

From: [Jared Mummert he/him](#)
To: [Robie, Ron](#); [REDACTED]; [REDACTED]; [REDACTED]
Cc: [Sandra Nichols Thiam](#); [REDACTED] [Helene Krasnoff \(she/her\)](#)
Subject: Agenda: CJP Advisory Committee Meeting
Date: Wednesday, June 5, 2024 12:04:58 PM
Attachments: [Outlook-st3yhdt](#)
[JLCS Map.png](#)
[2024.02.23 Sen. Cruz Letter to Environmental Law Institute.pdf](#)
[CJP Clean Energy Program Concept.docx](#)

Dear Advisory Committee Members,

We are looking forward to seeing many of you at our Advisory Committee meeting next **Wednesday, June 12 from 2:30 to 4 pm Eastern**. If you have not yet RSVP'd, it would be great if you could let us know if you can make it.

Here is an overview of how we will spend our time together:

- Welcome and agenda setting (5 mins)
- Updates (10 mins)
- Discussion
 - 2000 judges reached – what's next? (25 mins)
 - Clean energy expansion (25 mins)
 - Attacks on CJP/positive narratives (25 mins)

In preparation, we have attached a map showing the jurisdictions we have reached with our Judicial Leaders in Climate Science program, a short concept paper about our planned clean energy expansion, and a letter we received in February from Senator Ted Cruz. In addition to the Cruz letter, on May 22, 19 Republican AGs filed a [motion](#) with the Supreme Court requesting to file an original action against five states pursuing climate litigation against oil companies. Although these allegations do not seem to relate to the AGs' legal claims, their proposed Bill of Complaint includes the following three paragraphs on pages 15-16 about CJP:

36. To bolster the efforts to set interstate energy policy through state law, the Climate Judiciary Project ("CJP") of the Environmental Law Institute ("ELI") has been training judges on climate litigation. This includes "disseminating a climate science and law curriculum and ... conducting seminars and educational programs" to provide "information to the judiciary about the science of climate change as it is understood by the expert scientific community and relevant to current and future litigation."³⁰

37. CJP trained "over 400 judges" in 2022 alone, and "wove a network of Judicial Leaders in Climate Science (JLCS), delivering a model program to train and support trainers of judicial peers at the state court level."³¹ CJP Co-Founder Paul Hanle has stated that CJP is particularly mindful of "the states where there are [climate] impacts

that are being adjudicated.”³²

38. “The judges came away steeped in facts about the science of climate change, deeply impressed with their consequences, and committed to working together and reaching out to fellow judges to convey what they had learned. Drawn from a diversity of backgrounds and jurisdictions—from Vermont to Texas to California—each participant has committed to taking concrete actions to advance the education of their peers. Judges with no experience educating colleagues or previous knowledge of climate issues proposed an impressive array of ways they would contribute to preparing their courts.”³³

Footnotes:

30 ELI, Climate Judiciary Project, www.eli.org/climate-judiciaryproject.

31 CJP Staff, 2022 Year in Review, ELI (Apr. 1, 2023), <https://cjp.eli.org/news/230401-2022-year-review>.

32 ELI, Dialogue: Extreme Weather and Climate Change, 50 Env’t L. Rep. 10963, 10972 (2020), www.nossaman.com/assets/htmldocuments/ELR%20-%20Extreme%20Weather%20and%20Climate%20Change.pdf.

33 2022 Year in Review, *supra*. (emphases added).

Please let us know if you have any questions, and we will see you soon.

