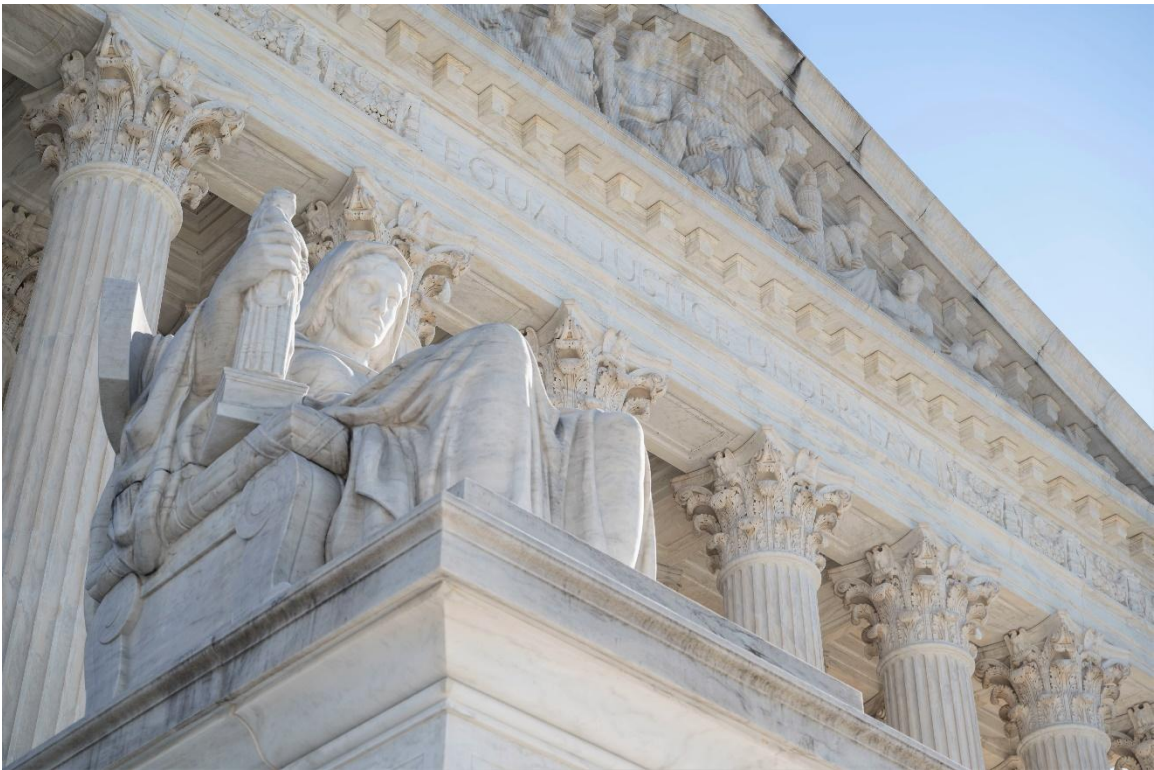


# **Climate Change Law: The Impact of Recent Cases on Climate Security**



United States Supreme Court

Photo by Jason Teffrey, USAF

**Authors: Rebecca Grippo, Kristen Fletcher  
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# Climate Change Law: The Impact of Recent Cases on Climate Security

By Rebecca Grippo<sup>1</sup>, Kristen Fletcher<sup>2,3</sup>

## Background

Litigation related to climate change has increased dramatically in recent years, delivering a body of law that is shifting over time as precedents change, laws not written for a problem as complex as climate change are applied to climate change, and citizens, companies, and state governments take action either in response to federal action or in response to the lack thereof. This report provides analysis of cases through the lens of climate security and environmental security. In other words, these cases have an impact on our collective ability to address and mitigate climate change impacts in the climate security space.

The report points to trends at the international and domestic levels that address the following four key elements.

- **Who is responsible for addressing climate change?** Congressional action and diplomacy have a significant role but can be slow and inadequate. Activists have tried to make up for inaction or delays through litigation.
- **Do we have a right to a healthy climate?** If so, what might this include? Clean air? Clean water? Protection from heat? Cases worldwide are pushing the limits of what such a provision may mean.
- **What are the remedies for current and future generations?** Given the challenges that climate change will present to future generations, perhaps it is appropriate that youth are playing a significant role in these cases.
- **How much authority do U.S. agencies really have?** There is a trend in U.S. law limiting agency authority, including a case to be decided in 2024 that may overturn decades of deference to federal agencies. This report reveals how this trend may relate to U.S. federal agency authority, including those that address climate security issues.

## Summary of Cases

Starting at the international level, for the first time, several courts will review climate change related cases including the **International Court of Justice (ICJ)**. The ICJ will issue an advisory opinion on the obligations of states with respect to climate change and especially those states that have caused significant harm to small island developing states and future generations. (Report p. 6) The **European Court of Human Rights** also heard its first case related to climate change in 2023 brought by the Swiss Senior Women for Climate Protection who argued, among other claims, that heat waves exacerbated by climate change interfere with their rights to life and health. While the ICJ opinion is advisory only, the European Court of Human Rights decision could set an important legal precedent for the forty-six states of the Council of Europe.

In 2022, the **Brazil Supreme Court** held that the government must allocate funds to the country's Climate Fund to mitigate climate change; importantly, in this case, the Supreme Court recognized the Paris Agreement as a human rights treaty. (Report p. 8) This case is supplemented by another case in Brazil regarding a constitutional human right to a stable climate which is being damaged by deforestation and a case in Columbia

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regarding rights to health, food, water, and a healthy environment also related to deforestation. This rise of climate constitutionalism is bringing constitutional rights to the forefront in the face of serious climate impacts. As of 2017, over 150 countries around the world had constitutionalized a right to climate security, while six states in the United States have explicit environment rights provisions (with three more states establishing these rights via Green Amendments as of 2023). In addition, “in 2022, the United Nations (UN) General Assembly declared access to a ‘clean, healthy and sustainable environment’ a human right.”<sup>4</sup>

An increasing number of climate cases are brought by youth, including constitutionalism cases. The first such case to go to trial in the U.S. was *Held v. State of Montana* which was decided in August 2023 in favor of the youth. (Report p. 10) While this is a state court decision at the trial court level, it is historic in that it is the first case in the U.S. where evidence was presented of damage to youth and to future generations showing a violation of a constitutional right to a clean and healthful environment. The judge declared that a clean and healthful environment includes climate as part of the environmental life-support system. A provision of the Montana Environmental Policy Act was found unconstitutional for it prohibited the state agency from considering greenhouse gas (GHG) emissions and climate change in its environmental reviews. This finding was bolstered by the fact that the state, over decades, had *never* denied a permit for fossil fuel-based activities in Montana. While this case is at the state level and specific to Montana, it provides fuel (pun intended) for other youth and constitutional cases pending around the country.

The report also includes analysis of four key administrative law cases from the U.S. Supreme Court which have significant effects on climate change actions at the federal level. The primary climate change law case, *Massachusetts v. EPA* from 2007, found that states have standing to sue on climate change issues, that GHGs are pollutants under the Clean Air Act, and that the EPA must base its regulations on a consideration of whether GHG emissions contribute to climate change. (Report p. 13) This case is credited as laying the foundation for climate action at the federal level, including the U.S. joining the Paris Agreement in 2015. Fifteen years after *Massachusetts v. EPA*, the 2020 case of *West Virginia v. EPA* limited the EPA’s authority to emission reduction technologies under a Clean Air Act provision, denying EPA authority to require plants to shift to different energy sources “outside the fence line.” (Report p. 15) The Court showed its desire for clear congressional authorization.

