



ENVIRONMENTAL
LAW • INSTITUTE®

CLIMATE CHANGE AND VERMONT'S COURTS

March 31, 2023
Judge Thomas S. Durkin



OUTLINE

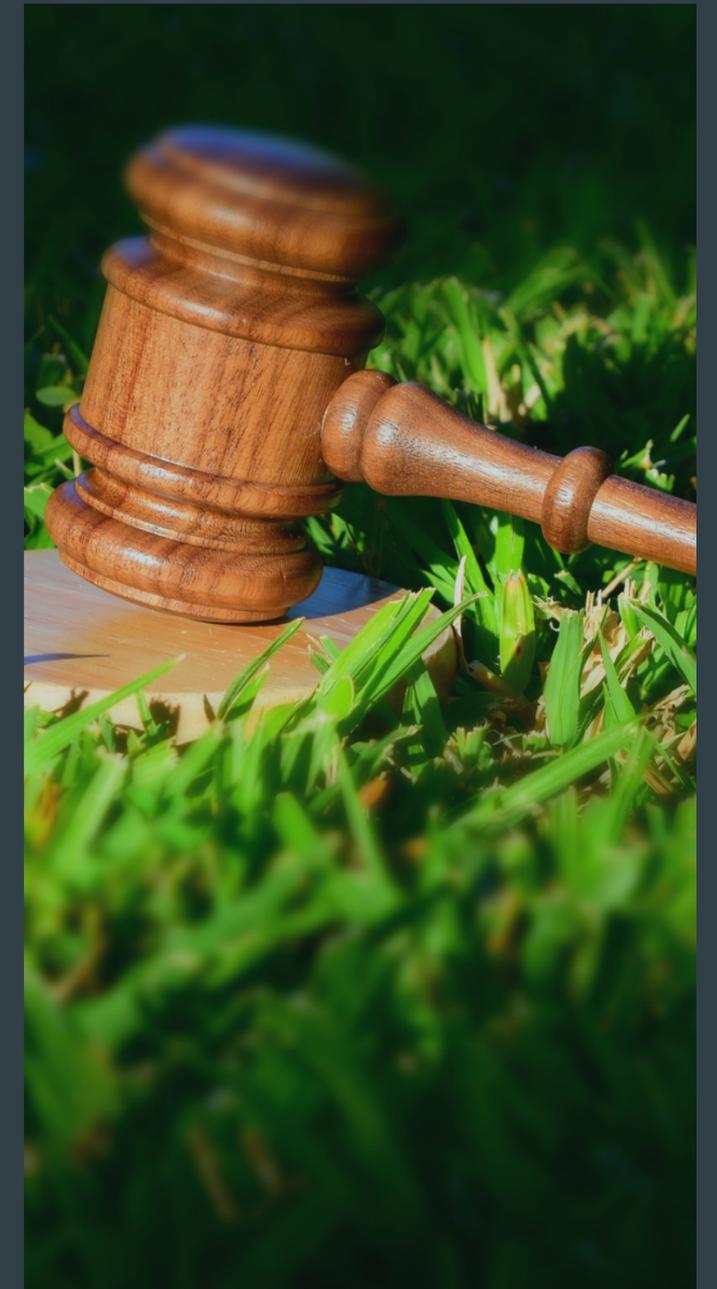
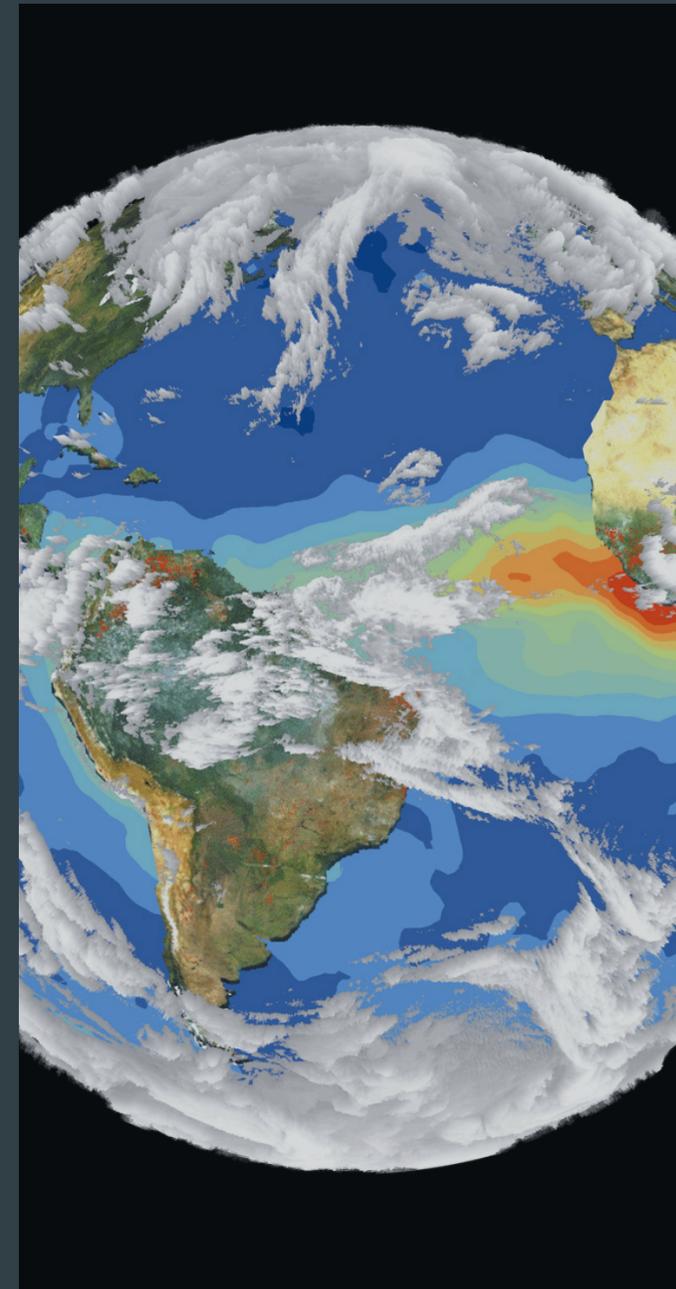
- 1 INTRODUCTION
- 2 SCOPE AND TRENDS
- 3 LEGAL LANDSCAPE
- 4 CLIMATE CASES IN VERMONT
- 5 CONCLUSION

