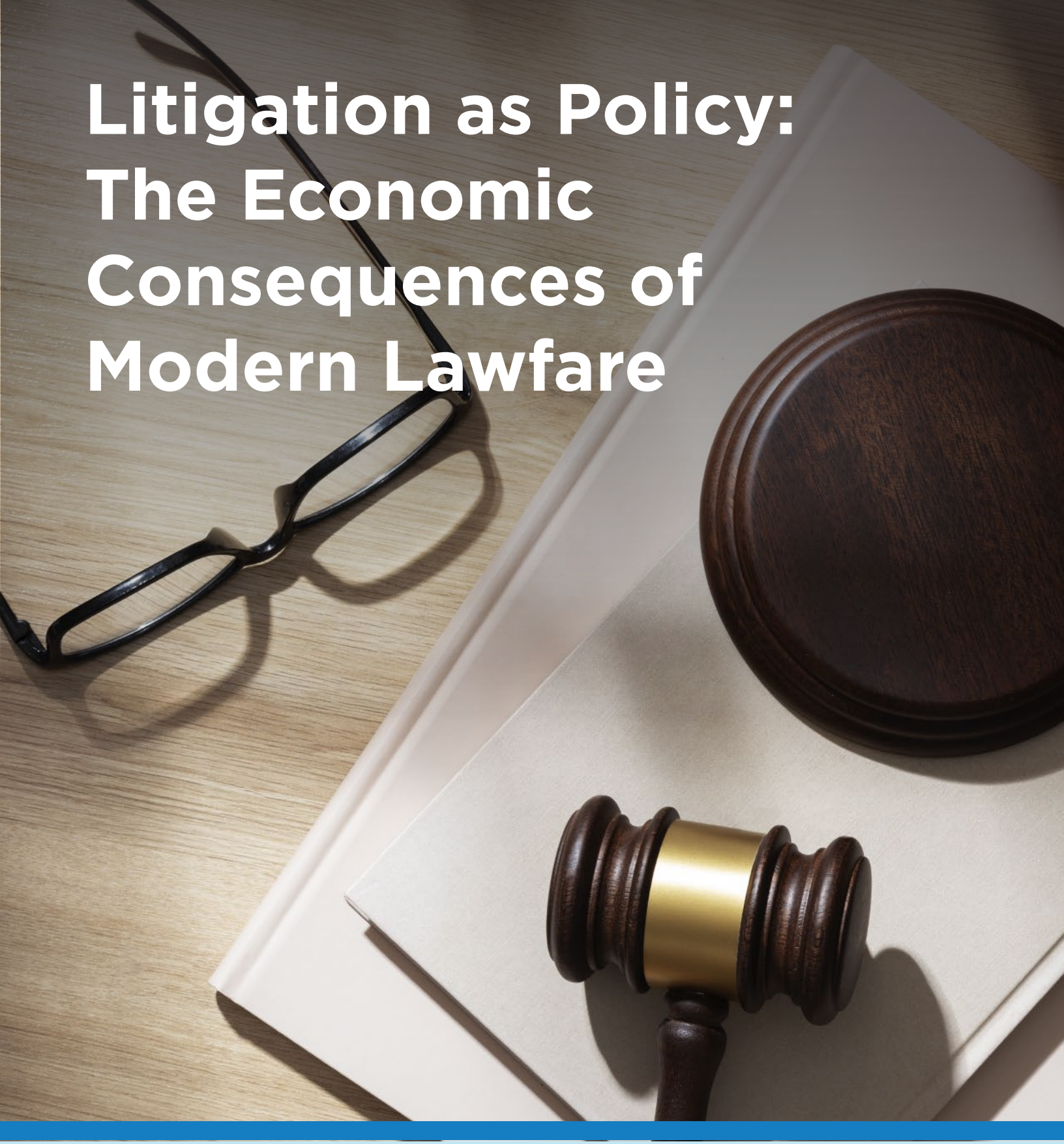
Litigation as Policy: The Economic Consequences of Modern Lawfare



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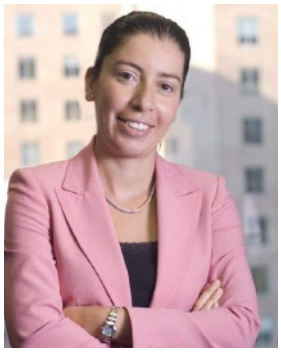

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Litigation has long influenced the development of America's energy, environmental, and industrial systems. In recent years, however, the strategic use of lawsuits to drive public policy outcomes—commonly referred to as lawfare—has expanded markedly in both scope and impact. Increasingly, litigation is used not only to enforce environmental standards but to influence, delay, or block energy and infrastructure policy outcomes outside the legislative and regulatory processes designed to govern resource development.

Three categories of litigation now play central roles in this dynamic: the strategic use of the existing laws such as the National Environmental Policy Act (NEPA) and related permitting statutes to delay or halt project development, a growing wave of state and local climate liability actions, and legacy and coastal damage suits as exemplified in Louisiana. Together, these forms of lawfare introduce uncertainty into investment decisions, raise the cost of capital for essential infrastructure, and complicate the long-term planning required to maintain reliable energy systems and resilient supply chains. Specifically:

- **NEPA and Permitting-Based Litigation:** The NEPA remains one of the most frequently litigated environmental statutes. Even where agencies complete initial reviews within statutory timelines, projects often face successive lawsuits, remands, and demands for supplemental analysis that extend schedules, raise costs, and undermine investment certainty—frequently despite agencies prevailing on the merits.

- **Climate Liability Lawsuits:** A growing number of states, municipalities, nongovernmental organizations, environmental and youth groups pursue damages for alleged climate harm under public nuisance, consumer protection, fraud, or deceptive practices theories. In some cases, by attempting to apply state law to global emissions and worldwide climate effects, these cases raise foundational questions of preemption, extraterritoriality, and judicial competence. Regardless of outcome, their scope and persistence have introduced material legal risk for energy producers and manufacturers operating across jurisdictions.

- **Legacy and Coastal Damage Litigation:** State and local governments have advanced claims seeking retroactive liability for historical energy activities, including conduct undertaken decades ago or pursuant to federal authorization. In coastal states such as Louisiana, these cases have produced a large verdict, drawn out appellate battles, and left unresolved jurisdictional questions, injecting uncertainty into offshore and coastal investment and complicating long-term planning for revenues tied to public services and coastal restoration.

Using case studies for each specific litigation category, this report aims to highlight various economic impacts of using litigation as lawfare.