A year later, in *Sackett v. EPA*, the Court curtailed the EPA’s authority to regulated wetlands under the Clean Water Act. (Report p. 17) In redefining “waters of the United States” under the statute, the Court found that it does not include wetlands that are not adjoining a federally protected body of water. This 2023 case further limits the EPA’s authority and, in critics’ eyes, ignores the role of wetlands in environmental health and mitigating climate impacts. Finally, the Court will reconsider precedent set in 1984 under *Chevron v. Natural Resources Defense Council* which gave deference to a federal agency’s interpretation of an ambiguous statute if that interpretation was reasonable. (Report p. 20) The Supreme Court will rule in 2024 in the case of *Loper Bright Enterprises v. Raimondo* to determine whether to keep this deference or upend the 39-year precedent. The previous cases show a trend of limiting EPA authority in recent years; this case would extend those limitations to all federal agencies if *Chevron* is overturned.

A final aspect of administrative law is where a case can be brought – either in state or federal court – and this is being deliberated in courts across the U.S. State courts are seen as more favorable for the plaintiffs for these types of cases because there is usually a greater possibility of having a jury trial and higher awards for damages. Companies usually move to have the case decided in federal court, arguing that the scope of the problem is more a federal issue than a state issue. A group of cases that illustrate this issue were brought by local and state governments against energy companies for climate change impacts attributable to the companies’

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<sup>4</sup> [https://www.americanbar.org/groups/environment\\_energy\\_resources/publications/trends/2022-2023/july-aug-2023/constitutional-right-to-a-clean-environment/#:~:text=In%202020%2C%20seven%20government%20organizations,implement%20the%20nation's%20deforestation%20regulations.](https://www.americanbar.org/groups/environment_energy_resources/publications/trends/2022-2023/july-aug-2023/constitutional-right-to-a-clean-environment/#:~:text=In%202020%2C%20seven%20government%20organizations,implement%20the%20nation's%20deforestation%20regulations.)

actions and emissions.<sup>5</sup> After rulings kept the cases in state court, the companies requested review (known as certiorari or “cert” for short) from the U.S. Supreme Court but the Court declined to hear the cases. As a result, the Supreme Court at least allowed the rulings in favor of state courts to stand. Following the denial of cert, the Supreme Court sent the cases to the U.S. Court of Appeals to take a second look.<sup>6</sup>

Given the breadth of litigation across the globe, this report cannot cover all the interesting findings and trends. For several years, the Grantham Research Institute on Climate Change and the Environment has provided a *Global Trends in Climate Change Litigation* report. In recent years, the reports have highlighted that “strategic litigation against companies is an area of increasing interest to many actors.”<sup>7</sup> One such case in the U.S. is a case brought by sixteen municipalities in Puerto Rico against fossil fuel companies including Exxon Mobil, the Chevron Corporation, Royal Dutch Shell, and British Petroleum. The suit seeks damages for devastation caused by Hurricane Maria and other storms, relying on science that indicates hurricanes are becoming more intense because of climate change.<sup>8</sup> At the heart of the suit is an allegation – the first of its kind in climate litigation – that the companies violated the Racketeer Influenced and Corrupt Organizations Act (RICO) by misrepresenting the dangers of their carbon-based products. The suit is also unique in that it is the first to seek damages for a specific weather event. This case is part of a trend itself: accessing unique legal arguments to address climate change, especially in the absence of laws that deal with it directly.

## Findings

For those working in climate security, it is important to note that lack of action and litigation loss can exacerbate tensions, especially among youth and developing states, which are often the states affected the most by climate change and least able to build resilience to climate related impacts. Opportunity for shifts is emerging, especially in the international law decisions to be issued in late 2023 and early 2024. However, in the U.S., the trend continues toward eroding federal agency authority which may affect the Executive Branch’s ability to address climate change either through mitigation or adaptation. The following graphic shows the summary of findings and key trends in climate change law.

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<sup>5</sup> <https://lewisbrisbois.com/newsroom/legal-alerts/u.s.-supreme-court-allows-climate-change-lawsuits-to-proceed-in-state-court>

<sup>6</sup> <https://www.jdsupra.com/legalnews/new-case-law-update-mountain-valleys-9884738/>

<sup>7</sup> Global Trends at 23, [https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2023/06/Global\\_trends\\_in\\_climate\\_change\\_litigation\\_2023\\_snapshot.pdf](https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2023/06/Global_trends_in_climate_change_litigation_2023_snapshot.pdf)

<sup>8</sup> *Municipalities of Puerto Rico v. Exxon Mobil Corp.*, Case 3:22-cv-01550, US District Court of Puerto Rico (2022), <https://climatecasechart.com/case/municipalities-of-puerto-rico-v-exxon-mobil-corp/>



The remainder of the report provides background on key cases including the holding (or finding) of the case, its overall significance and what it means for climate security work. Resources follow the analysis, including links to different perspectives and interpretations of the case. On the [EAG Energy, Climate and Environmental Security page](#), you will find a one-page resource document, video of a briefing from August 2023 and briefing slides. The authors welcome your questions and feedback.

## ICJ Opinion

### Evolution of Advisory Opinion:

On 29 March 2023, the UN General Assembly adopted a resolution [requesting an advisory opinion](#) from the International Court of Justice (ICJ) on the obligations of nation states (states) with respect to climate change. The procedure can be found [here](#); documents regarding the proposal can be found [here](#). The effort was led by the Republic of Vanuatu, an island nation in the South Pacific Ocean significantly impacted by climate change, with 105 co-sponsor states and youth activist groups. The group consists of “Pacific Island Students Fighting Climate Change, Climate Action Network – International, Greenpeace Australia Pacific, 350 Pacific, Pacific Islands Climate Action Network, and Vanuatu Climate Action Network.”<sup>9</sup> However, the resolution was not supported by the U.S. or China, which are the largest carbon emitters.<sup>10</sup>

The resolution requests that the ICJ render an opinion on the following questions:

- (a) What are the **obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions** of greenhouse gases (GHG) for States and for present and future generations?
- (b) What are **the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm** to the climate system and other parts of the environment, with respect to:
  - (i) **States, including, in particular, small island developing States**, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?
  - (ii) **Peoples and individuals of the present and future generations** affected by the adverse effects of climate change?

