

Overview of Climate Litigation

Executive Summary¹

As the negative effects of climate change have worsened, the prevalence of climate-related litigation has steadily grown. With the number of climate cases coming before judges expected to continue to rise, it will become increasingly important for the judiciary to be familiar with the fundamentals of climate change litigation, including its scope and trends, the current legal landscape governing climate litigation, and the role that climate science plays in deciding these cases.

Over the past several years, the number and variety of lawsuits in which climate change is a central legal or factual issue have dramatically increased, both in the United States and abroad. Such ‘climate litigation’ includes legal disputes over mitigating greenhouse gases, adaptation efforts, and climate impacts. Typically, plaintiffs in U.S. state and federal courts bring suit to strengthen environmental protections or to receive compensation for environmental harms they have suffered. Cases where climate is not the central issue but that are motivated by or have climate implications are also growing, such as land use disputes related to renewable energy development. Foreign domestic and transnational courts have also seen an uptick in climate litigation, and though these cases are concentrated in the Global North and may address climate change peripherally, their geographic variation and engagement with climate change are both expanding.

There is no typical climate case, as climate litigation involves a varied assortment of parties, causes of action, and remedies. Climate-based suits can entail issues ranging from justiciability and procedural questions to constitutional, statutory, administrative, and common law claims. The most commonly brought climate suits in state courts are challenges to environmental reviews conducted under state law and public utilities cases; and in federal court, climate cases most often arise under the National Environmental Policy Act or the Endangered Species Act and other federal wildlife protection laws. Climate cases generally do not markedly differ from cases arising under similar causes of action, meaning that judges can employ the various case management tools and strategies typically available to them.

Climate science — particularly detection and attribution studies — can play a key role in establishing causation in standing and merits analyses. No U.S. court has yet adjudicated whether plaintiffs can establish a complete causal chain between specific greenhouse gas emissions and a particular climate-related harm, but attempts to do so are more likely as attribution science continues to improve. Defendants in climate cases have generally shifted their approaches from denying the fact of climate change to instead emphasizing the uncertainty of scientific methods or specific conclusions in relevant scientific studies. Understanding how to assess scientific confidence levels and translate them into courtroom standards, such as

evidentiary admissibility and burdens of proof, will be one aspect of deciding these climate science-based disputes.

¹This is a summary of Overview of Climate Litigation authored by Sandra Nichols Thiam and Jarryd C. Page.