KEY TAKEAWAYS

- **Litigation risk has become a constraining factor for energy and infrastructure development.** For energy, manufacturing, and critical mineral projects, the outcome and timing of lawsuits increasingly determines whether projects move forward—often outweighing regulatory approvals. This uncertainty increases risk premiums for the projects, creating a range of negative economic consequences from total cancellations to higher costs for consumers.

- **Lawfare carries systemic economic and security consequences.** Strategic litigation aimed at reshaping national policy through the courts can constrain domestic supply, weaken U.S. manufacturing competitiveness, increase consumer costs, and undermine energy-security objectives—particularly at a moment of rising global demand and geopolitical competition.

- **Policy clarity—not weaker standards—is the solution.** The challenge is predictability. Distinguishing legitimate enforcement from meritless litigation that substitutes judicial outcomes for legislative and regulatory decisions is essential to preserving safeguards while enabling timely infrastructure development and sustained economic growth.

Litigation serves essential purposes, including enforcing environmental laws and providing avenues for redress. But when it expands beyond those functions and becomes a primary mechanism for shaping national energy, climate and economic policies through state and local courts, it can generate broad and potentially adverse economic and strategic consequences. Documented cases show that litigation risk often translates into prolonged project delays, reduced investment in domestic production, and higher costs for consumers and industries that depend on reliable, affordable energy. Sometimes, these negative economic consequences extend beyond national borders given the global nature of energy markets.

INTRODUCTION

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This report aims to describe the current lawfare landscape, give examples of how this lawfare is weaponized to shape the policy realm, and where available, discuss potential negative economic consequences of lawfare for both the domestic and global economies.

WHAT IS LAWFARE

Lawfare is used as an analytical label for litigation strategies that function as a substitute for policymaking rather than a means of adjudicating discrete legal violations. It refers to the various ways individuals and organizations use legal action to achieve their goals, which might include stopping a transmission line or changing government climate policy. Such litigation typically:

- Seeks outcomes functionally equivalent to policy changes that would ordinarily be set through legislative or regulatory processes;
- Relies on expansive remedies, novel legal theories, or serial procedural challenges that materially delay or obstruct otherwise authorized projects and;
- Imposes significant uncertainty, cost, or leverage over investment decisions even in the absence of a final merits determination.

Operationally, if a lawsuit's primary practical effect is to create schedule risk, capital-cost risk, or forum leverage for a project or sector—regardless of the claim's ultimate merits—it is treated as lawfare.

For example, environmental lawfare differs from traditional environmental enforcement in both its purpose and its effect. Conventional enforcement is designed to ensure compliance with clearly defined statutory requirements—such as those under the Clean Air Act or Clean Water Act—and typically targets specific, contemporaneous violations. By contrast, environmental lawfare uses the courts as a primary venue for shaping energy, climate, and industrial outcomes ex post—often by retroactively imposing liability, stretching statutory frameworks beyond their intended scope, or exploiting procedural uncertainty to alter investment behavior. The central mechanism is not the enforcement of existing law, but the creation of economic and legal pressure that effectively reallocates policymaking authority from legislatures and regulators to courts. Even when such cases do not ultimately prevail, their procedural effects can alter investment decisions, project timelines, and capital allocation.

The use of lawfare has grown significantly in recent years, both domestically and globally. The rising reliance on litigation is evident in both the volume of lawsuits and the scale of financial demands they impose. The lucrative nature of the cases is also underlined by the rapid expansion of the litigation finance sector, which diverts investor capital to fund lawsuits. Estimates suggest the global litigation funding market could grow from roughly $20 billion in the mid-2020s to nearly $50 billion by the mid-2030s, reinforcing the perception of litigation as a growing industry in its own right.[1]

Another indicator is the number of cases related to one specific issue, climate change. The 2025 annual climate litigation report of Columbia Law School and the UN Environment Program shows that, as of June 2025, the cumulative number of climate change cases included 1,936 cases in the U.S. and 1,113 cases in all other jurisdictions, highlighting the prevalence of such cases in the U.S.[2]

All these trends point to the fact that as the legislative process has become increasingly difficult to navigate and the regulatory landscape more crowded and complex, litigation has emerged as a central policy tool — often substituting for democratic compromise rather than complementing it. This could have significant negative ramifica-

1. U.K. Parliament, "Civil Justice Council Review of Litigation Funding" 29 October 2025
2. Columbia Law School, Climate Litigation Report 2025.

tions through the introduction of uncertainty and increased costs, especially given the outsized role the industries targeted play in the U.S. economy.

STATE OF PLAY: LAWFARE VERSUS THE ECONOMY

Litigation is a fundamental tool for resolving disputes, but concerns are growing around its misuse to direct policy and its economic impacts on targeted industries and the overall U.S. economy. For example, the Trump Administration's goal of reshaping the U.S. economy into a manufacturing powerhouse, requires secure and abundant energy with strong infrastructure built at a rapid pace. However, past experience provides ample evidence on how the lawfare is used to delay, stop and discourage important projects and this could be an impediment to the Administration's agenda. Overall, the major economic issues created by these delays/cancellations of projects due to litigation include:

- Higher uncertainty increases risk premiums for the project, creating a range of negative economic consequences from total cancellations to higher costs for consumers.

- Economic research shows that firm level legal risks predict a 3–7% decline in future investment and lowers firms' reliance on debt, consistent with precautionary motives.[3]

- The private sector cannot effectively respond to market demands due to delays. The global nature of energy markets requires swift actions, but delays created by litigation may result in firms missing important opportunities in the markets.

- Litigation can affect market options and lead to unintended outcomes. For instance, opposition to natural gas infrastructure in the Northeast may result in greater reliance on costly, higher-emission LNG imports as compared to domestic sources. Conversely, new pipelines can reduce oil and diesel use, allowing for cleaner domestic energy resources.

Understanding how lawfare operates—and how it affects energy security, economic competitiveness, and national resilience—is essential to designing a durable legal and policy framework that supports environmental protection while enabling the United States to meet rising energy demand and remain globally competitive.

Specifically, there are three important categories of lawfare shaping the current U.S. energy and manufacturing landscape: Tactical use of existing laws such as NEPA and related permitting statutes to delay or halt project development, a growing wave of state and local climate liability actions, and legacy coastal damage suits. The next sections focus on each of these areas and provide examples.