In response, The ICJ gave notice of the request for the advisory opinion to all member states entitled to appear before the Court in April of 2023.<sup>11</sup> The ICJ is expected to provide the opinion in 2024.<sup>12</sup>

### Significance of case:

The ICJ Opinion could have an impact on the Paris Agreement, Human Rights Law and the growing body of international climate change law including the right to a healthy environment. Although the opinion will not be legally binding or create a new standard, it will be an influential statement on how the ICJ interprets existing laws and treaties, providing clarity for other governing or judicial bodies.<sup>13</sup> Also, migrants leaving their country for climate reasons are not included in the definition of a refugee, according to the 1951 Convention; this advisory opinion may influence future determinations regarding legal protections for migrants fleeing because of climate change impacts.<sup>14</sup> As noted, the U.S. was not among the states supporting the resolution: a

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<sup>9</sup> <https://climatenetwork.org/2022/05/05/thousands-of-civil-society-organisations-call-on-countries-to-support-vanuatu-climate-justice-initiative/>

<sup>10</sup> <https://www.eenews.net/articles/u-n-seeks-rare-legal-opinion-on-climate-the-u-s-abstained/>

<sup>11</sup> [http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2023/20230420\\_18913\\_order.pdf](http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2023/20230420_18913_order.pdf)

<sup>12</sup> [Id.](#)

<sup>13</sup> <https://www.forbes.com/sites/jonmcgowan/2023/06/30/international-court-clarifies-process-for-input-on-climate-change-opinion/?sh=71aeb7587994>

<sup>14</sup> <https://www.pbs.org/newshour/world/climate-change-is-already-fueling-global-migration-the-world-isnt-ready-to-meet-peoples-needs-experts-say#:~:text=And%20scientists%20predict%20migration%20will,Change%20report%20published%20this%20year>

Biden Administration official stated that although climate change is of the highest priority, they do not believe the international judicial process is the “most effective path forward.”<sup>15</sup>

A legal claim was also brought in 2023 by the Swiss Senior Women for Climate Protection which includes women over 63. The group sued the Swiss government in front of the European Court of Human Rights claiming that heat waves, which have become more frequent and intense as result of climate change, interfere with their rights to life and health. The European Court of Human Rights has never decided a case related to the climate crisis, meaning the ruling could set an important legal precedent for the 46 states of the Council of Europe on whether countries must reduce GHG emissions more stringently to protect human rights. A ruling is expected no earlier than the end of 2023. It is interesting to consider how the record-setting heat waves of the 2023 summer might affect such a ruling.

### **Role of case in Climate Change Law/Relevance to Environmental Security:**

The ICJ advisory opinion is the ICJ’s first opportunity to address the question of climate action.<sup>16</sup> With hundreds of millions of people in developing countries suffering the harshest impacts of climate change and, as a result, claiming denial of their fundamental rights, this would answer their right to remedies and affect climate cases in the future.<sup>17</sup> Pacific island states, in particular, experience harsher effects of climate change disasters, and Vanuatu is one of the most vulnerable despite having net-zero carbon emissions.<sup>18</sup> An ICJ advisory opinion in their favor could strengthen human rights legislation and “ensure that we consider the Paris Agreement in a more holistic manner across treaties and enshrined in the rule of law.”<sup>19</sup>

### **News or Brief Journal Articles on case:**

- Sabin Center for Climate Change Law at Columbia University, 29 March 2023: [The ICJ’s Advisory Opinion on Climate Change: What Happens Now?](#)
- The New York Times, 29 March 2023: [Can Nations Be Sued for Weak Climate Action? We’ll Soon Get an Answer.](#)
- Forbes, 29 March 2023: [U.N. Resolution on Climate Change Isn’t The Win Some Claim](#)
- The Washington Post, 29 March 2023: [How a small island got world’s highest court to take on climate justice](#)
- Inside Climate News, 29 March 2023: [The UN Wants the World Court to Address Nations’ Climate Obligations. Here’s What Could Happen Next](#)

### **Resources on link to Climate Change/Environmental Security:**

- E&E News, 30 March 2023: [U.N. seeks rare legal opinion on climate. The U.S. abstained.](#)
- BBC, 29 March 2023: [Climate Change: World’s top court to weigh in](#)
- [Reports and Studies submitted to the Human Rights Council](#) (on the Human Rights Obligations)

### **European Court of Human Rights:**

- Reuters, 30 March 2023: [Elderly Swiss women bring European court’s first climate case](#)
- European Court of Human Rights, February 2023: [Fact Sheet – Climate Change](#)

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<sup>15</sup> <https://www.eenews.net/articles/u-n-seeks-rare-legal-opinion-on-climate-the-u-s-abstained/>

<sup>16</sup> <https://climatenetwork.org/resource/voteyesforclimatejustice/>

<sup>17</sup> <https://climatenetwork.org/2022/05/05/thousands-of-civil-society-organisations-call-on-countries-to-support-vanuatu-climate-justice-initiative/>

<sup>18</sup> <https://www.eenews.net/articles/u-n-seeks-rare-legal-opinion-on-climate-the-u-s-abstained/>

<sup>19</sup> <https://climatenetwork.org/resource/voteyesforclimatejustice/>

## PSB ET AL. V. BRAZIL (on Climate Fund)

2020

[PSB ET AL. v. BRAZIL](#),<sup>20</sup> ADFP 708, Direct Action of Unconstitutional Omission to the Federal Supreme Court to compel the Ministry of the Environment to resume the activities of the Climate Fund, (Supreme Federal Court 2020).

### Holding:

The PSB, the Brazilian Socialist Party, along with three other political parties in Brazil filed suit against the government for not implementing the National Climate Change Fund as an instrument for mitigating and adapting to climate change, although it was created by law in 2009.<sup>21</sup> In 2022, the Brazilian Supreme Court ruled that the “executive branch has a constitutional duty to execute and allocate the funds to the Climate Fund to mitigate climate change,” and that the courts must take action to avoid a decline in environmental security.<sup>22</sup>

### Significance of the case:

This was the first court in the world to recognize the Paris Agreement as a human rights treaty, giving it legal precedent above national law.<sup>23</sup> Interestingly, Brazilian political parties bring these climate litigation cases because it is the only avenue for the Supreme Court to hear these fundamental rights breaches.<sup>24</sup>

### Role of case in Climate Change Law/Relevance to Environmental Security:

The Climate Fund, at the time inoperative, was seen as an important tool to cut carbon emissions, as Brazil is the fifth highest carbon emitter in the world.<sup>25</sup> Brazil is projected to fail to meet its 2030 commitments under the Paris Agreement.<sup>26</sup> This case created a constitutional duty to allocate funds to a project aimed at fighting climate change, essentially creating a duty to mitigate climate change.<sup>27</sup> Furthermore, climate constitutionalism is also enshrined in Brazil’s constitution, under article 255, where it states that “everyone has the right to an ecologically balanced environment, which is a public good for the people’s use and is essential for a healthy life. The government and the community have a duty to defend and to preserve the environment for present and future generations.”<sup>28</sup>

Similarly, in the 2020 case *Institute of Amazonian Studies (IAS/IEA) v. Brazil*, the Institute brought suit against the Brazilian federal government for violation of Brazil’s Climate Change National Policy Act and the constitutional human right to a stable climate for current and future generations by failing to prevent

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<sup>20</sup> Unofficial translation of the decision.

<sup>21</sup> <http://climatecasechart.com/non-us-case/psb-et-al-v-federal-union/>

<sup>22</sup> Id.

<sup>23</sup> The ruling notes: “Treaties on environmental law are a type of human rights treaty and, for that reason, enjoy supranational status. There is therefore no legally valid option to simply omit to combat climate change.” See [here](#).

