

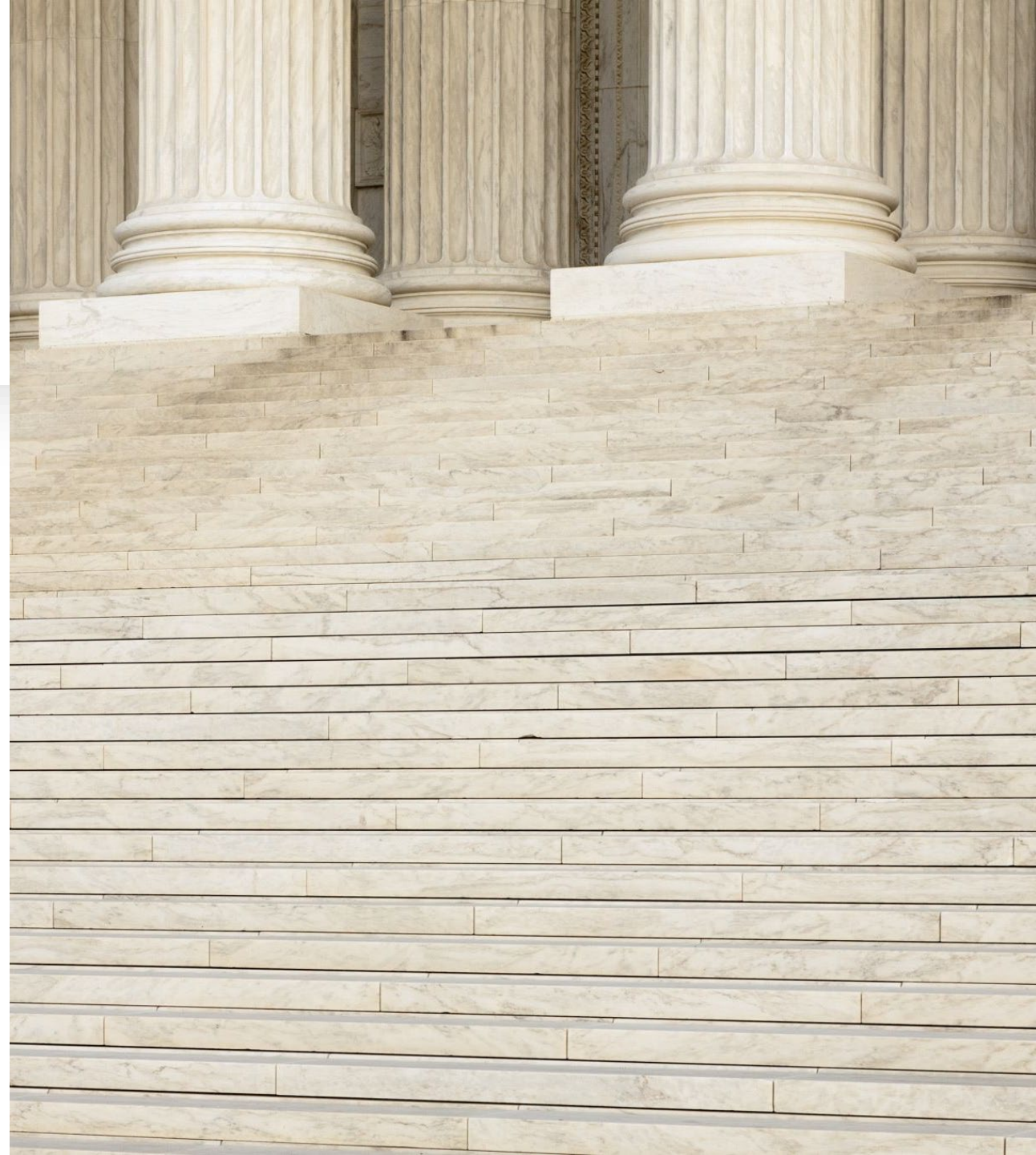
What is the Environmental Law Institute?