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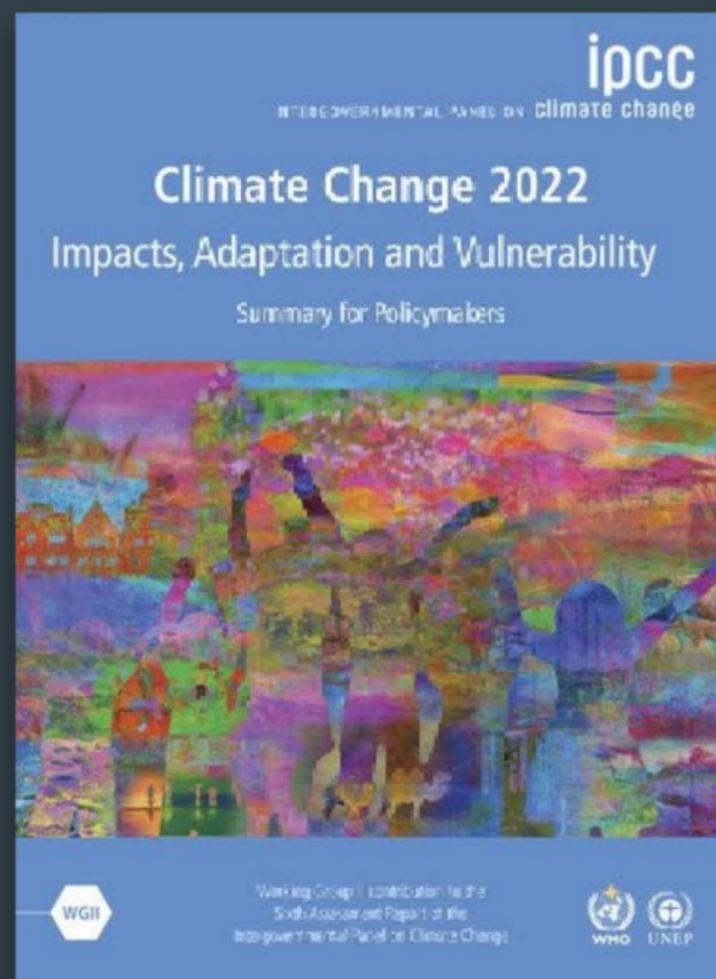
INTRODUCTION

INTRODUCTION

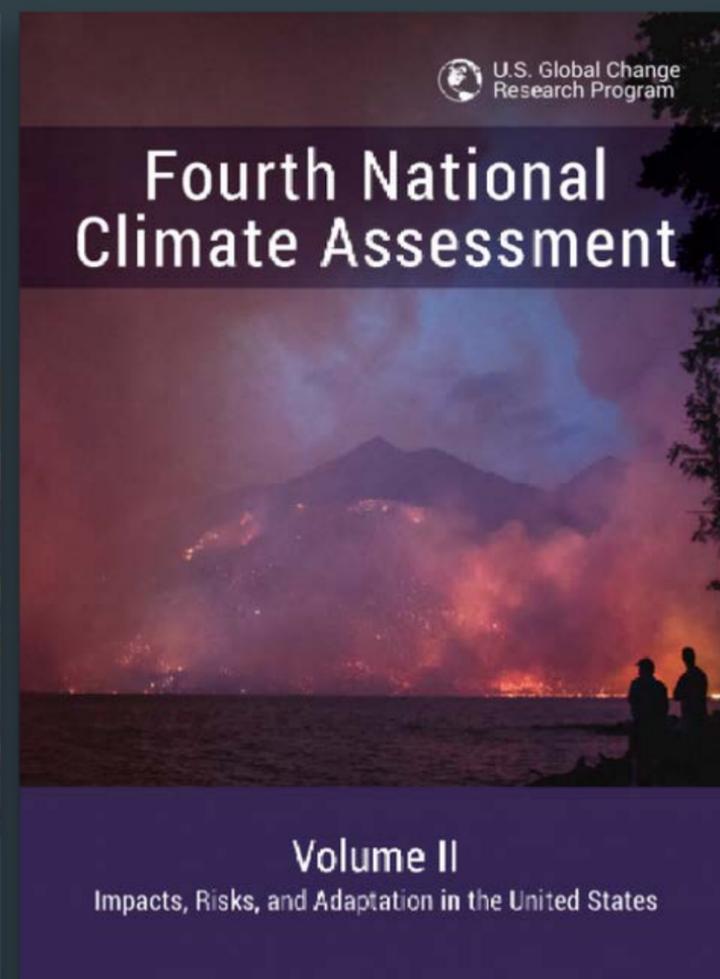
- Climate change is already affecting people across the United States
- Climate science offers a way to understand impacts
- Climate cases have increased significantly in the last several years



