

Climate Litigation in Oregon, pt. 1 — Landscape and Trends  
Jay Austin, Senior Attorney, Environmental Law Institute

- I. Introduction
  - a. Climate Judiciary Project
  - b. *Climate Science and Law for Judges* curriculum
- II. Climate case data
  - a. Climate cases over time
  - b. U.S. climate cases by state
  - c. Types of climate cases
  - d. U.S. climate cases by claim
- III. Categories of legal topics
  - a. Procedural
  - b. Case management
  - c. Constitutional rights
  - d. Statutory/regulatory
  - e. Common law
  - f. Remedies
- IV. Climate case trends
  - a. Utility negligence for wildfires
  - b. State-law suits against fossil-fuel companies
  - c. Challenges to energy projects
  - d. State constitutional suits

Climate Litigation in Oregon, pt. 2 — What we can expect in Oregon  
Sarah J. Adams-Schoen, Assistant Professor, UO Law

- I. Introduction
- II. Jurisdictional, procedural, and evidentiary issues
  - a. Oregon Evidence Code
    - i. ORS 40.150: Rule 401. Definition of “relevant evidence”
    - ii. ORS 40.410: Rule 702. Testimony by experts
    - iii. ORS 40.160: Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion or undue delay
    - iv. *State v. Brown* (Or 1984); *State v. O’Key* (Or 1995); *Jennings v. Baxter Healthcare Corporation* (Or 2009)
  - b. TROs and preliminary injunctions
    - i. Oregon Rules Civ. Proc., ORCP 79
    - ii. *Wilson v. Parent*, 228 Or. 354; *Knight v. Nyara*, 240 Or. App 586 (2011)
  - c. Declaratory judgment
    - i. O.R.S. 28.020

ii. *Brown v. Oregon State Bar* (Or 1982); *Couey v. Atkins* (Or 2015)

- III. Suits against fossil fuel companies and major emitters
  - a. Tort claims by the state / individuals / insurers
  - b. Misrepresentation / consumer protection
  - c. Investor-related litigation
- IV. Suits against the state
  - a. Oregon Tort Claim Act
  - b. Failure to adapt to climate change & failure to mitigate (slow or stop GHG emissions)
  - c. Public Trust Doctrine
  - d. Tribal and indigenous rights
  - e. Constitutional
    - i. Oregon: Privileges and Immunities, inverse condemnation, implied right to a stable climate system
    - ii. US: Equal Protection, Due Process, Dormant Commerce Clause, and Fifth Amendment Takings
- V. Climate “across the curriculum”
  - a. Contracts, property, criminal law, family law
  - b. And more . . .