Climate Change as Public Nuisance

A Backdoor Scheme to Dictate America's Energy Policy

By Rea S. Hederman Jr., David C. Tryon, Sai C. Martha, and Aswin Prabhakar

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April 9, 2026

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EXECUTIVE SUMMARY

Municipal, county, and state governments across the United States have recently filed more than 30 lawsuits against fossil fuel companies seeking huge monetary awards and court-imposed abatements to force the defendants to adopt net-zero carbon-emissions policies and otherwise fall into line with left-wing orthodoxy regarding energy production. These lawsuits declare fossil fuel companies to be responsible for creating a "public nuisance"—climate change—in a misguided effort that distorts a long-standing legal doctrine that historically does not permit plaintiffs to seek damages. Plaintiffs rely on so called "attribution science" to assess fossil fuel companies' liability for any costs the locality claims to have incurred due to climate change—from needing a new water treatment plant to declining tourism. No court has yet accepted "attribution science" to assign harm or support causality against a defendant. But, if successful, the plaintiffs' novel claims would financially cripple energy companies, inflict significant economic harm, and turn the limited public nuisance theory into a boundless tort action available for economic engineering. A legal advisor for the plaintiffs in *Suncor Energy v. County Commissioners of Boulder County* publicly acknowledged that their suit's legal strategy imposes "an indirect carbon tax," essentially pursuing an environmental, social, and governance (ESG) agenda through the courts after failing to do so through Congress.[1]

This "novel claims would financially cripple energy companies, inflict significant economic harm, and turn the limited public nuisance theory into a boundless tort action available for economic engineering."

[1] Kamden Mulder, **Lawyer Behind Colorado Climate Suite Says the Quiet Part Out Loud: Litigation is a Tax on Oil Companies**, NationalReview.com, October 20, 2025.

INTRODUCTION

The modern climate litigation campaign began on July 17, 2017, when California's San Mateo County, Marin County, and Imperial Beach filed public nuisance lawsuits against major fossil fuel companies alleging that they created a public nuisance by contributing to climate change while concealing known risks and imposing billions of dollars in climate adaptation costs on affected communities.[2] Since then, governments at every level have filed similar cases. Rhode Island brought its action in 2018,[3] followed by state attorneys general in California, Delaware, Vermont, Maine, New Jersey, and Hawaii alleging that the oil and gas industry's deception has imposed huge costs on state infrastructure and public health systems.[4] Large cities and counties, including Chicago, San Francisco, Oakland, Boulder County, and Multnomah County, have filed suits citing the costs of protecting urban infrastructure from climate impacts.[5] Chicago's complaint seeks damages expected to reach "billions of dollars," while Multnomah County demands a $51.55 billion abatement fund, the largest single damages request to date.[6] Individuals and advocacy groups have also sued seeking net-zero carbon gas emissions.

Relying on a novel public nuisance theory, climate change cases seek compensatory damages, a relief fund to pay for future damages, and abatements to stop fossil fuel companies from emitting carbon gases. The requested damages already run into the hundreds of billions of dollars, and such damages will inflict extraordinary financial and societal impact if the plaintiffs prevail and other jurisdictions follow their lead.

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[2] Kurtis Alexander, **Marin, San Mateo counties sue Big Oil over climate change**, SFGate, July 17, 2017.

[3] Nicholas Kusnetz, **Rhode Island Sues Oil Companies Over Climate Change, First State in Wave of Lawsuits**, Inside Climate News, July 2, 2018.

[4] **Maine Sues Big Oil for Climate Deception**, Center for Climate Integrity press release, November 26, 2024.

[5] Bruce Gil, **U.S. Cities and States Are Suing Big Oil Over Climate Change. Here's What the Claims Say and Where They Stand**, PBS Frontline, August 1, 2022; Lesley Clark & E&E News, **Chicago Becomes the Latest City to Sue the Oil Industry over Climate Change**, Scientific American, February 21, 2024; and **Communities File Lawsuit Against Oil Giants for Climate Change Costs**, bouldercounty.gov, April 17, 2018.

[6] Notice of Removal at 5, ***County of Multnomah v. ExxonMobil Corp.***, 2024 WL 2938473 (D. Or. 2024) (No. 3:23-Cv-1213).