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> [https://www.americanbar.org/groups/environment\\_energy\\_resources/publications/trends/2022-2023/july-aug-2023/constitutional-right-to-a-clean-environment/#:~:text=In%202020%2C%20seven%20government%20organizations,implement%20the%20nation%27s%20deforestation%20regulations](https://www.americanbar.org/groups/environment_energy_resources/publications/trends/2022-2023/july-aug-2023/constitutional-right-to-a-clean-environment/#:~:text=In%202020%2C%20seven%20government%20organizations,implement%20the%20nation%27s%20deforestation%20regulations)

<sup>27</sup> <http://climatecasechart.com/non-us-case/psb-et-al-v-federal-union/>

<sup>28</sup> <https://delawarelaw.widener.edu/files/resources/jamesrmaylistofconenvirorightsmay2021.pdf>



deforestation of the Amazon and mitigate climate change effects.<sup>29</sup> Sixty percent of the Amazon is in Brazil,<sup>30</sup> and Brazil contributes the most to its deforestation.<sup>31</sup> Brazil's largest source of emissions is deforestation, making this an important area for emissions mitigation. The deforestation of the Amazon also contributes to the issue of preserving Indigenous land as 98.25% of Brazilian Indigenous lands are in the Amazon.<sup>32</sup> While this case is still pending, it was one of the first groundbreaking cases to go to trial in the climate constitutionalism movement.<sup>33</sup>

Also in South America, another group of young people sued the Colombian government in 2018 for violating their constitutional rights to health, food, water, and a healthy environment and breaching their duty to protect the Colombian Amazon and reduce its deforestation.<sup>34</sup> In *Future Generations v. Ministry of the Environment and Others*, the Supreme Court of Colombia ruled in favor of the youth, allowing future generations to bring a similar suit on their "rights to a healthy environment, life, food, access to water, and health, and that the Amazon is an entity subject of rights, giving it similar rights and entitling it the same legal protections given to Colombian citizens."<sup>35</sup> The Court also "ordered the government to formulate and implement action plans to address deforestation in the Amazon."<sup>36</sup>

#### News or Brief Journal Articles on case:

- The London School of Economics and Political Science, 25 November 2020: [Public prosecutors, political parties, and NGOs are paving the way for vital climate change litigation in Brazil](#)
- Climate Home News, 7 July 2022: [Brazilian Court world's first to recognize Paris Agreement as human rights treaty](#)

#### Resources on link to Climate Change/Environmental Security:

- Legal Planet, 13 April 2023: [Brazil Advances in Climate Change Litigation](#)
- American Bar Association, 30 June 2023: [The constitutional right to a clean environment: Human rights violations as an emerging legal foundation and vehicle for a clean environment](#)
- The London School of Economics and Political Science, 2 December 2021: [The 11 nations heralding a new dawn of climate constitutionalism](#)
- Climate case chart: [PSB et al. v. Brazil \(on Climate Fund\)](#)

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<sup>29</sup> <http://climatecasechart.com/non-us-case/institute-of-amazonian-studies-v-brazil/>

<sup>30</sup> <https://www.wwf.org.uk/where-we-work/amazon#:~:text=The%20Amazon%20covers%20a%20huge,an%20overseas%20territory%20of%20France>

<sup>31</sup> [https://www.americanbar.org/groups/environment\\_energy\\_resources/publications/trends/2022-2023/july-aug-2023/constitutional-right-to-a-clean-environment/#:~:text=In%202020%2C%20seven%20government%20organizations,implement%20the%20nation%27s%20deforestation%20regulations](https://www.americanbar.org/groups/environment_energy_resources/publications/trends/2022-2023/july-aug-2023/constitutional-right-to-a-clean-environment/#:~:text=In%202020%2C%20seven%20government%20organizations,implement%20the%20nation%27s%20deforestation%20regulations)

<sup>32</sup> <https://www.climatecard.org/2023/04/illegal-mining-and-climate-change-in-brazil-threatens-the-livelihood-of-indigenous-peoples/>

<sup>33</sup> [https://www.americanbar.org/groups/environment\\_energy\\_resources/publications/trends/2022-2023/july-aug-2023/constitutional-right-to-a-clean-environment/#:~:text=In%202020%2C%20seven%20government%20organizations,implement%20the%20nation's%20deforestation%20regulations](https://www.americanbar.org/groups/environment_energy_resources/publications/trends/2022-2023/july-aug-2023/constitutional-right-to-a-clean-environment/#:~:text=In%202020%2C%20seven%20government%20organizations,implement%20the%20nation's%20deforestation%20regulations)

<sup>34</sup> *Future Generations v. Ministry of the Environment and Others*, STC 4360-2018, Colombian Supreme Court Rules to Protect Future Generations and Amazon Rainforest in Climate Change Case, (Supreme Court of Justice of Colombia 2018). <https://news.climate.columbia.edu/2018/03/21/colombian-youth-lawsuit-climate-rainforest/>

<sup>35</sup> <https://www.escri-net.org/caselaw/2019/stc-4360-2018>

<sup>36</sup> <http://climatecasechart.com/non-us-case/future-generation-v-ministry-environment-others/>

## HELD V. STATE OF MONTANA

Held v. State of Montana, Montana First Judicial District Court, Cause No. CDV-2020-307 (14 August 2023).

### Findings of Fact, Conclusions of Law and Order

#### **Holding:**

A group of sixteen youth sued their home state of Montana for promoting and supporting the use and extraction of fossil fuels, worsening the impacts of climate change and violating their state's constitutional "[right to a clean and healthful environment](#)."<sup>37</sup> The Court denied the State's many attempts to prevent the case going to trial, and the Montana Supreme Court denied hearing the case so as not to supersede the appeal process or a trial.<sup>38</sup> The case went to trial in June and was ruled in favor of the youth in August, 2023.<sup>39</sup>

The [order](#) found in favor of the youth and that the state of Montana violated the youth's constitutional rights.<sup>40</sup> Significantly, the judge found that "Plaintiffs have a fundamental constitutional right to a clean and healthful environment, which includes climate as part of the environmental life-support system."<sup>41</sup> The court also found a provision of Montana Environmental Policy Act as unconstitutional for it prohibited the state agency from considering greenhouse gas emissions and climate change in its environmental reviews, including projects related to fossil fuels.<sup>42</sup>

#### **Significance of case:**

As the first constitutional climate trial in U.S. history, this case was an historic win for the youth and the first court decision in the U.S. to declare that climate is included in a state's constitutional right to a healthy environment.

In the 1972 Montana Constitutional Convention, Montana was one of the first to enshrine climate and environmental rights into their constitution.<sup>43</sup> Article II Section 3 reads "all persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment."<sup>44</sup> Article IX Section 1 states that "the state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations."<sup>45</sup> This case shows how a court interprets "a clean and healthful environment" by tying climate into the constitutional language; it is declaring climate as essential to a healthy environment, which is a significant finding in climate litigation cases.

This is the first youth case to reach trial in the U.S. Previously, [Juliana v. United States](#) was denied standing<sup>46</sup> by the Ninth Circuit Court of Appeals.<sup>47</sup> Our Children's Trust, a coalition of young people and environmental lawyers, brought suit in 2015 seeking to hold the federal government accountable for failing to

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<sup>37</sup> <https://montanafreepress.org/held-v-montana-climate-trial/>

<sup>38</sup> <http://climatecasechart.com/case/11091/>

<sup>39</sup> <https://www.ourchildrenstrust.org/montana>

<sup>40</sup> <https://www.washingtonpost.com/climate-environment/2023/08/14/youths-win-montana-climate-trial/>

<sup>41</sup> [https://climatecasechart.com/wp-content/uploads/case-documents/2023/20230814\\_docket-CDV-2020-307\\_order.pdf](https://climatecasechart.com/wp-content/uploads/case-documents/2023/20230814_docket-CDV-2020-307_order.pdf)

<sup>42</sup> Id.