NEPA and Permitting-Based Litigation

The NEPA, a key law that requires agencies to study the environmental and social impacts of their actions before they undertake them, remains one of the most frequently litigated environmental statutes in the United States. Signed into law in 1970, the law recently went through significant changes in the form of reforms and reversals between the first Trump Administration and the Biden Administration. Reforms in 2020 were intended to streamline federal environmental reviews but were criticized for reducing consideration of issues such as climate change and for narrowing opportunities for public input. In 2022 and 2024, the

3. Dean Ryu, "The Pricing and Economic Impact of Legal Risk," September 2024.

Biden administration reviewed and reversed several of the 2020 changes, restoring the requirement to consider indirect and cumulative impacts of Agency actions, including climate change, and bringing back the full scope of environmental review.[4] The law again took center stage in a number of President Trump's Executive Orders (EOs). In his first EO, "Unleashing American Energy,"[5] the President directed the Council on Environmental Quality (CEQ) to consider rescission of the 2024 amendments to the NEPA regulations, issue nonbinding NEPA guidance to agencies and form a NEPA taskforce to coordinate revision of each federal agency's NEPA implementing regulations.

Despite this back and forth in reforming the law, there were some positive developments as well. According to a January 2025 CEQ report, for final environmental impact statement issued in 2024, the median time from notice of intent (NOI) to final environmental impact statement (EIS) was 2.2 years, representing a 28 percent time savings since 2020 and a 20 percent time savings since 2010.[6] However, major infrastructure projects routinely face successive rounds of litigation, negating any time saved from these reform activities.

According to a recent Breakthrough Institute report analyzing 387 NEPA cases brought to the U.S. appellate court system over the 2013-2022 period:[7]

- Between 2013 and 2022, circuit courts heard approximately 39 NEPA appeals cases per year, a 56% increase over the rate from 2001 to 2015.

- Agencies won 80 percent of the cases, meaning these environmental reviews are seldom changed as a result of litigation.

- On average, 4.2 years elapsed between publication of an environmental impact statement or environmental assessment and conclusion of the corresponding legal challenge at the appellate level **(see Table 1)**. Of these appealed cases, 84% were closed less than six years after the contested permit was published, and 39% were closed in less than three.

- Nongovernmental Organizations instigated 72 percent of the total challenges.

- While public management projects were the most common subject of litigation (37 percent), energy projects took second place with 29 percent. The report shows that "Litigation delayed fossil fuel and clean energy project implementation by 3.9 years on average, despite the fact that agencies won 71% of those challenges. NGOs filed 74% of energy cases, with just 10 organizations responsible for 48% of challenges."[8]

In a follow up report, Breakthrough Institute expanded the court cases to include over 1,400 cases filed in U.S. District and Circuit Courts.[9] According to the analysis, while the median project spent 1 year and 7 months in legal proceedings following a court challenge, a meaningful subset (7% of projects) remained in litigation for more than 6 years, reflecting a long tail of extended delays.[10]

4. BBK LLP, "White House Council on Environmental Quality Finalizes NEPA Phase II Rulemaking," May 2024.

5. The White House, "Unleashing American Energy," January 2025.

6. CEQ, Environmental Impact Statement Timelines (2010–2024) (Jan. 13, 2025), https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2025-1-13.pdf

7. The Breakthrough Institute, "Understanding NEPA Litigation," July 2024.

8. The Breakthrough Institute, 2024.

9. The Breakthrough Institute, "The Procedural Hangover: How NEPA Litigation Obstructs Critical Projects," June 2025.

10. The Breakthrough Institute, 2025.

Table 1. Environmental assessment and environmental impact statement appeal cases by category with time to resolution, 2013–2022

Project category	Number of cases	Minimum days	Maximum days	Average days	Median days
Energy	70	110	5,032	1,415	1,159
Infrastructure	45	91	3,456	1,250	1,127
Other	37	210	3,648	1,531	1,511
Public lands	106	98	6,942	1,744	1,486
		Minimum	Maximum	Average	Median
Total categories in days	–	91	6,942	1,538	1,365
Total categories in years	–	0.2	19.0	4.2	3.7

Source: The Breakthrough Institute, "Understanding NEPA Litigation," July 2024

Even though there is no comprehensive economywide litigation cost analysis for cases conducted under NEPA, anecdotal evidence based on delayed projects gives an idea in terms of lost economic value for affected economies in addition to direct legal costs. For example, New England Clean Energy Connect (NECEC), a large-scale energy transmission project, from Quebec to Massachusetts, was delayed due to litigation, costing Massachusetts taxpayers an extra $500 million due to inflation increasing the cost of the project.[11]

High-profile examples also show that lawfare is not confined to traditional fossil fuel energy projects. It increasingly affects clean energy development, critical mineral extraction, transmission infrastructure, manufacturing investment, and broader efforts to build secure domestic supply chains. A few recent cases —including the Mountain Valley Pipeline, Dakota Access Pipeline, the Willow Project, and the Thacker Pass lithium mine—illustrate how repeated NEPA challenges, remands, and supplemental reviews can extend project timelines by many years beyond the initial environmental analysis. Even when projects ultimately survive on the merits, litigation-driven delays can raise costs, deter investment, and postpone public benefits that depend on the timely deployment of energy infrastructure **(See case studies 1 and 2).**

11. Associated Press, "Massachusetts ratepayers could foot bill for Maine power corridor," December 2023.

CASE STUDY 1

Thacker Pass Lithium Project (Nevada)

Approval First, Construction Later: Procedural Litigation and Post-Decision Delay

Lithium Nevada submitted its plan of operations for the Thacker Pass mine in 2019, initiating a federal permitting process that would lead to one of the largest lithium projects in the United States.[12] The Bureau of Land Management moved on a relatively standard NEPA timeline: a draft environmental impact statement was issued in July 2020, followed by a final EIS in December 2020 and a record of decision approving the project on January 15, 2021.[13]

However, federal approval did not end the process. Multiple lawsuits followed, challenging the sufficiency of BLM's NEPA analysis, consultation with Tribes, and land-use determinations. The litigation did not center on whether lithium mining should occur as a matter of national policy, but on the adequacy and sequencing of federal processes. In early 2023,[14] the district court declined to vacate the project approvals but remanded a narrow, technical issue concerning waste rock placement, directing BLM to clarify whether certain mining claims could lawfully be used for long-term waste storage under the applicable legal standard.

BLM completed the court-ordered supplemental analysis on May 16, 2023.[15] The agency reaffirmed the project's approval, while modestly narrowing its footprint by concluding that eight claims could not be used for the proposed waste rock storage. Construction began in March 2023, even as appeals and related litigation activity dragged on into mid-year.

The arc of Thacker Pass is defined less by a single decisive ruling than by elapsed time. A project approved in early 2021 did not enter the construction phase decisively until more than two years later, after additional rounds of agency analysis prompted by litigation over procedural sufficiency. The project ultimately survived on the merits, but the intervening delay introduced uncertainty into a domestic battery-materials investment that sits at the foundation of the U.S. electric-vehicle and clean-energy supply chains.