Best,

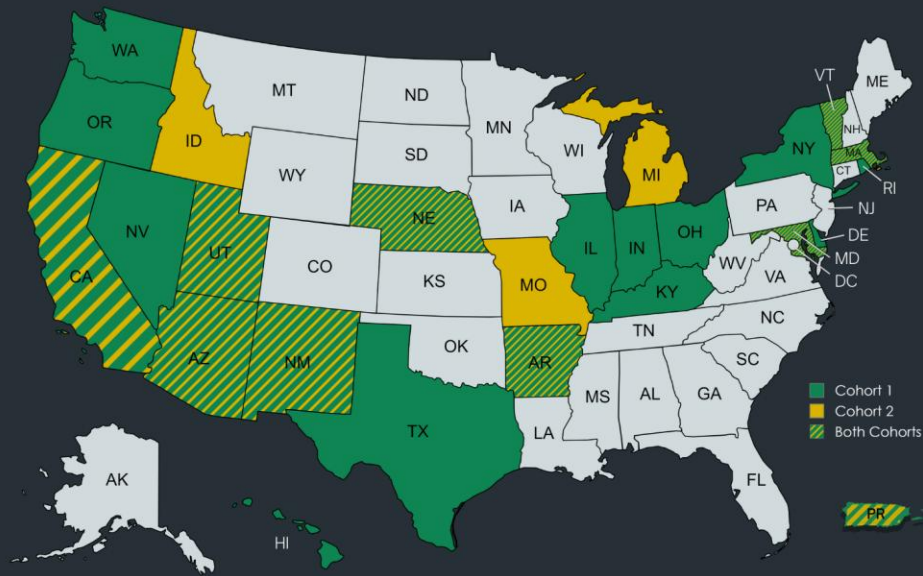


Jared Mummert (he/him)

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JUDICIAL LEADERS IN CLIMATE SCIENCE



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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

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LILA HARPER HELMS, MAJORITY STAFF DIRECTOR
BRAD GRANTZ, REPUBLICAN STAFF DIRECTOR

February 23, 2024

Ms. Jordan Diamond
President
Environmental Law Institute
1730 M Street, NW, Suite 700
Washington, D.C. 20036

Dear Ms. Diamond:

So-called “climate change lawsuits”—lawsuits claiming that private companies should be monetarily liable for damage to public infrastructure allegedly caused by climate change—have exploded in the past five years.¹ In tandem with this unprecedented litigation, the Environmental Law Institute (ELI) launched a “first-of-its-kind effort” to provide judges with “education on climate science, the impacts of climate change, and the ways climate science is arising in the law.”² It appears that ELI’s goal in providing this “education,” however, may be to influence judges to side with plaintiffs in climate change cases.

As you are aware, one of the program’s architects is Ann Carlson, the former Chief Counsel of the National Highway Traffic Safety Administration (NHTSA) whom the President unlawfully appointed acting administrator.³ As the Ranking Member of the U.S. Senate Committee on Commerce, Science, and Transportation, I write to request information to allow the Committee to evaluate the efforts of both Ms. Carlson and ELI to influence the federal judiciary in its adjudication of climate litigation.

While Ms. Carlson was a member of ELI’s board of directors, ELI unveiled the Climate Judiciary Project (the Project).⁴ Although ELI claims that it gives “neutral, objective information

¹ See, e.g., Joana Setzer & Catherine Higham, GRANTHAM RSCH. INST. ON CLIMATE CHANGE ET AL., GLOBAL TRENDS IN CLIMATE CHANGE LITIGATION: 2023 SNAPSHOT 11 (2023), https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2023/06/Global_trends_in_climate_change_litigation_2023_snapshot.pdf.

² *Climate Science and Law for Judges: Introduction*, CLIMATE JUDICIARY PROJECT (Mar. 2023), <https://cjp.eli.org/curriculum/introduction>.

³ See Letter from Senator Ted Cruz, Ranking Member, S. Comm. on Commerce, Science, & Transp., & Other Republican Comm. Members to the President of the United States (Sept. 30, 2023).