<sup>43</sup> <https://www.theguardian.com/us-news/2023/jul/03/montana-climate-trial-green-amendments-state-constitutions#:~:text=Montana%20is%20one%20of%20just,before%20Montana%20did%20in%201971>

<sup>44</sup> Mont. Const. art. II, § 3. <https://courts.mt.gov/external/library/docs/72constit.pdf>

<sup>45</sup> Mont. Const. art. IX, § 1. <https://courts.mt.gov/external/library/docs/72constit.pdf>

<sup>46</sup> Standing is the right of the party to bring suit. <https://www.law.cornell.edu/wex/standing>

<sup>47</sup> <https://www.brennancenter.org/our-work/analysis-opinion/hawaii-supreme-court-takes-climate-crisis>

meet environmental goals and violating their citizens' constitutional rights to life, liberty, and property.<sup>48</sup> In 2016, the judge issued an opinion denying the motion to dismiss, allowing the case to proceed to trial, and recognized that a "climate system capable of sustaining human life is fundamental to a free and ordered society."<sup>49</sup> She also found that the government's actions violated Due Process, which "safeguards fundamental rights that are implicit in the concept of ordered liberty or deeply rooted in this Nation's history and tradition," and the right to a livable atmosphere meets both of these standards.<sup>50</sup>

However, in 2020, the Ninth Circuit Court of Appeals ruled that "ordering the federal government to adopt 'a comprehensive scheme to decrease fossil fuel emissions and combat climate change' would exceed a federal court's remedial authority."<sup>51</sup> Thus, the plaintiffs' requested remedies should be addressed by the executive and legislative branches rather than the courts.<sup>52</sup> This Ninth Circuit ruling narrowed the remedial authority of the federal courts related to climate change.<sup>53</sup> However, the case continues to be contested as negotiations for a settlement failed in 2021, and the plaintiffs moved to amend their complaint in June of 2023.<sup>54</sup> As of July 2023, they are still awaiting a trial date. The [Children's Fundamental Rights and Climate Recovery Resolution](#) was introduced to the U.S. House of Representatives as a concurrent resolution on July 13th 2023, supporting the principles on which *Juliana v. U.S.* relies and demanding a robust climate recovery plan.<sup>55</sup>

In 2020, another group of 14 youths brought a similar suit against the Hawaiian Department of Transportation, claiming the agency's methods violate their constitutional right to a clean and healthy environment.<sup>56</sup> In *Navahine v. the Hawaii Department of Transportation*, a youth case directed at stopping climate pollution from transportation systems, the plaintiffs [ask for a declaration](#) that the state's transportation system "violates the state's constitutional public trust doctrine and infringes upon the youth plaintiffs' constitutional right to a clean and healthful environment."<sup>57</sup> Like Montana, Hawaii also has climate protections enshrined in its [state constitution](#), as the "right to a clean and healthful environment." The Court decided in January 2023 to allow the case to proceed to trial; it is set for June 2024, making it only the second constitutional climate trial.<sup>58</sup>

In another Hawaii case, *In re Hawai'i Elec. Light Co.*, Hawaii's Public Utilities Commission rejected a bid from a Hawaiian bioenergy company, Hu Honua, to supply energy to Hawaii Island by establishing a biomass power plant, so the companies sued the state regulators to get the plan approved.<sup>59</sup> The Hawaii Supreme Court unanimously affirmed this decision based on the significant greenhouse gas emissions and other impacts

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<sup>48</sup> [Id.](#)

<sup>49</sup> <https://www.oregonencyclopedia.org/articles/juliana-v-united-states/>

<sup>50</sup> [Id.](#)

<sup>51</sup> *Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020). <https://harvardlawreview.org/print/vol-134/juliana-v-united-states/>

<sup>52</sup> <https://www.ourchildrenstrust.org/juliana-v-us>

<sup>53</sup> <https://harvardlawreview.org/print/vol-134/juliana-v-united-states/>

<sup>54</sup> <https://www.ourchildrenstrust.org/juliana-v-us>

<sup>55</sup> <https://jayapal.house.gov/2023/07/13/jayapal-merkley-schakowsky-and-colleagues-introduce-resolution-for-climate-recovery-planning-to-stand-up-for-childrens-fundamental-right-to-a-health-livable-planet/>

<sup>56</sup> <https://earthjustice.org/case/navahine-v-hawaii-department-of-transportation#:~:text=Navahine%20v.-Hawaii%20Department%20of%20Transportation.zero%20emissions%20economy%20by%202045>

<sup>57</sup> [Id.](#)

<sup>58</sup> <https://earthjustice.org/press/2023/judge-rules-in-favor-of-hawaii-youth-plaintiffs-in-climate-case-navahine-f-v-hawaii-department-of-transportation-case-will-proceed-to-trial>

<sup>59</sup> *In re Hawai'i Elec. Light Co.*, 145 Haw. 1, 445 P.3d 673 (2019). <https://news.bloomberglaw.com/environment-and-energy/hawaii-supreme-court-ruling-bolsters-rights-based-climate-cases>

on Hawaiians' right to a clean and healthful environment.<sup>60</sup> This was one of the first climate litigation cases to recognize a human right to a stable climate and the growing concern for net zero emissions.

**News/Brief Journal Articles on case:**

- The Conversation: [Montana kids win historic climate lawsuit – here’s why it could set a powerful precedent](#)
- The Guardian: [‘Gamechanger’: judge rules in favor of young activists in US climate trial](#)
- Daily Montanan: [The ‘youth climate trial’ decision is so simple, even I can understand it – and that’s the point](#)
- The New York Times: [Judge Rules in Favor of Montana Youths in a Landmark Climate Case](#)
- Forbes: [There Are Legal Limits To Montana’s Landmark Climate Change Ruling](#)
- CNN: Meet the kids suing their state over climate change ([video](#))
- *Held v. State of Montana*: [Timeline](#)

**Resources on link to Climate Change/Environmental Security:**

- Washington Post, June 12, 2023: [Did Montana violate its residents’ right to a clean environment?](#)
- Sabin Center for Climate Change Law - Columbia Law School, 27 June 2023: [Sabin Center Staff Weigh in on \*Held v. Montana\* Case](#)

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<sup>60</sup> <https://www.brennancenter.org/our-work/analysis-opinion/hawaii-supreme-court-takes-climate-crisis>

## MASSACHUSETTS v. EPA

[Massachusetts v. EPA](#), 127 S. Ct. 1438, 1438 (2007).

### **Holding:**

In *Massachusetts v. EPA*, States, local governments, and environmental organizations petitioned for review of an EPA order which declined to regulate GHG emissions from motor vehicles under the Clean Air Act. Three key issues were: (1) did states have standing to sue over climate change; (2) did the EPA have statutory authority to regulate GHG emissions under the Clean Air Act, and (3) could the EPA decline to regulate GHG emissions based on policy judgments that are outside the scope of the regulatory considerations provided in the Clean Air Act.

The Supreme Court held that states did have standing to sue in this situation. The Court noted the state's unique position and responsibility to protect its citizenry. In addition, the Court held that the EPA did have statutory authority to regulate because carbon dioxide and other GHGs fall within the Act's capacious definition of "air pollutant." Finally, the Court held that the EPA must base GHG regulation or inaction on a consideration of "whether greenhouse gas emissions contribute to climate change."

The Court remanded to the EPA, instructing the agency to either issue an endangerment finding for GHGs or provide a basis for not issuing the endangerment finding grounded in the statute.