12. Bechtel. "Bechtel Applauds Green Light for Thacker Pass Lithium Project." https://www.prnewswire.com/news-releases/bechtel-applauds-green-light-for-thacker-pass-lithium-project-302417624.html.

13. Max Wilbert. "The Fight for Thacker Pass." https://maxwilbert.substack.com/p/the-fight-for-thacker-pass

14. US District Court District of Nevada, February 6, 2023. Case No. 3:21-cv-00080-MMD-CLB.

15. United States Department of the Interior, "Use of Mining Claims for Mine Waste Deposition, and Rescission of M-37012 and M-37057" May 16, 2023.

CASE STUDY 2

Sabal Trail and Dakota Access Pipelines (Alabama, Georgia, Florida, North Dakota)

NEPA Litigation Risk Applied to Operating Assets

NEPA litigation is not confined to the permitting and construction phases of infrastructure development. The Sabal Trail and Dakota Access pipeline projects demonstrate how litigation can be used to challenge federal approvals after a project has entered service and begun operating as designed. In both cases, plaintiffs contested the adequacy of prior environmental reviews. Courts then required federal agencies to reenter the NEPA process even though the infrastructure was already in service and supplying energy to end users. These cases show that NEPA litigation can reopen federal approvals after construction is complete and revenue operations have begun. Courts can vacate permits, certificates, or easements and order supplemental analysis or a full environmental impact statement, creating regulatory uncertainty for assets that are already built and operating.

Sabal Trail illustrates how quickly this risk can materialize after startup. The pipeline began partial service on June 14, 2017, delivering natural gas into Florida. Less than 10 weeks later, on Aug. 22, 2017, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the Federal Energy Regulatory Commission's environmental impact statement failed to adequately consider downstream greenhouse gas emissions from the end-use combustion of the transported gas. The court vacated the approvals and remanded the matter to FERC for a revised environmental analysis.[16]

Although the pipeline continued operating, the decision forced FERC to reopen the NEPA record for an in-service system.[17] The agency issued a draft supplemental environmental impact statement in September 2017 and finalized the analysis in February 2018. The episode prolonged uncertainty over the durability of federal approvals, complicated compliance planning, and increased perceived regulatory risk for an asset already in operation.[18]

Dakota Access faced a similar but longer-running post-startup challenge. In 2020, after years of disputes over the pipeline's Lake Oahe crossing, a federal district court vacated the U.S. Army Corps of Engineers' easement and ordered the preparation of a full environmental impact statement, despite extensive prior review.[19] The court also ordered the pipeline shut down and emptied, while acknowledging that the asset had been operating for nearly 3 years.[20]

The D.C. Circuit later affirmed the core NEPA ruling requiring an EIS but reversed the shutdown order. That decision allowed operations to continue, but the nullification of the easement remained in effect while the Corps conducted the court-ordered review. As a result, Dakota Access continued to operate under a cloud of legal and regulatory uncertainty, affecting long-term planning, compliance obligations, and investment decisions. In December 2025, the Army Corps released a final environmental impact

16. Federal Energy Regulatory Commission (FERC). (2018). Mountain Valley Pipeline Certificate Order. https://www.ferc.gov/sites/default/files/calendarfiles/20180314230126-cp14-554-002.pdf

17. U.S. Court of Appeals for the District of Columbia Circuit. "Sierra Club v. FERC, No. 16-1329 (D.C. Cir. 2017)." https://law.justia.com/cases/federal/appellate-courts/cadc/16-1329/16-1329-2017-08-22.html

18. Federal Energy Regulatory Commission (FERC). Draft Environmental Impact Statement: Southeast Market Pipelines Project. https://www.ferc.gov/draft-environmental-impact-statement-southeast-market-pipelines-project-0

19.U.S. Court of Appeals for the District of Columbia Circuit. "Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers, No. 20-5197 (D.C. Cir. 2021)." https://law.justia.com/cases/federal/appellate-courts/cadc/20-5197/20-5197-2021-01-26.html

20. U.S. District Court for the District of Columbia. "Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers, No. 1:16-cv-01534 (D.D.C.)." https://law.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2016cv01534/180660/496/

statement recommending that the pipeline continue operating with specified safeguards.

Taken together, Sabal Trail and Dakota Access demonstrate a core risk for large infrastructure projects. NEPA litigation can undermine federal permit approvals even after a project enters service. Courts can require agencies to revisit prior decisions and rebuild the administrative record. That dynamic imposes long-tail risk on assets that already perform as built, leaving operators, regulators, lenders, and counterparties to manage prolonged uncertainty well beyond the construction phase, even in the absence of a court-ordered shutdown.[21]

21. U.S. Court of Appeals for the District of Columbia Circuit. "Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers, No. 20-5197 (D.C. Cir. 2021)." https://law.justia.com/cases/federal/appellate-courts/cadc/20-5197/20-5197-2021-01-26.html

Climate Liability Lawsuits

Climate litigation is a globally evolving field, with cases surging in 55 national jurisdictions and 24 international or regional courts, tribunals, or quasi-judicial bodies.[22] According to recent research, while the overall global growth rate of cases has slowed, the U.S., which has the highest number of cases filed historically, appeared to maintain a stable rate of activity.[23] A growing number of states, municipalities, nongovernmental organizations, environmental and youth groups have filed lawsuits seeking damages for alleged climate-related harms under public nuisance, consumer protection, fraud, or deceptive practices theories. The major goals of these lawsuits are:[24]

- To push governments and private actors to undertake more ambitious climate change mitigation and adaptation measures.

- To hold private organizations and corporations accountable for their contribution to climate change and its resulting effects on the environment.

- To obtain monetary damages or other compensation for injury caused by climate change and the costs of adapting to climate change.

States like California, New York and Vermont have pending cases that seek to apply state tort law to global greenhouse gas emissions and to assign liability for worldwide climate impacts through state courts. Regardless of their ultimate disposition, these suits raise significant questions about federal preemption, extraterritoriality, and the appropriate role of state courts in addressing interstate and global environmental phenomena.[25] At the writing of this report, the Supreme Court has agreed to consider an argument from Exxon Mobil and Suncor Energy that federal law bars local governments from seeking relief for climate change in state courts. The court's ultimate ruling will have national implications on the future of pending cases in the U.S.[26]

While initially targeting fossil fuel companies, climate litigation is expanding to include sectors like food and agriculture, as well as finance, with banks facing pressure to be held responsible for the emissions they finance. Figure 1 shows the composition of companies targeted by climate litigation by the line of business globally.