⁴ See *Past ELI Board Members*, ENV’T L. INST., <https://www.eli.org/past-eli-board-members?page=2> [<https://web.archive.org/web/20230730212418/https://www.eli.org/past-eli-board-members?page=2>] (showing Carlson was a member of ELI’s Board in 2018); *About CJP*, CJP, ENV’T L. INST., <https://cjp.eli.org/about> (last visited Feb. 16, 2024) (showing Climate Judiciary Project was unveiled in 2018).

to the judiciary about the science of climate change,”⁵ the Project is meant to be a direct complement to the wave of climate change litigation initiated by the Carlson-connected law firm Sher Edling LLP (Sher Edling).⁶ Indeed, ELI knows the impact this litigation could have on the fossil fuel industry: ELI recognizes that, in addition to legislation, “[l]itigation has the benefit” of “providing an incentive for adaption efforts as the standard for reasonable behavior changes.”⁷ More specifically, ELI states that “climate change litigation” can “control, order, or influence the behavior of others in relation to climate governance.”⁸ Therefore, the “highest goal” of ELI’s Project is “to help the judiciary as [it] build[s] a body of law that *appropriately* addresses climate change” through climate change litigation.⁹ In other words, ELI intends to accomplish via the courts what it cannot get enacted into law: a radical environmental agenda.

To help judges reach those “appropriate” decisions, the Project developed the “Climate Science and Law for Judges Curriculum” (the Curriculum).¹⁰ While ELI claims the Project is “neutral” and “objective,” the Curriculum reads like a playbook for judges to find in favor of plaintiffs in artificial climate change cases against traditional energy companies: it includes courses that “show[] how climate science is built on long-established scientific disciplines” and “explore[] the human-caused component of [global] warming,” such as the “causal connections between emissions” and “changes in the climate.”¹¹ Ms. Carlson was a member of the Project’s “Advisory Curriculum Committee,” which “helped to shape, refine, and strengthen the curriculum’s methodology and content.”¹² Ms. Carlson also participated in the Project’s pilot series to train federal judges.¹³

By its own account, the Project appears to have gained hundreds of judicial acolytes, with over 1,700 judges participating in the Project.¹⁴ Its judicial students even include Hawaii Supreme Court Chief Justice Mark Recktenwald, who handed Sher Edling a major win in the lawsuit it

⁵ *About the Climate Judiciary Project*, ENV’T. LAW INST., <https://www.eli.org/climate-judiciary-project>; Sandra Nichols & Paul Hanle, *Judging in a Changed Climate*, 14 THE ENV’T. L. FORUM 55 (July/August 2022) <https://www.eli.org/sites/default/files/files-pdf/Judging%20in%20a%20Changed%20Climate.pdf>.

⁶ See Letter from Senator Ted Cruz, Ranking Member, S. Comm. Commerce, Science, & Transp., & Congressman James Comer, Chairman, H. Comm. Oversight & Accountability, to Sher Edling (Sept. 25, 2023), <https://www.commerce.senate.gov/2023/9/sen-cruz-chairman-comer-demand-answers-from-law-firm-regarding-acting-nhtsa-administrator-s-role-in-frivolous-lawsuits-aimed-at-bankrupting-oil-companies>.

⁷ Nichols & Hanle, *supra* note 5, at 56.

⁸ *Id.*

⁹ CJP Staff, *2022 Year in Review*, CJP, ENV’T L. INST. (Apr. 1, 2023), <https://cjp.eli.org/news/230401-2022-year-review> (emphasis added).

¹⁰ *Climate Science and Law for Judges*, *supra* note 2; see also *Climate Science and Law for Judges: Fundamental Rights*, CJP (Jan. 2023), https://www.eli.org/sites/default/files/files-pdf/Fundamental%20Rights_FINAL%20WORD_formatted.pdf.

¹¹ *About the Climate Judiciary Project*, *supra* note 5; *Climate Science and Law for Judges*, *supra* note 2.

¹² *Climate Science and Law for Judges*, *supra* note 2.

¹³ Nichols & Hanle, *supra* note 5.

