

# Study demonstrates courts' critical, underappreciated role in climate policy

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Researchers at the George Washington University (GW) have identified that the number of federal and state climate lawsuits has been growing since 2006 in the most extensive study to date on the nature and impact of judicial resolutions of legal actions related to climate change. This first-of-a-kind analysis shows that air pollution and coal-fired power plants were the subject of the majority of the studied cases and 58 percent of all of the cases were won by litigants opposed to government regulation. The analysis also shows that pro-regulation plaintiffs won more than twice as frequently in cases involving renewable energy and

energy efficiency.

"The courts are a central, yet underappreciated avenue for the development of climate-related policy in the United States," says lead author Sabrina McCormick, PhD, an Associate Professor of Environmental and Occupational Health at GW's Milken Institute School of Public Health (Milken Institute SPH). "In this regard, our country is responding to climate change similarly to how we dealt with tobacco and chemical exposures. In the coming months and years, judicial decisions that both support government action on climate change and serve to halt or slow such action will have a significant impact on our nation's [greenhouse gas emissions](#), energy development, and biodiversity. These decisions will also play a key role in determining how our cities and society are able to adapt to climate change."

McCormick and her colleagues in the Milken Institute School of Public Health's Department of Epidemiology and Biostatistics, the George Washington University Law School, and the university's Trachtenberg School of Public Policy and Public Administration looked at 873 judicial decisions between 1990 and 2016. They found that the number of decisions mentioning climate science has been increasing, especially since 2006. One of the best-known cases is *Massachusetts v. Environmental Protection Agency (EPA)*, which prompted the U.S. Supreme Court to cite climate science in 2007 when it enabled the agency to regulate carbon dioxide emissions as a pollutant. But it is only one of hundreds of legal cases that address activities responsible for greenhouse gas emissions that have affected governmental decision-making, the authors say.

The GW team's analysis revealed that science was raised more frequently in cases arguing for regulation than in cases advocating against regulation. The analysis also shows that the role of climate science in the legal decisions has grown in recent years. A notable

example of a case where climate science played a pivotal role is the 2009 decision by a U.S. District Court judge to overturn the U.S. Department of the Interior's 2007 removal of the grizzly bear from the Endangered Species List. The 2009 [decision](#) was influenced by studies showing that climate change threatened the bears' food sources.

"Litigation related to climate change is likely to grow in the next few years in response to actions by the administration and the Congress to roll back regulations dealing with greenhouse gas emissions and protections against the effects of climate change," says Robert L. Glicksman, the J. B. and Maurice C. Shapiro Professor of Environmental Law at the George Washington University Law School. He and his coauthors anticipate that the importance of climate [science](#) is likely to increase in future judicial decisions.

Cases to watch, McCormick, Glicksman and their colleagues say, include the legal actions by the nonprofit Our Children's Trust, which argue that U.S. states are responsible for protecting children against the impacts of climate change. The lawsuit underway in Oregon relied on [climate science](#) to overcome important legal hurdles, and other similar suits are pending elsewhere across the country. In addition, courts are likely to respond to an increasing number of cases challenging federal agency failures to adequately consider the impacts of their decisions on climate change in the context of environmental impact assessments and implementation of the Endangered Species Act.

The GW team also points out that courts in other countries have used novel legal approaches to deal more effectively with [climate](#) change. In the Netherlands, for example, a district court has ordered the Dutch government to take steps to substantially reduce greenhouse gases based on decisions by the Dutch Supreme Court holding that government can be legally accountable for failures to prevent foreseeable harms to its citizens.

McCormick has been studying the impacts of [climate change](#) on human health for over a decade. Her experience includes serving as the lead author on the Special Assessment of the Nobel Prize-winning Intergovernmental Panel on Climate Change.

"Science in litigation, the third branch of U.S. Climate Policy" will appear online September 7 and in the September 8 journal *Science*.

**More information:** S. McCormick et al., "Science in litigation, the third branch of U.S. climate policy," *Science* (2017).  
[science.sciencemag.org/cgi/doi ... 1126/science.aao0412](https://science.sciencemag.org/cgi/doi/10.1126/science.aao0412)

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