### **Significance of case:**

This case solidified states' standing to sue regarding climate change, a significant victory for states that now have dozens of pending cases to address climate change issues. A state's unique position includes the responsibility to protect its territory and citizenry from climate change impacts including sea level rise, irreversible changes to natural ecosystems, changes in precipitation, extreme weather events, and related health impacts. The Court notes that even though these impacts are widely shared, that does not minimize an individual state's interest in addressing them.

In addition, Justice Stevens, who authored the opinion, noted that a "well-documented rise in global temperatures has coincided with a significant increase in the concentration of carbon dioxide in the atmosphere" as recognized by respected scientists and called carbon dioxide "the most important species ... of a 'greenhouse gas.'" This language was and remains significant; it is Supreme Court precedent relying on well-founded science of climate change and can be used as science is challenged in courts.

The majority found that CO<sub>2</sub> is an air pollutant under the Clean Air Act given the capacious definition in the statute which includes "any air pollution agent ..., including any physical, chemical, ... substance ... emitted into ... the ambient air ...." (Clean Air Act §7602(g)) Finally, the rationale offered by the EPA – that it would be unwise to regulate GHGs at that time – failed; the Court found that the EPA could not avoid its statutory obligations under these circumstances. The significance is evidenced by what occurred on remand: the EPA issued a positive [endangerment finding](#) that GHGs from motor vehicles do endanger public health and welfare.

### **Role of case in Climate Change Law/Relevance to Environmental Security:**

*Massachusetts v. EPA* has been referred to as environmental law's *Brown v. Board of Education*, emphasizing its significance in both environmental law as well as climate change law. *Massachusetts v. EPA* is credited as the foundation for the U.S. government's actions to address climate change since 2007, including entering into the 2015 Paris Agreement and actions under the Obama administration declaring six greenhouse gases pollutants just two years after the case was decided. While some of these actions, including the Clean Power Plan, were later litigated, this case remains a foundational case for climate change law and policy in the U.S.

**News/Brief Journal Articles on case:**

- Harvard Environmental Law Review, 2008: [Massachusetts v. Environmental Protection Agency](#)
- Quimbee Video, March 2021: [Massachusetts v. Environmental Protection Agency Case Brief Summary](#)
- NPR Here & Now Podcast, March 9, 2020: [How The Supreme Court Made ‘Climate History’ In Massachusetts v. EPA](#)
- Legal Planet, July 27, 2023: [State Government Standing and Environmental Law](#)
- Reshaping the Supreme Court, July 10, 2018: [What 2 Dissents on Climate Rules Tell Us](#)

**Resources on link to Climate Change/Environmental Security:**

- E&E News, June 23, 2023: [Supreme Court takes aim at Mass v. EPA in immigration ruling](#)
- Resources, May 19, 2022: [Climate Change and the Supreme Court](#)

## WEST VIRGINIA v. EPA

[West Virginia v. EPA](#), 142 S. Ct. 2587, 2587 (2022).

### **Holding:**

Fifteen years after *Massachusetts v. EPA*, the U.S. Supreme Court decided this case determining the reach of the EPA's authority under the Clean Air Act related to GHG emissions from power plants. In 2015, the EPA under the Obama administration created the Clean Power Plan, setting out emission reductions for new and existing coal and natural gas plants.<sup>61</sup> The EPA argued that Congress, via the Clean Air Act, gave them implicit authority to decide "how Americans will get their energy" and included requirements for the plants to shift to different energy sources "outside the fence line."<sup>62</sup>

Although this is similar to the agency's explicit authority under the Act to find the best system of emissions reduction and to regulate power plants by setting federal standards of performance for emissions, the Court found that this implicit authority is not enough.<sup>63</sup> The Court held that the generation shifting part of the plan for outside the fence line was beyond the EPA's authority and rests with Congress.<sup>64</sup>

### **Significance of case:**

The Supreme Court overturned the lower court's ruling on the case, limiting the authority of the EPA and officially striking down the Clean Power Plan.<sup>65</sup> This may create delays in federal climate action and limit the ability of the federal agencies to reduce GHG emissions.<sup>66</sup> Although the EPA can continue to regulate GHG emissions in other circumstances, this limits the EPA's ability to advance the use of renewable energy and greener energy sources in the power sector, which is one of the largest emitters in the United States.<sup>67</sup> The EPA can still create standards for existing power plants including requiring technologies for emissions reductions at the plant, but it cannot advance the generation shifting standard of transitioning power plants to clean energy.<sup>68</sup>

A striking element in this case was that it was accepted and heard by the Supreme Court when there was not an active rule to review. The case addresses rules related to the Clean Power Plan from 2015; that plan was changed and litigated under the Obama, Trump and Biden administrations and the newest version is still under development by the EPA. While the Court addressed this issue in its opinion, it is extremely rare for the Court to hear a case under these circumstances.

### **Role of case in Climate Change Law/Relevance to Environmental Security:**

This limit on the EPA's authority and powers will restrain the government's ability to advance shifting to renewable and reduced emission sources of energy.<sup>69</sup> It lays the groundwork for Congress to act in creating strong and clear laws that allow for federal climate regulation but given the polarization inside Congress,

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<sup>61</sup> [West Virginia v. EPA](#), 142 S. Ct. 2587, 2599 (2022). <https://supreme.justia.com/cases/federal/us/597/20-1530/#tab-opinion-4603402>

<sup>62</sup> *Id.* at 2612.

<sup>63</sup> *Id.* at 2601.

<sup>64</sup> *Id.* at 2613.

<sup>65</sup> <https://www.cfr.org/blog/what-does-supreme-courts-decision-west-virginia-v-epa-mean-us-action-climate>

<sup>66</sup> *Id.*

<sup>67</sup> <https://earthjustice.org/article/what-does-west-virginia-v-epa-mean-for-climate-action>

<sup>68</sup> *Id.*

<sup>69</sup> <https://www.pbs.org/newshour/show/epa-administrator-michael-regan-discusses-supreme-court-ruling-on-climate-change#transcript>

particularly on climate change, that may not be likely.<sup>70</sup> Some analysts claim that this was a significant setback for the authority of the EPA while others find it to be limited to one particular section in the Clean Air Act. It does show a trend toward limiting federal agency authority, as shown in the next two cases.

**News or Brief Journal Articles on case:**

- SCOTUS Blog, 30 June 2022: [Supreme Court curtails EPA’s authority to fight climate change](#)
- Bloomberg Law, 30 June 2022: [Biden Agenda Takes Hit From High Court Intent on Limiting It \(1\)](#)
- New Scientist, 30 June 2022: [What does the new US Supreme Court ruling mean for carbon emissions?](#)
- Climate Now Podcast, 9 August 2022: [Understanding \*EPA v. West Virginia\*: How will the Supreme Court’s ruling impact GHG regulation?](#)

**Resources on link to Climate Change/Environmental Security:**

- PBS NewsHour, 30 June 2022: [EPA Administrator Michael Regan discusses Supreme Court ruling on climate change](#)
- EESI, 22 June 2022: [Alarming Supreme Court Decision Makes Congressional Climate Action Even More Critical](#)
- The Verge, 30 June 2022: [The Supreme Court just took away an EPA tool to fight climate change – what happens next?](#)

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<sup>70</sup> <https://www.eesi.org/press-releases/view/supreme-court-decision-makes-congressional-climate-action-even-more-critical>



## SACKETT v. EPA

[Sackett v. EPA](#), 143 S. Ct. 1322, 1322 (2023).