In addition to the vast number of sectors being targeted, new litigation appears to pit climate goals against other social goals, increasing uncertainty and costs even further. For example, the Business and Human Rights Center keeps track of cases against companies undertaking, and/or the states authorizing, transition mineral mining or renewable energy projects, where rightsholders argue the abuse of human and environmental rights.[27]

As the number of cases of climate litigation increase, so does the research on its economic impacts at both the micro and macro levels, albeit slowly. For example, experts are cautioning firms about the impacts of climate litigation on the future of their businesses.[28] According to 2024 research conducted by the London School of Economics, based on climate change lawsuits against U.S. and European listed firms between 2005 and 2021, "firms experience on average a 0.41 percent fall in stock returns following a climate related filing or an unfavorable court decision."[29]According to the same study, the world's largest fossil fuel producers experienced an even larger negative impact on their stock returns: between 0.57 and

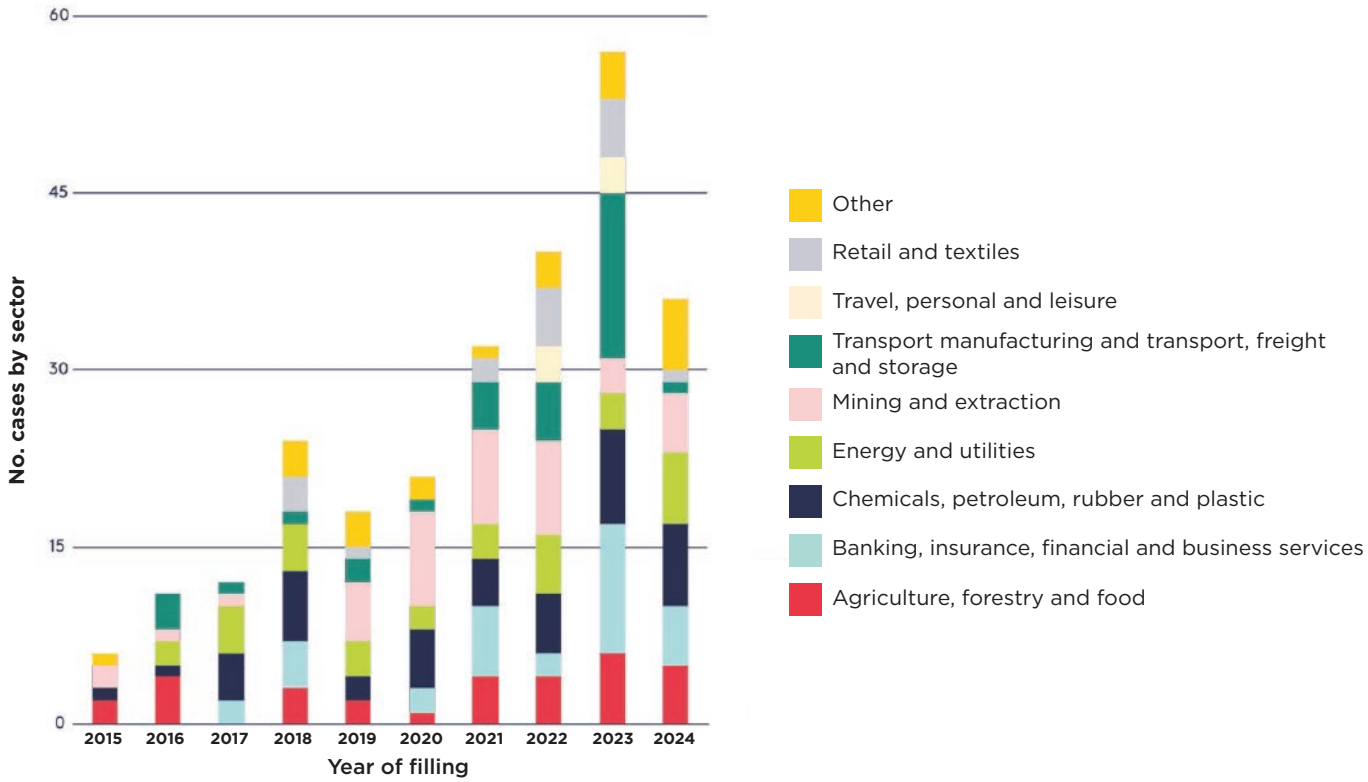
22. UNEP, "Global Climate Litigation Report: 2025 Status Review"
23. Joana Setzer and Catherine Higman, "Global trends in climate change litigation:2025 snapshot," LSE.
24. Centre for Climate Engagement, "Climate Change Litigation in the US," 2025, University of Cambridge.
25. Reuters: https://www.reuters.com/business/energy/us-supreme-court-hear-chevron-exxon-appeal-over-louisiana-coastal-damage-2025-06-16/
26. Greenwire, "Supreme Court accepts oil industry's bid to quash climate lawsuits," February 23, 2026.
27. Business and Human Right Center, "Just transition litigation tracking tool."
28. Joyeeta Gupta and Sharan Burrow, "Climate litigation is evolving - and businesses should take notice," January 13, 2026.
29. Sato, M., Gostlow, G., Higham, C. et al. "Impacts of climate litigation on firm value," 2024, Nature.

1.50 percent. When the impact of climate litigation is evaluated based on bank loans, another study shows that "firms targeted by climate lawsuits pay significantly higher spreads on their bank loans."[30]

The direct and indirect effects of climate litigation, such as legal costs, uncertainty, increased risk premiums, restricted financing and lower stock returns, could have unintended consequences. Every expert recognizes that, with ever-increasing energy demand, the fossil fuel industry will remain an integral part of the energy mix.

Furthermore, to improve the climate consequences of their actions, firms need a healthy pool of capital. The potential shift of funds needed for investment to upgrade and improve the efficiency of existing infrastructure, as well as the funds needed to defend against litigation, is creating more uncertainty and is likely to affect current production and, ultimately, consumers.

Figure 1. Number of companies targeted globally in strategic climate-aligned cases by sector, 2015-2024



Source: Setzer J and Higham C (2025) Global Trends in Climate Change Litigation: 2025 Snapshot. London: Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science.

30. Andreas Beyer and Lorenzo Nobil, "The Impact of Climate Litigation Risk on Firms' Cost of Bank Loans," 2024, European Central Bank.

CASE STUDY 3

Boulder and San Miguel Counties v. Suncor & Exxon (Colorado)

State Tort Law Applied to Global Emissions

In 2018, Boulder County, San Miguel County, and the City of Boulder filed coordinated lawsuits against ExxonMobil and Suncor Energy under Colorado state law, alleging that the companies' production, promotion, and sale of fossil fuels contributed to climate change related harms. The plaintiffs asserted nuisance, trespass, and related tort claims, seeking to impose liability for alleged impacts tied to global greenhouse gas emissions rather than any localized pollution source.[31]

From the outset, the litigation has centered on whether state courts may apply state tort law to claims involving interstate and international emissions. The defendants repeatedly sought removal to federal court, arguing that the claims are inherently federal in nature and preempted by federal law. After a series of remand decisions, the cases ultimately remained in Colorado state court, setting the stage for merits litigation.