CLIMATE ASSESSMENTS



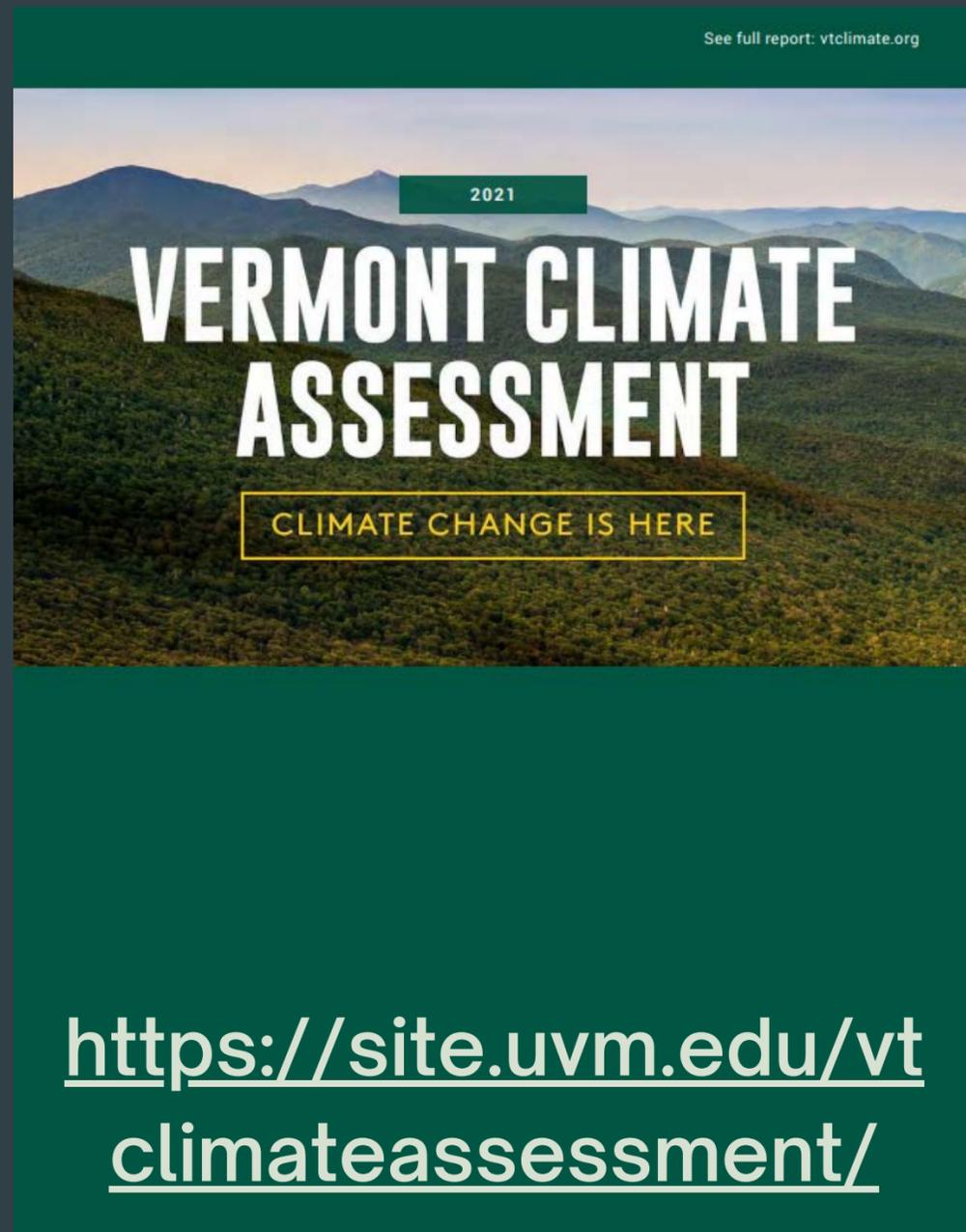
Source: IPCC (2022)



Source: US Global Change Research Program (2018)

- Intergovernmental Panel on Climate Change (IPCC) Assessment Reports (Synthesis Report for AR6 released March 2023)
- U.S. National Climate Assessment (Fifth NCA to be released Fall 2023)