¹⁴ *About the CJP*, *supra* note 5.

filed in 2020 on behalf of the City and County of Honolulu.¹⁵ Ms. Carlson had travelled to Hawaii with Mr. Sher to “encourage Hawaii to consider a nuisance lawsuit” just one year before that case was filed.¹⁶

The Project’s funding and ties to plaintiffs in climate change cases further belie ELI’s claim of neutrality. For example, ELI and climate litigation juggernaut, Sher Edling, share staff, including Ms. Carlson, who served as a “consultant/committee member” for Sher Edling while also serving on ELI’s board.¹⁷ ELI and Sher Edling also have some of the same sources of financing:

- In 2020, the William and Flora Hewlett Foundation, which provides “grants to protect people and places threatened by a warming planet by addressing climate change globally,” gave \$500,000 to ELI’s Project to “build a body of law supporting climate action.”¹⁸ The same year, the Hewlett Foundation gave \$6.62 million to the Resources Legacy Fund, which donated \$2.4 million to Sher Edling.¹⁹
- In 2021, the JPB Foundation, which works to “build[] the power of the environmental justice community,” donated \$2 million to ELI’s Project to “advanc[e] a new front against climate change.”²⁰ The same year, the JPB Foundation gave \$3.45 million to the New Venture Fund for “climate damage and deception litigation support.”²¹ The New

¹⁵ See Notice, *City & Cnty. of Honolulu v. Sunoco LP*, SCAP-22-0000429 (Haw. May 9, 2023); *City & Cnty. of Honolulu v. Sunoco LP*, 537 P.3d 1173 (Haw. 2023) (upholding denial of defendants-appellees’ motions to dismiss based on lack of jurisdiction and failure to state a claim).

¹⁶ E-mail from Ann Carlson to Dan Emmett (Jun. 24, 2019, 3:51 p.m.) (on file with the Committee).

¹⁷ *Past ELI Board Members*, *supra* note 4; Ann Carlson, Annual Reporting Form, UCLA Sch. L. (Dec. 6, 2020), <https://govoversight.org/wp-content/uploads/2021/08/Carlson-reporting-forms-Responsive-Documents-20-8525.pdf>.

¹⁸ *Environment*, HEWLETT FOUND., <https://hewlett.org/programs/environment/> (last visited Feb. 21, 2024); *Environmental Law Institute for the Climate Judiciary Project*, HEWLETT FOUND. (last visited Feb. 16, 2024), <https://hewlett.org/grants/environmental-law-institute-for-the-climate-judiciary-project/>; 2020 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, *The William and Flora Hewlett Foundation*, 304 (Nov. 3, 2021), <https://www.hewlett.org/wp-content/uploads/2021/12/2020-Form-990-PF-full-return-with-attachments.pdf>.

¹⁹ 2020 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, *The William and Flora Hewlett Foundation*, 304 (Nov. 3, 2021), <https://www.hewlett.org/wp-content/uploads/2021/12/2020-Form-990-PF-full-return-with-attachments.pdf>; 2020 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, *The Resources Legacy Fund*, 8 (Feb. 2, 2022), <https://resourceslegacyfund.org/wp-content/uploads/2022/03/RLF-2020-IRS-Form-990-Public-Copy-Amended.pdf>.

²⁰ *Environment*, JPB FOUND. (last visited Dec. 12, 2023), <https://www.jpbfoundation.org/environment/> [<https://web.archive.org/web/20230306041814/https://www.jpbfoundation.org/environment/>]; 2021 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, *The JPB Foundation*, 11 (Nov. 11, 2022), <https://projects.propublica.org/nonprofits/organizations/900747216/202223159349101982/full>.

²¹ 2021 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, *The JPB Foundation*, 11 (Nov. 11, 2022), <https://projects.propublica.org/nonprofits/organizations/900747216/202223159349101982/full>.