In May 2025, the Colorado Supreme Court affirmed the trial court's denial of the defendants' motions to dismiss, allowing the Boulder case to proceed under state law. The court rejected arguments that federal law categorically precluded the claims at the pleading stage, despite their reliance on global emissions and climate effects extending far beyond Colorado's borders. That ruling positioned the case among the most advanced climate liability actions nationwide.

The decision immediately prompted a renewed appeal to the U.S. Supreme Court. In August 2025, the defendants filed a petition for a writ of certiorari, asking the Court to decide whether federal law precludes state law claims seeking damages for injuries allegedly caused by interstate and international greenhouse gas emissions. The petition emphasized the growing conflict among courts, the national and international implications of the claims, and the risk that fragmented state tort regimes could effectively set climate policy.[32]

As of February 2026, the Supreme Court had agreed to hear arguments from Exxon and Suncor Energy that federal law bars local governments from seeking relief for climate change in state courts. This is the first time the Supreme Court has weighed in on such a case and the final ruling will have national implications for the future of pending cases in the U.S

This case illustrates the core lawfare question raised by climate liability suits: whether state tort law may be used to assign financial responsibility for global climate impacts, or whether such claims are foreclosed by federal statutes, constitutional limits on extraterritorial regulation, and the need for nationally uniform climate and energy policy. The next important development will be a Supreme Court decision, an outcome that will either return the case to the Colorado trial court or elevate the dispute to a definitive ruling on federal preemption and the proper forum for climate-related claims.

31. Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.) Inc., Climate Case Chart. https://www.climatecasechart.com/collections/board-of-county-commissioners-of-boulder-county-v-suncor-energy-u-s-a-inc-_be5980

32. Supreme Court of the United States. "Petition for Writ of Certiorari: Suncor Energy (U.S.A.) Inc., et al. v. County Commissioners of Boulder County, et al., No. 25-170 (2025)." https://www.supremecourt.gov/DocketPDF/25/25-170/369227/20250808130855966_Suncor_pet.pdf

CASE STUDY 4

Maryland Courts Halt Local Climate Liability (Maryland)

State Law Climate Claims Rejected on Federalism and Preemption Grounds

State Law Climate Claims Rejected on Federalism and Preemption Grounds
In Maryland, three local government plaintiffs—the Mayor and City Council of Baltimore, the City of Annapolis, and Anne Arundel County—filed coordinated climate liability lawsuits against a group of major oil and natural gas companies, captioned against BP p.l.c. and others. Although styled as state law actions asserting public nuisance, consumer protection, and related theories, the suits sought to recover alleged local costs attributed to the impacts of global greenhouse gas emissions arising from nationwide and worldwide conduct.

On July 10, 2024, the Baltimore City Circuit Court dismissed Baltimore's case at the pleading stage, characterizing the lawsuit as fundamentally aimed at "addressing the injuries of global climate change" and concluding that such claims exceed the permissible reach of state law. Emphasizing principles of federalism and the constitutional limits on state authority, the court rejected the use of state law to redress alleged harms arising from out-of-state and transboundary emissions.[33]

That reasoning carried forward in January 2025, when the Anne Arundel County Circuit Court dismissed the related lawsuits brought by Annapolis and Anne Arundel County.[34] The court expressly relied on the logic and authorities cited in the Baltimore decision and other transboundary emissions cases, concluding that the claims were preempted or otherwise foreclosed on federalism grounds.

All three plaintiffs appealed to the Supreme Court of Maryland, which heard oral arguments on October 6, 2025.[35] The appeals were still pending as this report went to printing. Amicus briefs filed with the Maryland Supreme Court, including submissions by the U.S. Department of Justice and a coalition of 24 state attorneys general, urge the court to affirm the dismissals. Those amici emphasized that the claims "take aim at worldwide activities," implicate substantial federal interests, and risk allowing state-by-state liability standards to function as de facto climate regulation.

The Maryland dismissals highlight a central fault line in climate liability litigation. Specifically, whether state tort and consumer protection laws can be used to impose sweeping damages for alleged climate harm rooted in interstate and international emissions. The forthcoming decision from the Supreme Court of Maryland will determine whether these cases remain dismissed at the outset or re-enter active litigation—along with the discovery burdens, litigation costs, and settlement leverage that often drive lawfare dynamics even before any adjudication on the merits.

33. Maryland Supreme Court. "Record Extract, Volume 2, Part 1, British Petroleum, et al. v. Mayor and City Council of Baltimore, et al., No. 32, September Term 2025 (Consolidated)." https://www.mdcourts.gov/sites/default/files/import/coappeals/highlightedcases/britishpetroleum/20250603scmrecordextractvolume2part1.pdf

34. Anne Arundel County v. BP P.L.C. et al., Climate Case Chart.
https://www.climatecasechart.com/documents/maryland-county-filed-climate-change-lawsuit-against-fossil-fuel-companies-and-trade-group_ea95?l=us-md

35. Petition for Writ of Certiorari, granted by the Maryland Supreme Court, for the consolidated cases of Baltimore, Annapolis, and Anne Arundel County.
https://www.mdcourts.gov/scm/petitions/202504petitions

Legacy and Coastal Damage Litigation

Legacy litigation refers to legal claims concerning damage to land and water, typically caused by historic oil and gas operations. State and local governments have pursued claims seeking to impose retroactive liability for historic activities, including projects undertaken decades ago or under federal direction. The allegations range from improperly plugged and abandoned wells, a tangle of corroded and leaking pipelines, leaking chemical-lined tanks, and salt-scarred abandoned disposal pits, etc. These cases have picked up speed, especially after the landmark Louisiana Supreme Court decision in Corbello v. Iowa Production in 2003. The final decision requiring oil companies to pay for the full cost of restoring contaminated land, even if that cost far exceeds the land's market value, dramatically increased the use of legacy litigation.

A large subset of legacy lawsuits is Louisiana's coastal damage litigation, which comprises more than 40 actions filed since 2013 by coastal parishes and the state against over 200 oil and gas companies alleging that decades of federally directed dredging, drilling, and pipeline construction contributed to coastal land loss. These suits seek billions of dollars in damages for restoration, arguing that these activities violated state permitting and coastal use requirements.

