

MAP Climate Litigation Resource Guide

Climate litigation against energy producers is now proceeding in several state courts. In spring 2023, after years of litigating whether the lawsuits are to go to state or federal court, the U.S. Supreme Court declined to review appeals in several cases, allowing them to be remanded to state courts. The companies will likely file motions to dismiss the claims because the law does not support these cases. No matter how packaged, selling Americans energy to turn on lights, drive cars and power factories is not a liability-inducing event—and must not be turned into one.

The manufacturing community is concerned about these lawsuits for two key reasons. First, they will hinder, not help the effort to meaningfully address climate change. Second, the litigation is part of an alarming trend of local and state governments, often at the behest of lawyers seeking large contingency fees, that are trying to transform a variety of social, political and environmental public policy matters into headline-grabbing and potentially profit-making litigation against manufacturers in the U.S. The manufacturing community is working together to oppose these lawsuits.

Here's a quick primer on today's climate litigation:

What Are These Lawsuits About?

More than two dozen lawsuits have been filed by local and state governments against energy producers. For some, the litigation is about monetizing climate change. They seek money for local infrastructure projects and civil penalties—as well as huge contingency fees for the attorneys bringing the cases. For others, the lawsuits are about climate politics. For nearly 20 years, people have been using litigation to advance their preferred climate policies. Today, their goal in suing energy producers is to bypass the checks and balances of the legislative and regulatory processes to “[raise the price](#)” of oil and gas on American consumers—even if people cannot afford this price hike. The litigation is counterproductive to the aim of addressing climate change, draining attention and resources away from actually addressing the issue.

The strategy for the current lawsuits was born in 2012, when groups behind the litigation convened in California to brainstorm on how to reformulate climate litigation as a state liability law issue. The year before, the U.S. Supreme Court dismissed the climate claims in *American Electric Power v. Connecticut* that several states brought against major American electric utilities arguing, under federal “public nuisance” law, that the utilities should be liable for contributing to climate change. In a unanimous ruling authored by Justice Ginsburg, the Court held that Congress’ enactment of the Clean Air Act displaced these claims. It also said climate litigation raises federal policy matters for regulators, not liability issues for courts, and cautioned against deciding climate policy on a case-by-case basis.

The groups intentionally packaged the current lawsuits to *look* different from *AEP v. Connecticut* in hopes of reaching a different result. These suits target energy producers for money damages under state public nuisance and consumer protection laws, among other theories. As MAP’s [Beyond the Courtroom](#) report details, foundations have been funding efforts by attorneys, lobbyists and public relations firms to develop these theories, recruit governments to file the suits, and cultivate allies. The cases are highly political and divisive, with some 15 states filing briefs *in opposition* to them.

The Lawsuits Have No Legal or Factual Foundation

These cases have no substantive legal merit. In 2021, the U.S. Court of Appeals for the Second Circuit made this clear when it affirmed dismissal of New York City’s climate suit, which is comparable to the others being waged around the country today. The court said the case was no different from *AEP v. Connecticut*. This [ruling](#) should be read by anyone interested in this litigation. It explains why state law does not subject energy producers to liability for climate change.

First, climate change is an international matter, where American policy needs to be driven by federal policymakers—not state liability law. Making American energy consumers and providers pay for the costs of climate change in some states will not reduce global emissions. It actually could make them worse. As [The New York Times](#) reported, if the U.S. and its allies reduce oil production, including as a result of this litigation, “that doesn’t mean the world will have

less oil.” OPEC countries and other nations that do not share our commitment to reducing emissions in the production and use of oil “are taking advantage of” the situation to increase their control of the global fuel market.

Second, climate change is the result of many complex global causes and actions from the past 150 years. As President Obama’s solicitor general said in his brief on behalf of the United States in *AEP v. Connecticut*, it is “impossible to consider the sort of focused and more geographically proximate effects” raised in climate litigation. There are “unimaginably broad categories of both potential plaintiffs and potential defendants,” making the question of who to blame “capacious.” There is no legal or factual basis for making any company or industry liable for climate change.

Third, setting American energy policy involves a multitude of factors, including preventing climate change, maintaining America’s energy security, and keeping energy affordable. Particularly for manufacturers in the U.S., if this litigation has the effect of raising energy prices, American competitiveness will be compromised and our economy worsened. It also raises national security concerns, which have been heightened by Russia’s invasion of Ukraine. That’s why environmental, social and political leaders have been sounding the alarm against these suits for years.

Finally, the rhetoric surrounding these lawsuits is off-point. As the Second Circuit said, “we are told that this is merely a local spat about the City’s eroding shoreline, which will have no appreciable effect on national energy or environmental policy. We disagree. Artful pleading cannot transform the City’s complaint into anything other than a suit over global greenhouse gas emissions.” Regardless of how climate cases are packaged—under state or federal law, as public nuisance or consumer protection claims, or for damages or injunctive relief—they have no merit.

Making Meaningful Progress on Climate Change Requires Innovation and Collaboration, Not Lawsuits

To make meaningful progress in the fight against climate change, we need to work with, not against, each other. We need leadership and innovation so the world can produce and use energy in ways that are affordable for people and sustainable for the planet. The manufacturing community in America has invested heavily in these efforts, making manufacturing cleaner, more energy-efficient and more sustainable. These are the types of solutions policymakers should advance and incentivize. This litigation does none of that and can lead to worsening greenhouse gas emissions.

Further, for communities in need of climate adaptation resources, there are more effective, fair and immediate ways to obtain funding—that do not include paying a huge portion of the funds to contingency-fee lawyers—including federal and state grant programs designed to invest in such local infrastructure resiliency projects.

The Manufacturers’ Accountability Project has produced many materials that can be useful in educating local leaders on the legal and practical problems with this litigation. They can be found by clicking on the links below:

- **Before You Sue** – Designed as a resource for local leaders who may be considering filing a lawsuit, “[Before You Sue](#)” collects a diverse set of deeply sourced arguments to push back against the litigation, distilling each message into a short talking point that links back to more detailed resources.
- **Beyond The Courtroom** – Published in 2020, this [report](#) traces the origins of climate litigation and the litigation campaign’s key participants. An accompanying [timeline](#) summarizes the history of these cases and links to foundational documents, court filings and other relevant materials.
- **Case Tracker** – This [chart](#) provides a quick reference guide for cases with basic information, such as the date of filings and claims. The status of each case will reflect any significant activity in the docket or rulings.
- **MAP Blog** – MAP regularly publishes [blogs](#) that cover key legal developments in the cases, share snippets from events and webinars and announce new materials from MAP.
- **MAP Social Media** – MAP maintains an active social presence to share developments and engage in the climate litigation conversation. Follow on [Twitter](#), [Facebook](#) and [YouTube](#).