CLIMATE SCIENCE - VERMONT

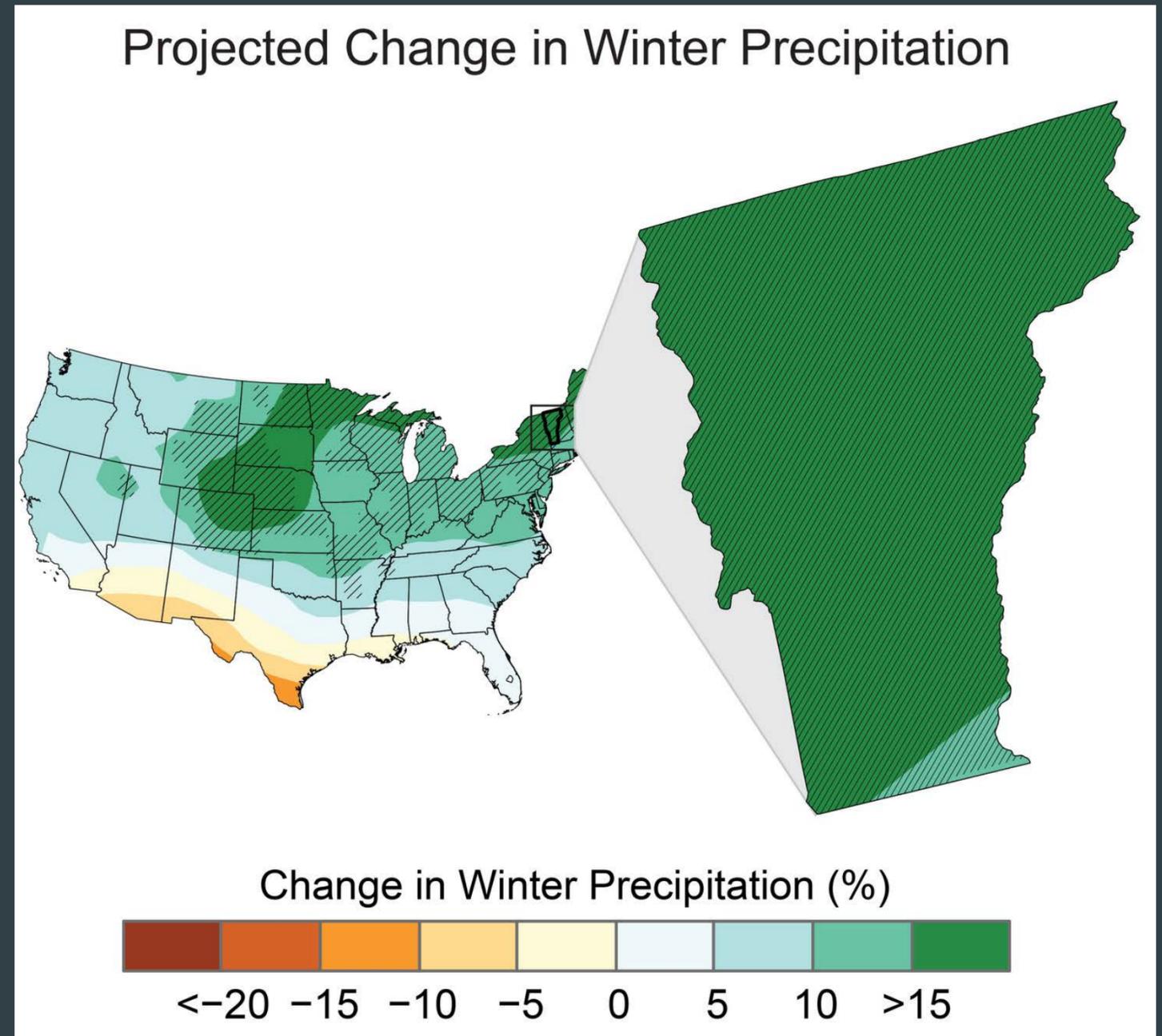


- Climate change has already affected temperature and precipitation trends in the state.
- Extreme weather events, such as floods and droughts, are expected to increase with climate change. Flooding is the most likely natural disaster to occur in Vermont.

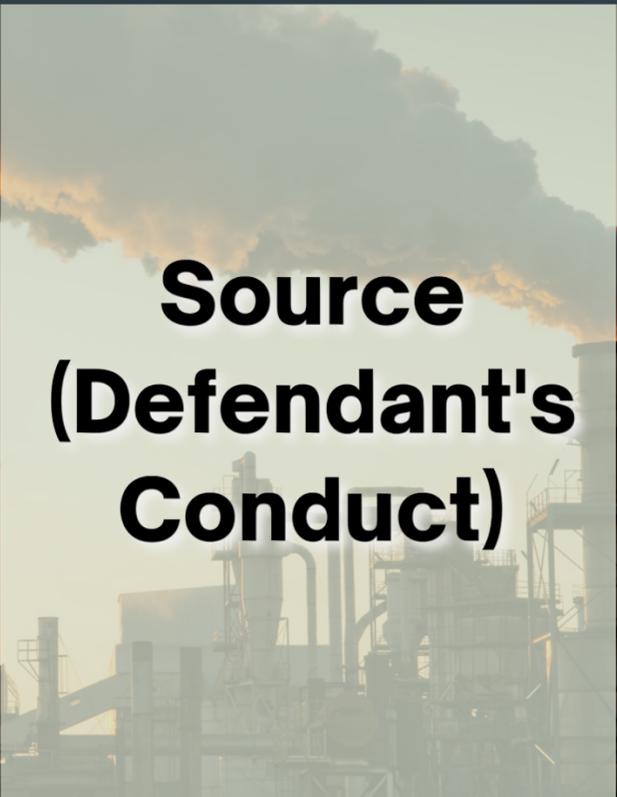
CLIMATE SCIENCE - VERMONT

Projected changes in total winter (December–February) precipitation (%) for the middle of the 21st century compared to the late 20th century under a higher emissions pathway. Hatching represents areas where the majority of climate models indicate a statistically significant change.