Venture Fund donated \$3 million to Sher Edling in 2021 and is currently under investigation by the D.C. Attorney General.²²

- In 2022, the ClimateWorks Foundation, which “is committed to supporting climate solutions that are equitable, inclusive, and just,” gave ELI \$987,763 to support the Climate Judiciary Project and gave New Venture Fund \$1,447,990.²³ That year, the New Venture Fund gave Sher Edling \$2,499,916.²⁴

The Standing Rules of the Senate provide the Committee on Commerce, Science and Transportation the authority to “review and study, on a continuing basis” matters related to interstate commerce and transportation including NHTSA and the Senate’s consideration of any nominee thereto.²⁵ So that the Committee can understand Ms. Carlson’s involvement in ELI’s judicial education efforts related to climate change prior to and following her nomination, the accuracy of her disclosures to Congress, as well as ELI’s connection to Sher Edling and other firms and parties bringing climate change cases and those cases’ potential adverse impacts on interstate commerce, please provide the documents requested below and written answers in response to the questions below no later than March 8, 2024 and in accordance with the attached instructions.

1. Please describe the work that Ms. Carlson performed for ELI during her time on ELI’s Board of Directors, including the contributions she made to the Curriculum.
2. Please provide copies of all communications between ELI and Ms. Carlson from January 20, 2021, to present.
3. Please provide copies of the Project’s member resources and all Curriculum materials and resources, including all modules, the learning dashboard, the resource library, slide presentations, member events, and directory of regional ambassadors or alternatively access thereto.²⁶

²² 2021 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, *The New Venture Fund*, 134 (Nov. 4, 2022), <https://newventurefund.org/wp-content/uploads/2022/11/NVF-2021-990-Public-Disclosure-Copy.pdf>; see, e.g., Joe Schoffstall, *D.C. Prosecutors Probe Liberal Dark Money Network After Backlash for Investigating Conservative Orgs*, FOX NEWS, <https://www.foxnews.com/politics/dc-prosecutors-probe-liberal-dark-money-network-backlash-investigating-conservative-orgs> (Oct. 5, 2023).

²³ *About Us*, CLIMATEWORKS FOUND., <https://www.climateworks.org/about-us/> (last visited Feb. 20, 2024); 2022 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, ClimateWorks Foundation, 77, 81 (Oct. 17, 2023), <https://content.climateworks.org/form-990-2022>.

²⁴ 2022 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, *The New Venture Fund*, 155 (Nov. 7, 2023) <https://newventurefund.org/wp-content/uploads/2023/11/NVF-2022-Public-Disclosure-Copy-257292001.pdf>.

²⁵ S. Rules XXV(1)(f), XXVI(8)(a)(2).

²⁶ *For Members*, ENV’T LAW INST. CLIMATE JUDICIARY PROJECT (Dec. 12, 2023), <https://cjp.eli.org/dashboard>.

4. Please provide documents sufficient to show or a list of all events sponsored by the Project and every federal, state, and local judge in the United States who either attended or presented at each event.
 - a. For each event, please state whether ELI provided any compensation, including reimbursement for travel expenses, to attendees, and if so, how much money ELI gave to each judge who attended.
5. Please identify every state and federal judge in the United States who has received any training or educational materials created by the Project or otherwise has served in any role related to the Project, including informal advisors and committee members.
6. Please identify every person and entity that provided ELI with any amount of funding that was directed to the Climate Judiciary Project. For each person or entity listed, please include the following information: (a) the amount of the money provided; (b) the date the money was provided; (c) the purpose for which the money was directed to be used; and (d) the way that money was provided, *e.g.*, through a grant.

Thank you for your attention to this matter.

Sincerely,



Ted Cruz
Ranking Member

**The Environmental Law Institute
Climate Judiciary Project**

Expanding to Support the Clean Energy Transition

At the end of 2023, 83 percent of U.S. primary energy generation still came from fossil fuels. According to the National Academy of Sciences (NAS), nearly all of this must transition to clean energy if the country is to meet its national policy goal of net-zero greenhouse gas emissions by 2050. However, opposition to clean energy projects has grown; the recent NAS report, “Accelerating Decarbonization in the United States (2023),” identifies this opposition as a formidable challenge to meeting the national net-zero emissions goal. This opposition adversely affects everyone, but it inflicts disproportionate impacts on disadvantaged communities. It is also increasingly resulting in litigation.