What elevates Louisiana coastal damage litigation from a localized dispute to a national risk factor is its interaction with (1) federally directed or federally authorized activity, (2) forum and jurisdictional maneuvering, and (3) the Gulf Coast's role in U.S. offshore development, energy logistics, and coastal-restoration finance. The result is a high-stakes test case for how large-scale, long-tail liability can influence investment behavior in a capital-intensive sector, well before any merits determination is reached.

These cases often focus on activities that were lawful at the time they occurred and, in some instances, were conducted pursuant to federal authorization. The resulting litigation risk has influenced offshore bidding behavior, long-term investment planning, and the stability of revenue streams used to fund coastal restoration and public services.

Multiple studies have looked at the economic impacts of legacy and coastal damage litigation. A Louisiana Mid Continent Oil and Gas Association study shows that the oil and gas industry accounted for 25% of Louisiana's economy, 15% of total state employment, 19% of total earnings, and supported up to 31.3% of local property taxes in 2025.[36] As such, the negative implications of these lawsuits could have wide-ranging impacts on every aspect of the Louisiana economy. According by research conducted by David Dismukes of Louisiana State University in 2012, legacy lawsuits led to a loss of approximately 1,200 wells and $6.8 billion in lost drilling investment in Louisiana.[37] A more recent study by the Pelican Institute found that coastal damage litigation continues to have a significant impact on Louisiana's economy.[38]

- Louisiana's share of U.S. GDP fell from about 1.4% (2009) to about 1.1% (2024); had the state held its 2009 share, it would have seen well over $600 billion more in economic activity from 2010–2024 (in 2017 dollars).

- Offshore reserves in Louisiana are down nearly 42% since 2009, while federal Gulf reserves declined by only 4.6%.

36. Louisiana Mid Continent Oil and Gas Association, "Economic Impact," 2025.
37. David Dismukes, "The Impact of Legacy Lawsuits on Conventional Oil and Gas Drilling in Louisiana," Louisiana State University.
38. Gavin Roberts, "Lawsuits Continue to Undermine Louisiana's Energy Economy," November 2025, Pelican Institute.

- Louisiana offshore production is down 56% since 2009, while federal offshore production rose 15% over the same period.

- The share of oil and gas in Louisiana's GDP fell from more than 7% to less than 3%, oil and gas employment in the state is down 37% since 2009 (vs. 24% nationally), and sector wages have slipped from roughly 90% of the U.S. average to less than 80%.

- State mineral royalties declined sharply: average annual collections fell from about $404 million (2009–2013) to $190 million since 2014, and cumulative receipts are roughly $2.1 billion versus about $4.4 billion if pre-2013 levels had persisted.

- Payroll data indicate that oil and gas wages averaged $1.05 billion annually (2009–2013) but $950 million since 2014, implying roughly $1.1 billion in lost wages and about $70 million in foregone state and local tax revenue—evidence that the impacts extend to household income and public budgets.

Legacy lawsuits in other oil and gas producing states have had similar impacts: Arkansas, which allows remediation and restoration awards several times in excess of the market value of the land, has also experienced a downturn in oil and gas production.[39] These impacts may clash with other state goals, like the recent announcement of Louisiana Governor Landry's goal to "*Expand Louisiana's industrial base and drill, baby, drill.*"[40] Ultimately, the litigation experience in Louisiana and other oil and gas producing states raise the following issues to be considered:

- When long-tail suits depend on whether federal-connected conduct should be heard in federal court, procedural clarity affects risk pricing, the cost of capital, and investment allocation decisions.

- The economic studies in Louisiana and other states link litigation risk to shifts in drilling, and then to downstream declines in reserves, production, jobs, wages, and public revenues.

- In an economy where oil and gas payrolls are multiple times more concentrated than the national baseline, marginal projects leaving a jurisdiction can translate into outsized impacts on labor markets and tax bases.

- In legacy lawsuits, litigation risk operates like a shadow tax; lowering that uncertainty is a practical mechanism to restore investment.

39. Loulan Pitre and D'Ann Penner, "Legacy Litigation—What Is Reasonable Behavior in the Oilfield?" 2015. Tulane Environmental Law Journal.
40. Louisiana Department of Conversation and Energy,"Gov. Landry Announces Whole-of-Louisiana Energy Strategy," January 22, 2026.

CASE STUDY 5

Chevron U.S.A. Inc. et al. v. Plaquemines Parish

Retroactive Liability for Activities that were Federally Directed

Beginning in 2013, several Louisiana coastal parishes filed lawsuits against major oil and gas companies that have been active in the state over a long period of time, specifically claiming that "companies had violated Louisiana's State and Local Coastal Resources Management Act of 1978 (SLCRMA), which requires certain activities within the state's designated "coastal zone" to comply with an environmental permitting system."[41] The companies subject to litigation were accused of operating without securing proper permits or violating the conditions of the permits that they had. An interesting aspect of these lawsuits was that the plaintiffs contend that some pre-1980 activities were also covered by the 1978 Act and cannot be excluded using the Act's grandfather clause, because the activities were not "lawfully commenced" prior to the program's effective date.

In one of these cases, in 2013, Plaquemines Parish filed a lawsuit against Chevron related to production undertaken by Texaco, which was bought by Chevron in 2001. Pointing to the 1978 Act, the plaintiff claimed that Chevron failed to restore wetlands after dredging canals, drilling wells and dumping wastewater. This case, like the others, has moved between federal and state courts over a 10-year period. In April 2025, a Plaquemines Parish state court jury ruled against Chevron, awarding damages of about $745 million ($575 million for land loss, $161 million for pollution and $8.6 million for abandoned equipment), considerably less than the amount originally sought by the Parish ($2.6 billion).[42]

Chevron is asking the Supreme Court to order the case to be removed to federal court and the Supreme Court has granted certiorari in the case. Chevron is seeking federal jurisdiction, arguing that its World War II-era activities were under federal, not state, authority. Specifically, the companies were fulfilling their contracts with the federal government to produce aviation gasoline during the war, which required them to refine crude oil. Currently, the case is centered around whether the federal order covered the production of crude oil.[43]

In addition to the coverage argument, based on the long running discussion of diversity jurisdiction, law scholars like Prof. Scott Dodson of UC San Francisco,[44] recognize the fact that "judges and juries in federal courts are less inclined to have a bias toward local interests."[45] During oral arguments, on January 12, 2026, Supreme Court Justice Brett Kavanaugh directly questioned the companies' counsel, Paul Clement, about why the defendants had sought removal from parish-level state courts. "There seems to be a concern about the fairness of the state court system that underlies your position in this case," Justice Kavanaugh said. "What is that concern?"[46]

