffs' actions for declaratory relief are successful, their next legal step may be to enforce the court's judgment against anyone who continues to violate the law or regulation at issue.

Plaintiffs in climate litigation may also seek money damages for the climate harms they have suffered. Congress or state legislatures may statutorily prescribe damages for breaches of legal obligations, relieving courts of the need to craft a remedy. Damages may also be authorized by the common law. Federal common-law claims for damages from greenhouse gas emissions have been held to be displaced by the Clean Air Act, but analogous state common-law claims remain viable and frequently are brought as tort or fraud actions against fossil fuel companies. Plaintiffs in ongoing climate tort cases contend that their actions for damages are

meant to obtain compensation for the harms they have suffered due to climate change, but some defendant oil and gas companies have countered that such lawsuits constitute attempts to indirectly regulate the fossil fuel industry.

¹This is a summary of *Judicial Remedies for Climate Disruption: A Preliminary Analysis* by John C. Dernbach and Patrick A. Parenteau.