Litigation related to clean energy is complex. In addition to the specialized principles and approaches inherent in environmental regulation and permitting, it requires an understanding of the environmental impacts and benefits of large infrastructure projects, the technology underpinning the clean energy transition, the economic incentives and inhibitors behind clean energy policies, and the socio-economic dynamics of energy development in communities. Most judges are generalists and lack familiarity with such scientific and technical issues.

Judicial education about the science, technology, economics, and impacts (STEI) of clean energy can ensure that judges have a basic understanding of the issues that are certain to arise in litigation related to the clean-energy transition. Providing judges with the necessary knowledge to consider these issues will facilitate outcomes that are based on science and the rule of law, are consistent with statutory policy, and take account of climate justice. Importantly, CJP’s curriculum already includes the disparate and disproportionate effects of climate change on historically disadvantaged communities, focusing on fundamental rights, environmental justice, and the adverse health and other human impacts of climate change. Our clean-energy program will provide factual information on the STEI of the clean energy transition so that judges may make decisions that appropriately take into account these issues when they are presented to them.

The curriculum will be varied and flexible so that our programming can be targeted by subject and location to match the factual and legal issues that are being presented in those jurisdictions. So, for example, the economics and impacts on agriculture and land use of solar farms can be presented in certain plains states, while impacts of offshore wind development on fisheries and marine mammals will be presented in coastal states. Our content will deliver expert understanding of the balance of benefits and harms of energy projects on human health, wildlife, property values, communities, agriculture, and other impacts, especially those bearing on permitting decisions for clean energy projects, as those are often the subject of litigation.

Content of the New Programs

Our existing curriculum is the starting point, and we will add new modules on clean energy topics, focusing on the issues most often involved in litigation, such as environmental and human impacts of projects, how these projects are influenced by the environmental mandates of laws such as the National Environmental Policy Act and the Endangered Species Act and their state equivalents, and how clean energy policies interact with energy utility regulations.

Examples of topics to be addressed might include:

- The state of the science related to the impacts of clean energy technologies, especially wind, solar, and electric storage and transmission, on species, ecosystems, and human activities
- Social dimensions of the clean energy transition: human health, employment, public engagement, quality of life, community impacts
- Justice and equity considerations, especially provisions in the IRA regarding clean energy and their implications for redressing disproportionate impacts of environmental pollution on low-income and historically marginalized communities
- Expedient reduction of greenhouse gas emissions while engaging communities to address climate justice and equity
- The national policy to advance clean energy and reduce fossil fuel emissions: environmental externalities from both fossil fuels and various clean energy technologies
- Basic economics of electricity generation, transmission, and storage
- State and local laws related to reducing fossil fuel emissions
- Economics of net metering, grid reliability, and transmission costs
- The current state of litigation related to clean energy.

Achieving this at the required speed will be made possible by our strong infrastructure (judges who have participated in CJP programming, collaborating scientists and scholars, affiliated institutions of judicial education) and our network of Judicial Leaders in Climate Science who are motivated to bring energy-related content to peer judges in their states.

Measuring the Impact of the Program

Ultimately, the impact of the lessons we offer will be in the full range of judicial decisions, grounded in facts and evidence, and their impact on the market environment for clean-energy development. Our purpose is not to influence individual decisions but rather to give judges the tools and context they need to make informed judgments illuminated by the scientific content. The best short-term measures of success we have found in CJP are the number and depth of lessons delivered to judges, the number and jurisdictions of judges participating, and judges' evaluation of the usefulness of the information, especially as manifested in requests for further support and resources to continue their education activities.