THE PUBLIC NUISANCE DOCTRINE: UNFIT FOR CLIMATE CHANGE LITIGATION

The ancient doctrine of public nuisance dates to medieval England. Originally understood as a criminal or quasi-criminal offense designed to protect the rights of the public at large,[7] the crown prosecuted nuisances as offenses against the general public and did not permit such cases as civil adjudications of private harms.[8]

Having migrated to America, the doctrine retained its public character and limited scope. Early American courts treated public nuisance as a cause of action that could be brought only by the government or by a private party suffering "special injury," meaning a harm distinct from that suffered by the public generally.[9] The emphasis remained on conduct that interfered with communal rights—not generalized grievances—and courts emphasized that public nuisance was not a catch-all tort and could not be expanded to address broad social issues.[10] Typical 19th-century American public nuisance cases included the keeping of deceased animals, gambling, prostitution, and disturbingly loud noises.[11] And because public nuisance was a matter of equity or criminal law, the remedy was abatement–that is, a judicial order to cease, remove, or remediate the source of harm.[12]

In the 20th century, the legal doctrine retained its historically limited scope. The *Restatement (Second) of Torts* defined a public nuisance as "an unreasonable interference with a right common to the general public," such as public health, safety, peace, or convenience. Cases brought under the theory must satisfy strict causation requirements: the defendant's conduct must be the proximate cause of the harm, and there must be a direct relationship between the act and the public harm.[13] Courts have repeatedly declined to extend public nuisance to claims

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[7] William Blackstone, ***Commentaries on the Laws of England, Volume 3*** (Oxford: Clarendon Press, 1765-1769), p. 134–137.
[8] Blackstone, ***Commentaries on the Laws of England, Volume 3***, p. 135.
[9] 66 *Corpus Juris Secundum Nuisances* section 9 (1950).
[10] ***In re Nat'l Prescription Opiate Litig.***, 2024-Ohio-5744.
[11] William Lloyd Prosser and W. Page Keeton, ***Prosser & Keeton on the Law of Torts*, Fifth Edition** (West Publishing Company, 1984), section 90, p. 643–644.
[12] ***Restatement (Second) of Torts*** (American Law Institute, 1979), section 821C(2)(a).
[13] ***City of New York v. Beretta U.S.A. Corp.***, 315 F. Supp. 2d 256, 281–283 (E.D.N.Y. 2004).

involving lawful products where the alleged harm results from indirect use, third-party conduct, or cumulative social factors.[14]

This legal history stands in stark contrast to the attenuated, global causal chains now being alleged in today's climate public nuisance litigation. First, although current climate nuisance suits argue that they seek an "equitable abatement" remedy, they also seek hundreds of billions of dollars to be spent at their discretion,[15] which means they seek monetary damages. Courts have consistently held that "abatement" requires stopping or correcting a nuisance, not transferring funds.[16] Second, under long-settled doctrine, public entities may sue only if asserting sovereign interests or if alleging harm distinct from that suffered by the public at large. But the current climate lawsuits allege injury from climate change, which, by nature, affects all people and places—and thus, the public at large. Courts across the country have already rejected such claims for failure to allege a nuisance under applicable state law.[17] Third, expanding public nuisance to cover global harms from lawful products invites unchecked liability against industries regardless of culpability, foreseeability, or causation; and would turn courts into *de facto* regulators, awarding funds and restricting products—both untethered to legal standards. Courts are ill-equipped to set global climate policy. Determining how to "abate" climate change is better suited for legislatures and regulatory agencies.

The current climate nuisance lawsuits risk redefining the public nuisance doctrine into a boundless tort that serves ideological ends. The public nuisance doctrine has always been a narrow, equitable doctrine, unsuited for the global policy adjudication plaintiffs now demand. Courts should resist such an expansion, preserve the integrity of public nuisance law, and avoid the unintended fiscal, institutional, and constitutional consequences that would follow.

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[14] ***State ex rel. Attorney General of Oklahoma v. Johnson & Johnson***, 499 P.3d 719 (Okla. 2021); see also ***City of New York v. Chevron Corp.***, 993 F.3d 81 (2d Cir. 2021).

[15] Amended Complaint at 121–23, ***Bd. of Cnty. Comm'rs or Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.***, No. 2018CV30349 (Colo. Dist. Ct. Boulder Cnty. June 11, 2018); First Amended Complaint at 143–45, ***People ex rel. Bonta v, Exxon Mobil Corp.***, No. CGC-23-609134, JCCP No. 5310 (Cal. Super. Ct. S.F. Cnty. June 10, 2024).

[16] ***City of Huntington v. AmerisourceBergen Drug Corp.***, No. 3:17-cv-01362, slip op. at 181 (S.D.W. Va. July 4, 2022).

[17] ***City of New York v. Chevron Corp.*, 993 F.3d 81** (2d Cir. 2021); ***Baltimore v. BP P.L.C.***, 2024 WL 3678699 (Md. Cir. Ct. 2024); ***State ex rel. Jennings v. BP Am. Inc.*, 2024 WL 98888** (Del. Super. Ct. 2024).