NOAA National Centers for Environmental Information



ATTRIBUTION SCIENCE



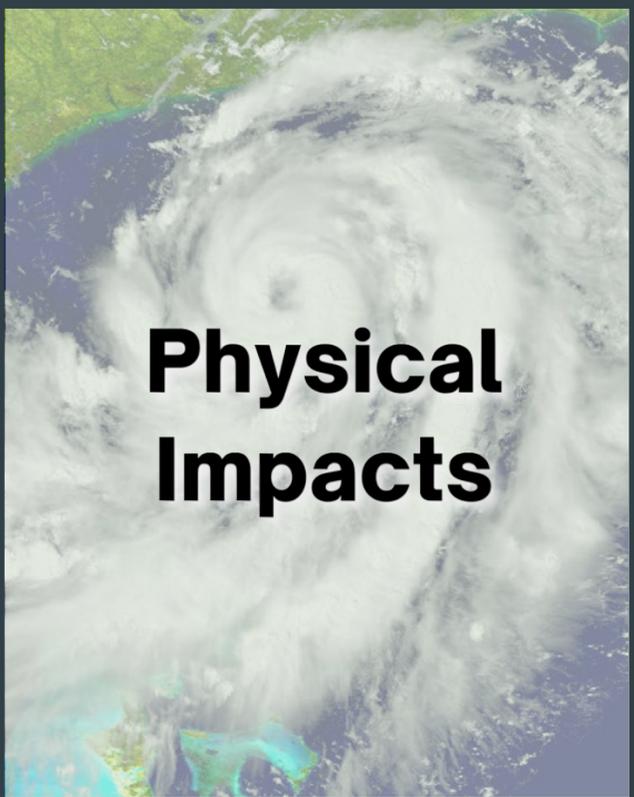
**Source
(Defendant's
Conduct)**

Source Attribution



**Global
Climate
Change**

*Global Climate
Change Attribution*



**Physical
Impacts**

*Impact Attribution
Event Attribution*



Harm

2

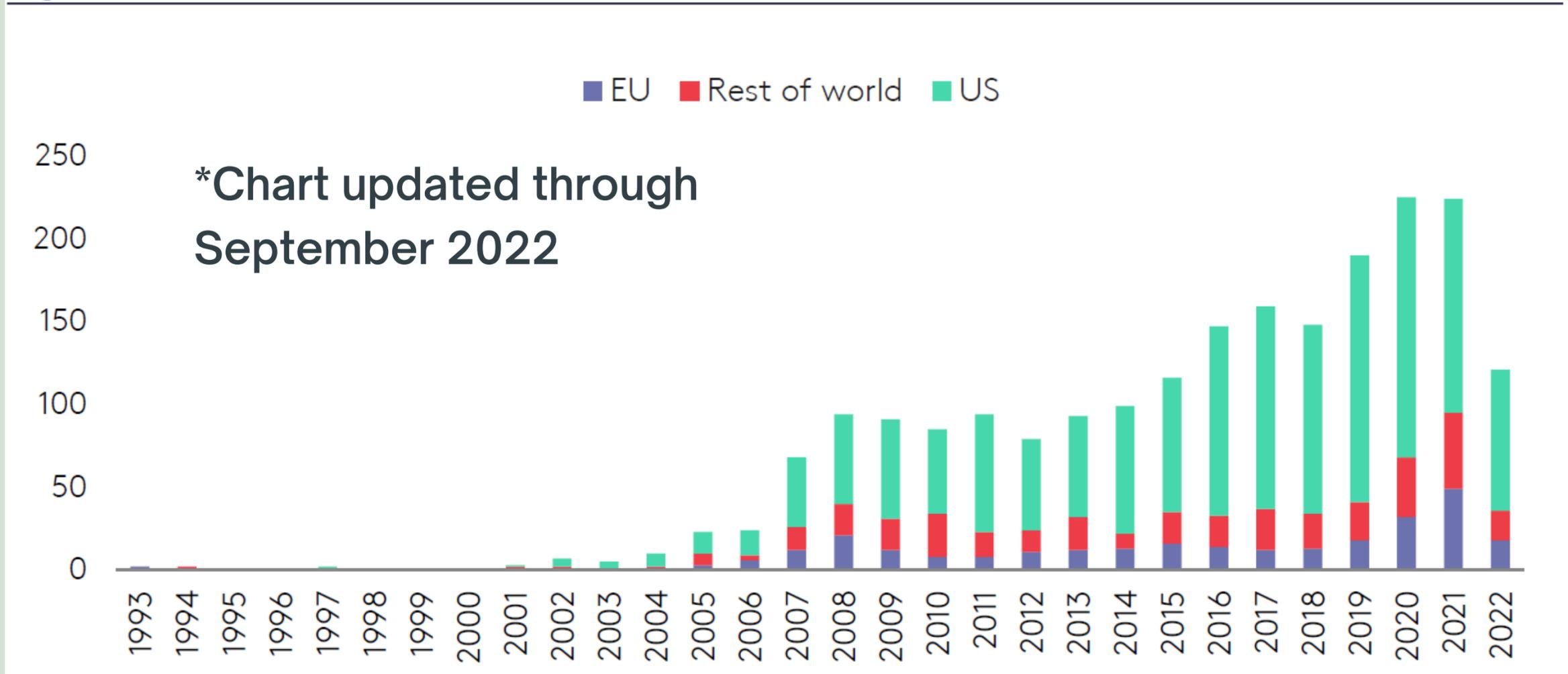


SCOPE AND TRENDS

CLIMATE LITIGATION TRENDS

2,200+ U.S. and international climate cases (as of 3/2023)