### Holding:

In *Sackett v. EPA*, the United States Supreme Court ruled 5-4 to curtail the EPA’s authority to regulate wetlands as “waters of the United States” under the Clean Water Act.<sup>71</sup> Enacted in 1972, the Clean Water Act seeks to decrease pollution and increase the quality and safety of the nation’s waters.<sup>72</sup> The Act prohibits releasing pollutants into “navigable waters,” which is defined as the “waters of the United States.”<sup>73</sup> In 1980, the EPA and the Army Corps of Engineers adopted a joint definition of the waters of the U.S. as “all waters that could affect interstate or foreign commerce;” this definition was refined over time.<sup>74</sup> The challenge of defining the waters of the U.S. has been in front of the court before, but they were unable to agree on a clear definition.<sup>75</sup>

In this case, the Sacketts had done construction on their home in Idaho, and the EPA demanded they restore the site because it contained wetlands.<sup>76</sup> Under the Clean Water Act, the definition of waters of the U.S. covers “those relatively permanent, standing, or continuously flowing bodies of water,” which includes certain adjacent wetlands.<sup>77</sup> The EPA also interpreted the definition of waters to include “all waters that could affect interstate or foreign commerce, as well as wetlands adjacent to those waters,” where adjacent meant bordering, contiguous, and/or neighboring.<sup>78</sup> The EPA constructed a rule that “adjacent wetlands are covered by the [Clean Water Act] if they ‘possess a significant nexus to’ traditional navigable waters, and that wetlands are ‘adjacent’ when they are ‘neighboring’ to covered waters.”<sup>79</sup> The EPA found the Sackett’s wetlands adjacent because they are in the same neighborhood as a tributary that feeds into a non-navigable creek that then feeds into a navigable lake.<sup>80</sup> Thus, their wetlands “significantly affect” the ecology of the lake and, therefore, the waters of the U.S. The Court disagreed and determined that the agency’s authority to regulate extends only to “wetlands with a continuous surface connection” to waters of the U.S., and the Clean Water Act extends to only those wetlands that are “as a practical matter indistinguishable from waters of the United States.”<sup>81</sup>

### Significance of case:

Like *West Virginia v. EPA*, the Court is requiring explicit language by Congress to give the EPA its authority and scope.<sup>82</sup> The majority defined waters of the U.S. as those with a “continuous surface water connection” to larger streams, lakes, and rivers. Given this definition, the dissenting justices stated that “it cuts out a broad swath of wetlands that are important to the Clean Water Act’s goal of protecting the nation’s

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<sup>71</sup> It was a unanimous decision that the Sackett’s wetlands are not subject to the Clean Water Act’s regulation and the prior test from [Rapanos v. United States](#) should no longer be used. Thus, the four opinions outside of the majority are regarded as concurring opinions. The opinion is divided on the definition of adjacent and what the new test should be. See more [here](#).

<sup>72</sup> <https://www.epa.gov/laws-regulations/summary-clean-water-act>

<sup>73</sup> *Sackett v. EPA*, 143 S. Ct. 1322, 1327 (2023). <https://www.oyez.org/cases/2022/21-454>

<sup>74</sup> *Id.* at 1332.

<sup>75</sup> *Id.* at 1329.

<sup>76</sup> *Id.* at 1331.

<sup>77</sup> *Id.* at 1326.

<sup>78</sup> *Id.* at 1331.

<sup>79</sup> *Id.* at 1328.

<sup>80</sup> *Id.* at 1332.

<sup>81</sup> *Id.* at 1341.

<sup>82</sup> *Id.*

waters.”<sup>83</sup> The dissent states that the majority has rewritten the word “adjacent” to mean “adjoining,” which will generate additional regulatory uncertainty.<sup>84</sup> Furthermore, nearly half of the states use the Clean Water Act’s definition, so this definition extends further than just the federal agencies.<sup>85</sup>

### **Role of case in Climate Change Law/Relevance to climate security:**

In the 2006 case *Rapanos v. United States*, the Court failed to clearly define what wetlands are included in the waters of the United States. The opinion of the court ruled that the Clean Water Act “covers only wetlands connected to relatively permanent bodies of water (streams, rivers, lakes) by a continuous surface connection,” while the concurring opinion emphasized that only a substantial nexus was needed, meaning an underwater connection is enough.<sup>86</sup> The EPA made regulatory revisions to define the waters of the United States in 2015, but many courts applied the significant nexus test from the concurrence.<sup>87</sup>

*Sackett* removes the significant nexus test and restricted what wetlands are subject to the Clean Water Act’s protections.<sup>88</sup> This removes protections for “as many as half of the 118 million acres of wetlands in the United States,”<sup>89</sup> prompting the need for new legislation to explicitly protect these newly unprotected wetlands, which the EPA has already started and plans to propose in the Fall of 2023.<sup>90</sup>

Even though the wetlands in question are visually separated from the other body of water, scientific evidence shows that the wetlands will still significantly affect those waters.<sup>91</sup> Wetlands are essential to climate change mitigation because they store water to prevent flooding, act as a filter for other bodies of water and capture pollutants, and “support forestry, food and seafood production and recreation.”<sup>92</sup> Their relationship to climate change also includes protection from storms, water storage, sources of biodiversity, and sequestration of twice as much carbon as tropical forests.

### **News or Brief Journal Articles on case:**

- Inside Climate News, 26 May 2023: [Supreme Court Sharply Limits the EPA’s Ability to Protect Wetlands](#)
- Grist, 26 May 2023: [What the Supreme Court’s ruling means for the future of wetlands](#)
- E&E News, 25 May 2023: [Supreme Court erases protections for most wetlands](#)

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<sup>83</sup> <https://www.politico.com/news/2023/05/25/supreme-court-dramatically-shrinks-clean-water-acts-reach-00098781>

<sup>84</sup> [Id.](#)

<sup>85</sup> <https://earthjustice.org/article/what-does-sackett-v-epa-mean-for-clean-water>

<sup>86</sup> *Rapanos v. United States*, 126 S. Ct. 2208, 2235 (2006). <https://www.everycrsreport.com/reports/RL33263.html>

<sup>87</sup> <https://www.bradley.com/insights/publications/2023/06/wotus-at-scotus-supreme-court-shrinks-clean-water-act-jurisdiction-over-wetlands#:~:text=Unlike%20Rapanos%2C%20the%20Sackett%20decision,the%20EPA%20and%20the%20Corps.>

<sup>88</sup> [Id.](#)

<sup>89</sup> <https://earthjustice.org/article/what-does-sackett-v-epa-mean-for-clean-water>

<sup>90</sup> <https://www.politico.com/news/2023/05/25/supreme-court-dramatically-shrinks-clean-water-acts-reach-00098781>

<sup>91</sup> [Id.](#)

<sup>92</sup> [Id.](#)

**Resources on link to Climate Change/Climate Security**

- Global Center on Adaptation, 2 February 2022: [5 Ways Wetlands are Crucial to Climate Change Adaptation](#)
- International Water Management Institute, 2 February 2021: [Three ways wetlands can influence climate change](#)
- National Association of Wetland Managers: [Wetlands and Climate Change](#)
- World Economic Forum, 24 March 2022: [Why wetlands are a versatile climate and biodiversity hack](#)

## CHEVRON USA INC. V. NATURAL RESOURCES DEFENSE COUNCIL (NRDC)

[Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.](#), 104 S. Ct. 2778, 2778 (1984).