Hon. Jason Isaac



A word on the climate change cases

- Two dozen far-left jurisdictions have filed state law claims against energy providers for public nuisance, fraud, or misrepresentation. These suits accuse providers of creating a public nuisance by causing climate change, or defrauding consumers by concealing information about climate change.
- The goal of the climate change cases is to **advance the Green New Deal**. The plaintiffs are seeking untold billions to influence industry behavior, finance healthcare programs, “greenfit” buildings with electric appliances, etc.
- Providers have appealed to the Supreme Court to dismiss the climate cases. Certiorari is pending in *Sunoco v. City and County of Honolulu*.
- Key player: Sher Edling LLP, a boutique law firm representing plaintiffs in two dozen climate change cases.



What is the Environmental Law Institute up to?

- The Environmental Law Institute's Climate Judiciary Project (CJP) hosts seminars to teach judges about climate science. CJP has hosted over 50 seminars for more than 2,000 state and federal judges since 2018.
- Though it bills itself as a neutral forum, CJP is wholly aligned with the climate change plaintiffs and helps them corruptly influence judges behind closed doors. **Their true purpose is to preview the plaintiffs' arguments in the climate cases in an *ex parte* setting.**
- CJP's director of judicial education [Sandra Nichols Thiam](#): "We're facing two massive crises...Litigation is a key front in addressing both challenges, and I lead a project at the Environmental Law Institute designed to contribute to the development of a body of law that supports climate *action*."

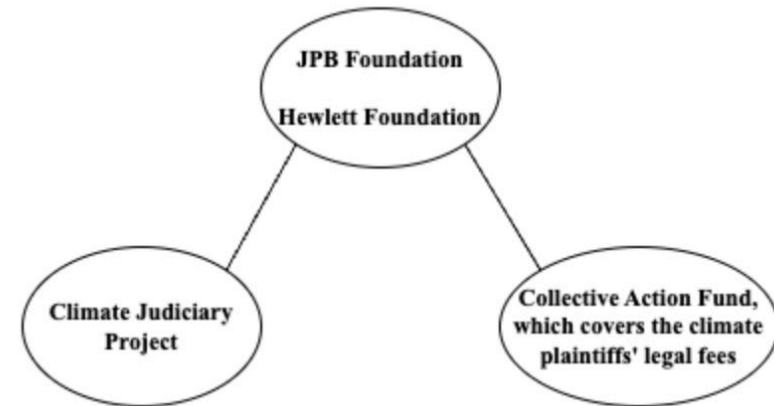
Scope of ELI's activities

- The Federal Judicial Center, the research and education agency of the federal courts, has partnered with CJP for programming.
- Top law schools have hosted CJP seminars, including UC Berkeley, Georgetown, and George Washington University.
- CJP has organized seminars in jurisdictions where climate change cases are pending, including California, Chicago, Maryland, Massachusetts, Puerto Rico, Vermont, and Washington, D.C.
- Judges have even presented at CJP events including Hawaii chief justice Recktenwald, who greenlit Honolulu's climate case in 2023.

CJP and the climate change plaintiffs share funding streams

- Leftwing entities have given significant sums to both the Climate Judiciary Project and the Collective Action Fund, the entity that pays Sher Edling to cover costs associated with the climate change cases.
- The JPB Foundation committed \$2 million to the CJP and \$4.45 million to the Collective Action Fund.
- Likewise, the William + Flora Hewlett Foundation gave \$500,000 to CJP and \$150,000 to Collective Action Fund.
- Judges participating in CJP seminars may not be aware of these conflicts, which ELI should disclose.

ELI and CJP dual money streams



A portrait of Patrick Parenteau, an older man with a white beard and glasses, wearing a tan jacket over a checkered shirt. He is looking directly at the camera. The background shows a desk with a computer monitor and some papers.

Meet the authors: Patrick Parenteau

- Vermont Law School professor and author of CJP's '[Judicial Remedies for Climate Disruption](#)' module.
- Advisor to the San Mateo climate plaintiffs.
- *“If these cases all go to their logical extreme, [the oil companies] all go bankrupt. **They should.**”* Parenteau in [Stateline](#) interview, April 13, 2022.