Figure 3. No. of cases filed around the world, 1993 to 2022*



Source: Joana Setzer, Harj Narulla, Catherine Higham and Emily Bradeen, *Climate Litigation in Europe 6* (December 2022) (based on data from the Sabin Center and Climate Change Laws of the World databases)

U.S. CLIMATE LITIGATION TRENDS

FEDERAL CASES*

most involve federal statutes like the ESA and NEPA

**The majority of climate cases are filed in federal court*

STATE CASES

many involve state impact assessment laws and utility regulation

CLIMATE LITIGATION DATABASE

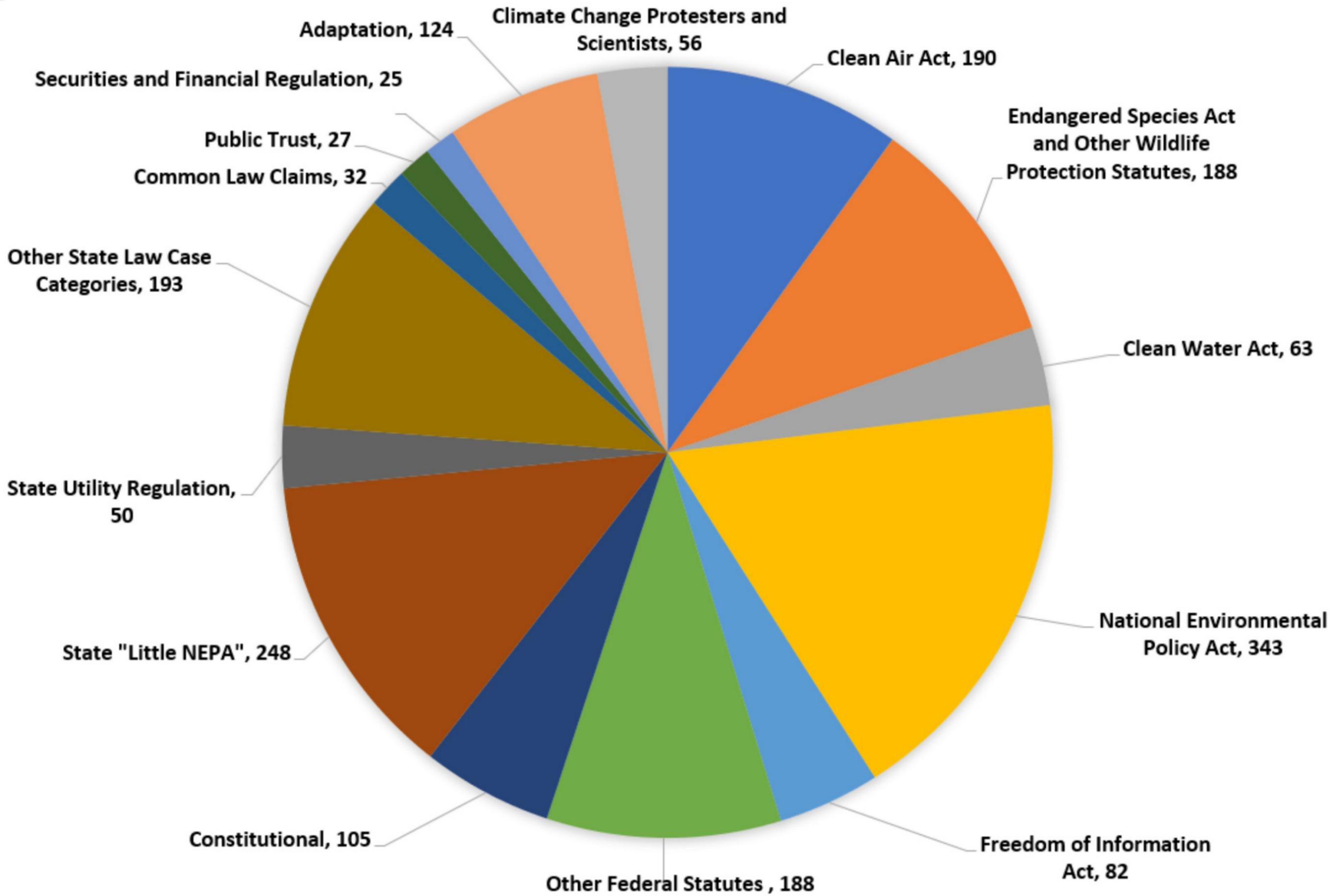
<http://climatecasechart.com/>

Climate Change Litigation Databases

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

[GLOBAL CLIMATE CHANGE LITIGATION](#)

This site provides two databases of climate change caselaw. The Global database includes all cases except those in the U.S. Cases in the databases are organized by type of claim and are searchable. For many cases, links are available to decisions, complaints, and other case documents.



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LEGAL LANDSCAPE



LEGAL LANDSCAPE

PARTIES

Governments
Private companies
NGOs
Individuals

JURISDICTION

Federal or State?