Clement responded that the issue was not distrust of state courts per se, but the need for a forum whose judgment would carry national legitimacy. A federal court ruling, he explained, would be more broadly accepted across jurisdictions and stakeholders. If the plaintiffs prevailed in federal court,

41. Oyez, "Chevron USA Inc. v. Plaquemines Parish, Louisiana," Accessed February 4, 2026.
42. The New York Times, "Chevron Must Pay $745 Million for Coastal Damages, Louisiana Jury Rules," April 5, 2025.
43. Amy Howe, Court hears arguments in suit attempting to find companies responsible for damage to Louisiana coast, SCOTUSblog (Jan. 12, 2026, 5:34 PM).
44. Scott Dodson, "Beyond Bias in Diversity Jurisdiction," Duke Law Journal, November 2019.
45. The Washington Post, "Louisiana residents, Big Oil spar over coastal damage at Supreme Court," January 12, 2026.
46. Supreme Court of the United States, Chevron USA vs Plaquemines Parish, January 12, 2026.

"everybody's going to accept the outcome," whereas a parish-level judgment risks being viewed as the product of localized interests or prejudice rather than neutral adjudication.[47]

In practical terms, the forum question can shape the predictability of outcomes for companies performing federally connected work and can influence the willingness of private actors to participate in federal initiatives when long-tail liability exposure is later asserted in state court.

The Louisiana litigation has also been associated with contingency-fee-driven public enforcement models, arrangements that can intensify settlement pressure, amplify transaction costs, and complicate transparency around how litigation recoveries are pursued and allocated.

According to the American Tort Reform Foundation, the Plaquemines Parish trial court's handling of the initial case effectively "eliminated causation" as a meaningful element of proof. The resulting damages theory is characterized as inconsistent with Louisiana's State and Local Coastal Resources Management Act (SLCRMA), which requires that restoration costs be tied to harm directly attributable to a defendant's unlawful conduct. As cited by the Foundation, testimony from a government witness acknowledged that coastal land loss arises from multiple,[48] interacting factors,[49] including hurricanes and storm impacts, sediment deprivation, coastal and geomorphic dynamics, sea-level change, management decisions by the U.S. Army Corps of Engineers affecting the Mississippi River, and natural subsidence.[50]

This dispute underscores a core source of legal uncertainty in the coastal litigation docket: how courts allocate long-term restoration remedies in circumstances involving numerous causal mechanisms, and how early trial-level interpretations of causation and statutory requirements can materially shape liability exposure, bargaining leverage, and settlement dynamics across the broader set of cases.

47. Supreme Court of the United States, Chevron USA vs Plaquemines Parish, January 12, 2026.
48. USGS, "An Overview of Coastal Land Loss: With Emphasis on the Southeastern United States," 2003.
49. Coastal Protection and Restoration Authority, Coastal Crisis.
50. American Tort Reform Foundation. "Judicial Hellholes: Louisiana Coastal Litigation (2025–2026)."https://judicialhellholes.org/hellhole/2025-2026/louisiana-coastal-litigation/

CASE STUDY 6

Richard versus Marathon

According to New Mexico state law, plugging and abandoning oil wells is the responsibility of the current operator. Once the operator assigns the lease to another operator, with the approval of New Mexico Commissioner of Public Lands, the original operator is "relieved from all obligations owing to the state with respect to the lands embraced in the assignment."[51]

Tesoro Petroleum Company was the operator of 560 acres of state leases between 1964 and 1988. This lease was assigned to a third-party operator sometime between 1988 and 1993. In 2018, Tesoro was acquired by the Marathon Petroleum Corporation. Later, Tesoro was accused of causing damage to the land through multiple oil spills and not properly remediating the area. To address the claimed damage, the Commissioner filed suit against Marathon Petroleum as the successor of Tesoro. Marathon pointed to the state law and argued that they were not responsible for the damage since Tesoro assigned the lease to a third-party operator, releasing them from all obligations. The district court agreed with Marathon and dismissed the case. The State Commissioner appealed and, ultimately, the appeals court reversed the dismissal and remanded the case, stating that Tesoro was not absolved of its legal liability for the damages, thus making Marathon liable as Tesoro's successor. The court's decision was based on the ambiguity of the phrase "relieved from all obligations."[52] Given this ambiguity, New Mexico courts "could — and likely would — rule that an assignor of an oil and gas lease would retain responsibility for their express contractual obligations post-assignment."[53] As a result of the case, state law is interpreted as saying that the assignor is released from contractual agreements, but not from liability for the past misconduct.

The case has been seen, by some, as protecting NM taxpayers from shouldering the burden of the costs of remediation. However, it is also difficult to contract around the potential remediation liability of a predecessor company. It also encourages the state to go after past operators with the bigger budgets, introducing significant uncertainty into doing business in the state.

51. See N.M. ANN. CODE § 19.2.100.43 (2016) ("Upon approval by the commissioner, the assignor shall be relieved from all obligations owing to the state with respect to the lands embraced in the assignment...").
52. Oliva Gibbs, "On the hook?: In a controversial decision, New Mexico Court of Appeals holds that a release of "all obligations" in an assignment of state leases does not protect successor from P&A liability," June 2025.
53. Oliva Gibbs, 2025.

CONCLUSION

The evidence demonstrates that lawfare has become a structural force shaping U.S. energy and industrial policy. Litigation remains indispensable for enforcing environmental laws and ensuring accountability. But when lawsuits are used primarily to advance energy and climate policy through the courts rather than to enforce clearly defined legal standards, they introduce uncertainty that can delay essential projects, increase costs, weaken supply chains, and diminish national resilience.

This report has shown how lawfare operates through three principal channels: legacy and coastal damage suits, climate liability litigation, and NEPA-based permitting challenges. Together, these litigation strategies extend far beyond individual disputes. They influence investment decisions, infrastructure timelines, and capital allocation across energy and manufacturing sectors, with direct consequences for energy security, industrial competitiveness, and consumer affordability.

The solution is not to weaken environmental protections or curtail legitimate legal oversight. Rather, balanced, evidence-based reforms can clarify jurisdictional boundaries, modernize and streamline permitting, stabilize offshore revenue and restoration frameworks, and channel accountability toward measurable, outcomes-based remediation. Such reforms would preserve environmental safeguards while restoring the predictability necessary for long-term infrastructure investment.

Policymakers can continue to allow litigation dynamics to shape national energy and industrial strategy by default, or deliberately act to restore clarity, predictability, and balance. Targeted reforms that reinforce the rule of law while enabling responsible investment and infrastructure development are essential to securing America's long-term energy security, economic strength, and national resilience.

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