Meet the authors: Michael Oppenheimer

- Princeton professor and member of CJP's curriculum advisory committee.
- Joined amicus briefs backing climate nuisance plaintiffs including [Baltimore](#), [Delaware](#), [Hoboken](#), [Rhode Island](#), and [San Mateo](#) among others.
- The briefs are alarmist – for example, the RI brief predicts “*daily* high tide flooding” in the Atlantic northeast by 2100.

A woman with blonde hair and glasses is speaking into a microphone at a conference. She is wearing a teal jacket. In the background, a man in a blue suit is blurred. The image is used as a background for the text.

Meet the authors: Ann Carlson

- UCLA professor and member of CJP's curriculum advisory committee.
- Consultant for Sher Edling, where she helped secure funding in support of climate litigation.
- Advised climate plaintiffs in the Baltimore and Imperial Beach cases, per press accounts.

A photograph of Richard Heede, a man with grey hair, wearing a plaid shirt, standing in a snowy outdoor setting. In the background, there is a snow-covered hillside with some evergreen trees and a small orange sculpture. The sky is blue with a few clouds.

CJP modules are full of pro-plaintiff messaging

- Key player: **Richard Heede**. Heede leads the Climate Accountability Institute's Carbon Majors project.
- Heede's work, including the Carbon Majors index, was funded by the Rockefeller Brothers Fund, which is also financing climate litigation. The Fund [donated](#) \$3 million to various climate-lawsuit entities between 2015 and 2019 alone.
- Vic Sher from Sher Edling said Heede performed research at Sher's direction during a [2017 lecture](#) at UCLA.

Examples of Heede’s “groundbreaking” and “emblematic” work in CJP modules

If one or more of the carbon majors suits ever reaches the merits, a critical contested element will be how to assign and apportion liability, given the vast number of actors who might be considered to have “caused” climate change. This is where the field of source attribution comes in. A number of research groups are dedicating time and attention to determining which entities are responsible for which percentages of historical greenhouse gas emissions.¹⁹ A groundbreaking study, for instance, concluded that nearly two-thirds of carbon dioxide emitted since the 1750s can be traced to the 90 largest fossil fuel and cement producers, most of which still operate today.²⁰ A study using a similar methodological approach concluded that more than half of ocean acidification can be traced to the 88 largest industrial carbon producers.²¹ Though its members have not yet been named as defendants in climate change lawsuits, the heavily concentrated industrial animal agriculture industry

¹⁵ Benjamin Ewing & Douglas A. Kysar, *Prods and Pleas: Limited Government in an Era of Unlimited Harm*, 121 YALE L.J. 350 (2011).

¹⁶ Douglas A Kysar, *What Climate Change Can Do About Tort Law*, 41 ENV’T L. 1 (2011).

¹⁷ Lee A. Albert, *Standing to Challenge Administrative Action: An Inadequate Surrogate for Claim for Relief*, 83 YALE L.J. 441 (1974). Lee Albert writes, “[O]ne cannot transform substantive rules of law, elements of a cause of action, into procedural or preliminary principles of access to a court. The natural common law method simply reveals that rules of standing are an integral part of a claim for relief.”

¹⁸ North Carolina ex rel. Cooper v. Tenn. Valley Auth., 615 F.3d 291, 302 (4th Cir. 2010). Also relevant are *New Eng. Legal Found. v. Costle*, 666 F.2d 30, 33 (2d Cir. 1981) (“Courts traditionally have been reluctant to enjoin as a public nuisance activities which have been considered and specifically authorized by the government.”); and RESTATEMENT (SECOND) OF TORTS §821B cmt. f. (“Although it would be a nuisance at common law, conduct that is fully authorized by statute, ordinance or administrative regulation does not subject the actor to tort liability.”).

¹⁹ E.g., *Carbon Majors*, CLIMATE ACCOUNTABILITY INST., <https://climateaccountability.org/carbonmajors.html> (last visited Nov. 30, 2022).

²⁰ Richard Heede, *Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854-2010*, 122 CLIMATIC CHANGE 229 (2014).

Finally, *source attribution* studies quantify the GHG emissions that can be attributed to a specific source, typically a single company or sector. Studies that quantify the historical emissions contributed by the largest oil and gas companies are emblematic.⁷³ Because tracing any single CO₂ molecule to any single emitter is not feasible because CO₂ is fungible in the atmosphere, attribution science can be used to help answer questions about market share and how much the increase in emissions from a defendant’s conduct contributed to the climate impact affecting the plaintiff.