CLAIMS & LEGAL ISSUES

Justiciability
Constitutional and rights-based
Statutory and administrative
Common law

REMEDIES

Damages
Injunction
Declaratory
Accounting

4

CLIMATE CASES IN VERMONT

CLIMATE LITIGATION - VERMONT

**RENEWABLE
ENERGY**

LAND USE

**CONSUMER
PROTECTION**

**PUBLIC
RECORDS**

CLIMATE LITIGATION VERMONT

GREEN MOUNTAIN CHRYSLER PLYMOUTH DODGE JEEP V. CROMBIE (D. VT. 2007)

- Upholding Vermont's adoption of California's greenhouse gas regulations for automobiles
- Court relied on expert testimony on the nature and risks of global warming

CLIMATE LITIGATION VERMONT

RENEWABLE ENERGY

- Upholding certificate of public good, relying on testimony of project manager that construction emissions would be similar to comparably-sized projects. *In re Acorn Energy Solar 2, LLC* (Vt. 2021)

CLIMATE LITIGATION VERMONT

RENEWABLE ENERGY

- Reversing and remanding PUC's denial of certificate of public good, rejecting argument that Vermont law required balancing of beneficial impacts of greenhouse gas emissions. *In re Petition of Apple Hill Solar LLC* (Vt. 2021)

CLIMATE LITIGATION VERMONT

LAND USE

- Complaint filed in federal court in 2022.
- Alleging City of South Burlington Land Development Regulations amendments would increase greenhouse gas emissions resulting from longer driving distances. *835 Hinesburg Road, LLC v. City of South Burlington*

CLIMATE LITIGATION

VERMONT

CONSUMER PROTECTION

- *Vermont v. Exxon Mobil Corp.*
- Alleging defendants have misled consumers about product risks
- Seeking
 - permanent injunction
 - point-of-sale disclosure
 - disgorgement of funds

CLIMATE LITIGATION VERMONT

PUBLIC RECORDS

- Vermont's adoption of California's greenhouse gas regulations for automobiles upheld
- Court relied on expert testimony on the nature and risks of global warming

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CONCLUSION

KEY TAKEAWAYS

1

More impacts
means more
cases

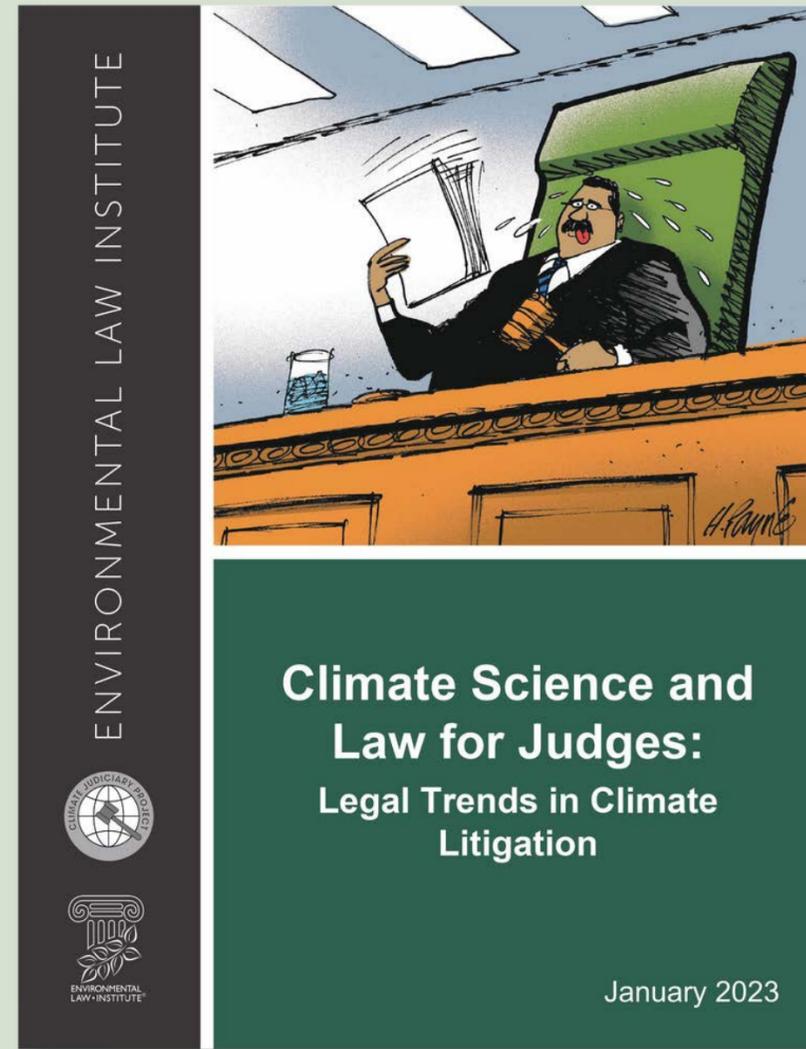
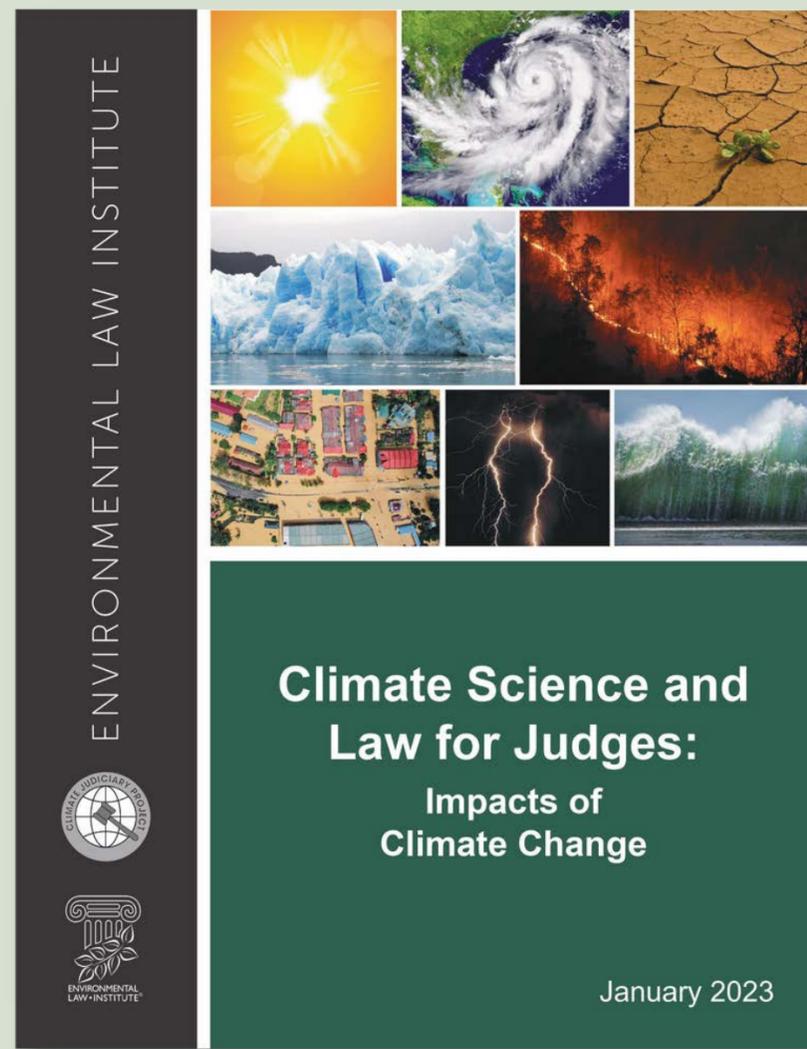
2