[Loper Bright Enterprises v. Raimondo](#) (pending).

### Holding:

*Chevron v. NRDC* stemmed from the 1977 Clean Air Act amendments which imposed new regulations on states that had not achieved the national air quality standard regarding major stationary sources of air pollution. The EPA interpreted this to include an existing plant with several pollution-emitting devices, allowing states to treat all pollution-emitting devices within a manufacturing plant as a single bubble.<sup>93</sup> This allowed a plant to modify or install a pollution-emitting device within their bubble “without meeting the permit conditions if the alteration [would] not increase the total emissions from the plant.”<sup>94</sup> The Supreme Court held that the EPA’s interpretation and their “bubble concept” was based on a reasonable construction of the statutory term “stationary source.”<sup>95</sup> The Court found that federal judges have the duty to respect legitimate policy choices made by those who have the relevant wisdom and constituency, as well as the policymaking responsibilities delegated by Congress.<sup>96</sup> The Court also found that Congress did not already have clear intention related to the term “stationary source.”<sup>97</sup>

### Significance of case:

As background, administrative agencies were created to carry out the policies set forth by Congress. Congress sets the general standards, and the agency applies those standards. In 1935, the Supreme Court decided cases that found Congress cannot give agencies unfettered discretion to administrative agencies, they must give clear guidance.<sup>98</sup> At that time, the Court found that agencies cannot be policymakers, they can only make subordinate rules that follow the policies set forth by Congress and within those limits set by Congress. In *Chevron*, the new deference test allowed for Congress’ policies to be carried out even when a statute is ambiguous if the interpretation is reasonable.

This case created what has become known as [Chevron deference](#) which calls for a court to defer to a federal agency’s interpretation of an ambiguous statute as long as that interpretation is reasonable.<sup>99</sup> This case created an ongoing, 39-year reign of the legal precedent of judicial deference which has seen challenges along the way. For example, in June of 2023, the House of Representatives passed legislation, the Separation of Powers Restoration Act and the REINS Act, hoping to end *Chevron* deference.<sup>100</sup> Representatives stated that this deference allowed for a lack of consequences for unelected officials to create sweeping rules, and the laws allowed for Congress to “regain legislative power.”<sup>101</sup> The REINS Act would require congressional approval for

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<sup>93</sup> [Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.](#), 104 S. Ct. 2778, 2778 (1984).

<sup>94</sup> [Id.](#) at 2780.

<sup>95</sup> [Id.](#) at 2793.

<sup>96</sup> [Id.](#)

<sup>97</sup> [Id.](#) at 2783.

<sup>98</sup> [Panama Refining Co. v. Ryan](#), 55 S. Ct. 241, 253 (1935); [Schechter Poultry Corp. v. United States](#), 55 S. Ct. 837, 848 (1935).

<sup>99</sup> <https://www.scotusblog.com/2023/05/supreme-court-will-consider-major-case-on-power-of-federal-regulatory-agencies/>

<sup>100</sup> <https://www.eenews.net/articles/house-approves-bill-to-end-chevron-deference/>

<sup>101</sup> [Id.](#)

any major rules.<sup>102</sup> These would severely limit the powers of administrative agencies.<sup>103</sup> However, these bills are not likely to be approved by the Senate or President Biden.<sup>104</sup>

**Role of case in Climate Change Law/Relevance to Environmental Security:**

The legacy of the *Chevron* doctrine has come into question with a new case to be heard by the Supreme Court in 2024. In *Loper Bright Enterprises v. Raimondo*, a group of fishing companies is calling the *Chevron* deference into question in front of the Supreme Court, giving the Court a chance to reconsider and possibly overturn it.<sup>105</sup> Under the federal fishery law that requires fishing companies to monitor their boats' compliance with fishery management plans, the National Marine Fisheries Services (NMFS) interpreted the rule to confer the costs of those monitors, the salaries of the federal observers, onto the fishing companies.<sup>106</sup> The U.S. Court of Appeals for the District of Columbia Circuit ruled in favor of the NMFS, using the *Chevron* deference and deferred to their interpretation of the federal fishery law because it was reasonable.<sup>107</sup> The fishery law discusses compliance of fishing companies, leaving out the discussion of costs. Thus, this case could be limited to a finding on costs for monitoring fishing boats or it could establish a broader finding about deference and interpretation. The case will be argued in tandem with a similar case (*Relentless, Inc. v. Department of Commerce*) in the January 2024 argument session.

The Supreme Court will rule in 2024 and decide on whether to overrule the *Chevron* deference or to clarify that when the law does not explicitly address a controversial issue, there is no ambiguity, and therefore no deference is even required.<sup>108</sup> The opinions that include Justice Thomas and Justice Gorsuch indicate that they disagree with the *Chevron* deference, seeing it as discarding judicial authority. In the *Loper* case, Justice Jackson will not participate in the decision because she presided over the case as a judge on the D.C. Circuit Court of Appeals.<sup>109</sup> The timeline and link to the proceedings can be found [here](#).

Overturning *Chevron* would severely limit the power and authority of federal administrative agencies, including the EPA and those agencies responsible for climate change and climate security.<sup>110</sup> Because of the *Chevron* deference, these agencies have been able to interpret the laws they execute and it has been acknowledged that they are better suited than federal judges to make policy choices in situations in which Congress has left gaps in statutes.<sup>111</sup> Advocates for the *Chevron* deference claim that overturning *Chevron* would bestow the interpretive authority onto courts, allowing judges to write public policy, which could be regarded as a judicial intrusion into the operations of the executive branch of government.<sup>112</sup>

**News or Brief Journal Articles on case:**

- E&E News, 15 June 2023: [House approves bill to end Chevron deference](#)

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<sup>102</sup> [Id.](#)

<sup>103</sup> <https://www.whitehouse.gov/wp-content/uploads/2023/06/SAP-H.R.-288.docx.pdf>

<sup>104</sup> <https://www.eenews.net/articles/house-approves-bill-to-end-chevron-deference/>

<sup>105</sup> <https://www.scotusblog.com/2023/05/supreme-court-will-consider-major-case-on-power-of-federal-regulatory-agencies/>

<sup>106</sup> [Id.](#)

<sup>107</sup> [Id.](#)

<sup>108</sup> [Id.](#)

<sup>109</sup> [Id.](#)

<sup>110</sup> <https://www.nrdc.org/stories/what-happens-if-supreme-court-ends-chevron-deference>

<sup>111</sup> [Id.](#)

<sup>112</sup> [Id.](#)

- SCOTUS NEWS, 1 May 2023: [Supreme Court will consider major case on power of federal regulatory agencies](#)
- Government Executive, 15 June 2023: [House Votes to Give Agencies Less Leeway in Interpreting Laws](#)
- E&E News, 8 November 2023: [Supreme Court may end Chevron doctrine. These states have already done it.](#)

**Resources on link to Climate Change/Environmental Security:**

- NRDC, 21 June 2023: [What Happens If the Supreme Court Ends “Chevron Deference”?](#)
- Politico, 1 May 2023: [Supreme Court move could spell doom for power of federal regulators](#)
- Columbia Law Review, March 2018: [The Impact of Weakening Chevron Deference on Environmental Deregulation](#)
- LA Progressive, 14 May 2023: [Could SCOTUS Cripple Key Health and Safety Regulations?](#)