Currently, no plaintiff has marshaled scientific support that shows a complete causal chain between specific GHG emissions sources and a particular climate-related harm. In *Kivalina*, one of the earliest high-profile climate cases, plaintiffs were Native Alaskans whose village—located on a spit of land on the northwest Alaskan coast—was threatened by rising seas. The plaintiffs’ inability to present evidence establishing a connection between a particular source of emissions and the harms suffered by their village resulted in a dismissal on standing grounds.⁷⁴ Since then, however, attribution science has improved and is continuing to improve, and studies claiming to establish this link are certain both to become more common in climate litigation and to be hotly contested.

B. Judicial Treatment of Climate Science to Date

In many ways, judges do not approach issues of climate science any differently than they would the scientific issues raised in other complex environmental, medical, toxic tort, or similarly science-dependent cases. At a high level, courts have repeatedly recognized the connection between the extraction and combustion of fossil fuels and climate change.⁷⁵ They have likewise acknowledged the harms climate change causes on local, national, and global scales.⁷⁶ To date, climate science has not posed a major obstacle to litigation; most dismissals have been on procedural and justiciability grounds.

In one instance, a federal district court judge in the Northern District of California made considerable efforts to understand climate science in an attempt to better address the issues presented in a case at bar.⁷⁷ In 2018, Judge William Alsup held a first-ever courtroom climate tutorial to understand the development of climate science and the connections between CO₂ in the atmosphere and the way CO₂ impacts global temperature. The case was a challenge brought by the cities of Oakland and San Francisco, California, against several fossil fuel corporations. The lawsuit

⁷² CLIMATE CENTRAL, *Climate Shift Index (TM)*, <https://www.climatecentral.org/realtime-fingerprints> (last visited Dec. 29, 2022).

⁷³ *Carbon Majors: Accounting for Carbon and Methane Emissions 1854-2010* (2014), <https://climateaccountability.org/pdf/MRR%209.1%20Apr14R.pdf>. The research was updated in 2019, *Climate Accountability Institute, Carbon Majors: Update of Top Twenty companies 1965-2017* (Oct. 9, 2019), <https://climateaccountability.org/pdf/CAI%20PressRelease%20Top20%20Oct19.pdf>.

CJP modules present contested issues as facts

CJP puts a strong pro-plaintiff gloss on the contested “source attribution” field:

The legal theory underpinning “carbon majors” suits has changed over time. The early suits, filed in the 2000s, led with federal common-law claims. Those suits failed after the Supreme Court determined in *American Electric Power Co v. Connecticut* that federal common-law actions were displaced by the federal Clean Air Act (CAA), which, in *Massachusetts v. EPA*, had been interpreted to govern greenhouse gas emissions as air pollutants.⁷ The more recent suits allege state-law claims since the preemptive effect of the CAA on such claims remains an open question. The new suits also seek to capitalize on factual developments in two key areas of potential relevance to industry liability. First, a series of academic and journalistic investigations uncovered substantial evidence regarding the extent of the fossil fuel industry’s long-standing internal knowledge of climate change science and the human impact of greenhouse gas emissions.⁸ Second, just as scientific understanding and precision of harm attribution developed over time for areas of litigation such as asbestos and tobacco, the fields of climate source and impact attribution have developed such that plaintiffs can now portray fossil fuel defendants as being responsible for human-caused warming, slow-onset impacts, and even specific climate-related events with a precision previously unavailable.⁹

Pro-plaintiff assertion the defendants’ contest:

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Calls to Action

Target: FJC

Urge the House Oversight and Judiciary committees to encourage the Federal Judicial Center to end its partnership with CJP. A corrupt influence campaign should not bear the imprimatur of the federal courts.

Target: Judicial administrative units

Ensure that the administrative unit of your state judiciary is not hosting Climate Judiciary Project programming.

Target: Higher ed

Press public higher education institutions in your state, particularly law schools, to close their venues to the Climate Judiciary Project.