

Why Hawaii became a hotbed of legal activism to protect the climate

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When it comes to mitigating climate change, "yesterday's good enough

has become today's unacceptable." That was what judges on Hawaii's Supreme Court ruled earlier this year, in the first US decision to declare a stable climate as an affirmative right.

The same [court](#) on Tuesday tossed an oil company appeal to quash a Honolulu lawsuit accusing industry giants of launching years-long deception campaigns about fossil fuel consumption. The decision fast-tracks the case towards what is likely to be the first US climate misinformation trial against the energy industry.

And at the state's special environmental court—one of only two designated environmental courts nationwide—a youth coalition is pursuing a first-of-its-kind constitutional lawsuit against the state's transportation department for approving high-emission projects.

The cases show how Hawaii has become uniquely fertile ground for environmental legal action, fueled by a long tradition of decolonization advocacy, specifically enshrined environmental rights and a rich Pacific Island heritage that is imminently threatened by global warming impacts—such as the devastating wildfires that ripped through Maui in August. The state's courts have moved decisively while other US courts quibble over jurisdiction and technical legal barriers in climate lawsuits.

Denise Antolini, a retired University of Hawaii law professor, credits Hawaii's emergence as a climate litigation trailblazer to a "perfect triangle" of influences: strong Native Hawaiian rights, robust environmental protections and the inclusion of natural resources in the state's [public trust](#) doctrine, which has roots in Indigenous law. "All three [influences] are enshrined in [the state] constitution and in statutes, and now in a whole series of very well-known cases," Antolini said.

The case on deck for trial, *City and County of Honolulu vs. Sunoco*, is part of a thicket of cases across the US looking to hold oil giants

responsible for allegedly lying to consumers about how fossil fuels contribute to global warming.

Island solidarity

Hawaii's connection with [island nations](#) whose existence is threatened by rising sea levels plays a huge part in the state's cultural and legal landscape, bolstering climate rights arguments that are more often heard in international courts.

Mike Wilson, a former Hawaii Supreme Court justice who retired in May, said judges in the state "are keenly aware of the fact that communities close to us, that we're connected to culturally ... are being exterminated, in part by the identified actions of a community that is being brought before the courts." Wilson authored a concurring opinion in the case *In re Hawai'i Elec. Light Co.*, calling a [stable climate](#) a constitutional right implicit in the state constitution's due process clause.

That relationship is also significant for Pahonu Coleman, one of 14 plaintiffs in *Navahine F. v. Hawai'i Department of Transportation*, which is scheduled to go to trial in June 2024 in the environmental court within Hawaii's First Circuit. The lawsuit is steered by Our Children's Trust, the nonprofit at the helm of a landmark youth case against the US government at the federal level.

Coleman, 18, sees Hawaii as a "beacon" for other at-risk Pacific Islands. "Of course I want to impact the continental US, but also impact my brothers and sisters within the Pacific when it comes to how big nations treat them and their natural resources," he said.

In addition to his role in *Navahine*, Coleman advocates unwinding the colonial influence on education to help preserve the Hawaiian language as the "database" of the natural resources slowly being lost to global

warming.

"We have a wind here in Waimānalo that is named after a once-prominent species of seaweed here in our bay, but we don't have that seaweed anymore," Coleman said.

Pacific Island nations Vanuatu and Tuvalu have both launched climate claims in global tribunals that urge international human rights bodies—such as the International Court of Justice and the International Tribunal for the Law of the Sea—to issue opinions that would shield vulnerable citizens from encroaching climate impacts.

Hawaii's own impacts are similar to those nations': shrinking coastlines, flooding, ocean acidification and water insecurity, which disproportionately affect Native Hawaiians.

"That equity context really makes Hawaii part of the Global South in the Global North," said Lisa Benjamin, Lewis & Clark Law School professor.

International bodies, including the United Nations, have been explicit in declaring Indigenous populations as some of the most vulnerable to global warming consequences. While crucial for indirect influence on courts worldwide, these advisory opinions aren't binding. To compel nations to act, Indigenous populations around the world are also leveraging the courts, with mixed success.

The synergy with international climate rights battles may be indirect, but affirmative rulings from US courts are "extremely important" in moving the dial, according to Maria Antonia Tigre, director of Global Climate Change Litigation at Columbia University's Sabin Center.

Public trust

The youth in Montana who pursued *Held v. Montana* won a major victory against the state and its fossil fuel development policies in August, relying on environment protections codified in Montana's Bill of Rights. Pennsylvania and New York are the only other states with the same environmental protection clauses.

The public trust doctrine in Hawaii isn't included in its Bill of Rights, but it's powerful within a legal system already primed to hear environmental cases.

The doctrine has its roots in Indigenous law that predates US statehood. The first laws codified by the Hawaiian Kingdom had a version of public trust that prohibited private ownership of natural resources, according to Earthjustice Mid-Pacific Managing Attorney Isaac Moriwake.

"I think these principles are being revived, recaptured, reaffirmed now in this modern era, where we're confronting through the biggest crisis of sustainability, that, frankly, settler capitalism has ever imposed anywhere," Moriwake said.

Hawaii was a kingdom until sovereignty was transferred to the United States by Congress in 1898. That ushered in an era of exploitative sugar plantations and American colonization that privatized the land's resources.

It wasn't until a seminal water rights case in the 1970s between two plantation owners that Hawaii's natural resources were once again made part of the public trust, this time under US common law.

"It's only a natural step to then recognize that the climate system, and all the natural resources that encompasses, is also subject to a public trust obligation," Moriwake said.

Although the state is a leader on climate litigation, it's not clear how future victories will affect other US emissions battles.

"How long will it take for a court in Mississippi to recognize [the right to a stable climate], versus the court in Hawaii? I mean, that's part of the process," Moriwake said. "The challenge is that we don't have a whole generation for the law to incrementally evolve to where we need to go."

Meanwhile, Hawaiians like Coleman and his fellow Navahine plaintiff Rylee K. are feeling the impacts they say are largely lost on visiting tourists.

"Our ancestors are here, this is our home, I want to one day raise a family here and be able to show my kids places that I've been to that our ancestors have been to," 16-year-old Rylee said. "It's really about protecting my home and I feel like that should resonate with anyone."

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