Climate science
is rapidly
advancing

3

Judges need
resources to better
understand and
prepare for these
cases

CLIMATE JUDICIARY PROJECT RESOURCES



Climate Science and Law for Judges Curriculum

Providing judges and the judiciary with reliable and up-to-date information about the legal and scientific issues in the climate litigation of today and tomorrow.

CLIMATE JUDICIARY PROJECT

Climate Science and Law for Judges Curriculum

SCIENCE

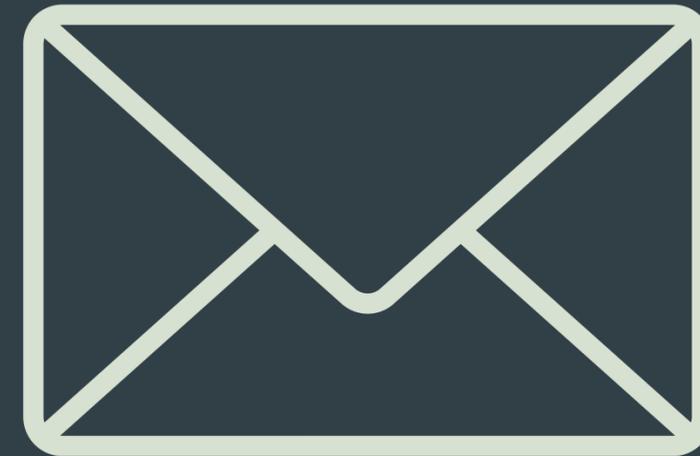
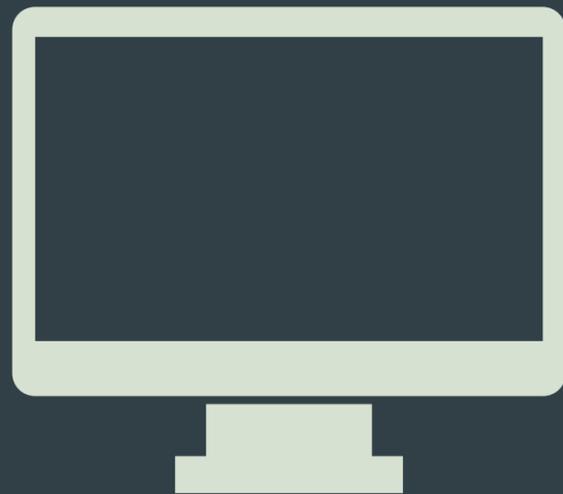
- How Climate Science Works
- What Is Causing Climate Change
- Impacts of Climate Change
- Climate Justice
- Risks and Costs of Climate Change
- Detection and Attribution Science
- Solving the Climate Problem

LAW

- Overview of Climate Litigation
- Applying Attribution: Torts
- Government Action
- Fundamental Rights
- Procedural Techniques
- Judicial Remedies

CONTACT US

Climate Judiciary Project



<https://www.eli.org/climate-judiciary-project>

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