THE PROBLEM OF QUANTIFYING CLIMATE CHANGE DAMAGES

Assuming the plaintiff governments are entitled to the supposed climate change damages, the governments must prove the amount of the damages and explain why the defendant fossil fuel companies are legally responsible. Doing so requires a chain of contested scientific, economic, and legal judgments.[18] Each link in the chain of the plaintiffs' climate change nuisance claims relies on dubious scientific and economic assumptions.[19]

Climate change plaintiffs must establish that the harms they have alleged were incurred as a result of climate change and were caused by defendant fossil fuel companies.[20] To do so, plaintiffs rely on so called "attribution science," which attempts to link particular local harms to global emissions and then assign some share of those emissions to specific defendants. That theory remains novel, methodologically contested, and untested as a basis for liability in these cases.[21]

Once the types and extent of damages are established and a causal link to fossil fuel emissions is demonstrated, the courts must assess the monetary value of those damages and determine the proportion attributable to each defendant.[22]

To further complicate monetization, plaintiffs seeking abatement costs must also estimate past and future damages. This requires applying a discount rate to future harms to express them in present-day terms. Determining a discount rate is typically contentious, as lower rates result in higher estimated damages and vice versa. The same is true of the broader valuation exercise: different models and assumptions can produce dramatically different damage estimates.

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[18] Union of Concerned Scientists, **The UCS Science Hub for Climate Litigation: Resources and Opportunities for Experts**, ucs.org, October 10, 2024.
[19] Nicolás Rivero, **Scientists Say They Can Calculate the Cost of Oil Giants' Role in Global Warming**, *The Washington Post*, April 24, 2025.
[20] ***The Role of Attribution Science in Climate Litigation Against Companies***, Schellenberg Wittmer Ltd Report No. 2, April 2023.
[21] Jonathan D. Haskett, ***Is That Climate Change? The Science of Extreme Event Attribution***, Congressional Research Service, June 1, 2023; InfluenceMap, **Carbon Majors**, carbonmajors.org (Last visited March 30, 2026); and Center for Climate Integrity, **Calculating Climate Costs**, climateintegrity.org (Last visited March 30, 2026).
[22] Travis Fisher, **The Political Economy of EPA's Updated Social Cost of Carbon**, Cato Institute, February 28, 2024.

The viability of climate change litigation against fossil fuel companies hinges on whether plaintiffs can convincingly quantify damages, establish causality, and attribute responsibility—each of which involves speculative scientific, economic, and legal propositions. The underlying models are contestable, the causal chain is attenuated, and the legal standards for admissibility and causation remain unsettled. In short, the damages theories in these cases are not merely ambitious; they are deeply uncertain.

Conclusion

Climate change litigation using the public nuisance theory is a novel, dangerous way to attack energy companies. If successful, such claims threaten to distort the public nuisance doctrine and inflict significant economic harm across the country. Asking courts to order abatements—the traditional remedy in nuisance litigation—would turn judges into regulators and effectively impose a net-zero rule on carbon emissions. Neither of those results are workable. States and local governments have brought numerous public nuisance cases against fossil fuel companies, with the Multnomah County case alone seeking $51.55 billion in damages, and others seem likely to follow. Assuming the entire damages are paid out immediately as a one-time lump sum, these remedies will act as a massive corporate tax, forcing energy producers to raise prices in order to offset higher costs.

Courts should be wary of plaintiffs extending public nuisance theory far beyond its traditional scope, and policymakers concerned with the legal and economic risks that such cases pose should be prepared to limit them if courts refuse—the U.S. economy might depend on it.

About the Authors

Rea S. Hederman Jr. is executive director of the Economic Research Center and vice president of policy at The Buckeye Institute. In this role, Hederman oversees Buckeye's research and policy output.

A nationally recognized expert in healthcare policy and tax policy, Hederman has published numerous reports and papers looking at returning healthcare power to the states, the impact of policy changes on a state's economy, labor markets, and how to reform tax systems to spur economic growth.

Prior to joining Buckeye, Hederman was director, and a founding member of the Center for Data Analysis (CDA) at the Heritage Foundation, where he served as the organization's top "number cruncher." Under Hederman's leadership, the CDA provided state-of-the-art economic modeling, database products, and original studies.

While at Heritage, Hederman also oversaw the organization's technical research on taxes, healthcare, income and poverty, entitlements, energy, education, and employment, among other policy and economic issues. He was also responsible for managing Heritage's legislative statistical analysis and econometric modeling.

Hederman's commentary has been published in *The Washington Post*, *The Washington Times*, *National Affairs*, *The Hill*, National Review Online, and FoxNews.com, among others. He is regularly quoted by major newspapers and wire services, and has appeared on Fox News Channel, CNN, CNBC, and MSNBC.

Hederman graduated from Georgetown Public Policy Institute with a Master of Public Policy degree and holds a Bachelor of Arts from the University of Virginia.

David C. Tryon is the director of litigation at The Buckeye Institute. In this role, he supervises all litigation and outside litigation counsel and actively participates in Buckeye's cases in both state and federal court.

Immediately prior to joining Buckeye, Tryon served as deputy solicitor general in the West Virginia Attorney General's office, where he handled both trials and appellate matters, including preparing amicus curiae briefs. Many of the matters either challenged federal laws and regulations that infringed on state's rights or defended the validity of West Virginia laws against constitutional challenges.

Tryon served as the deputy assistant secretary for policy and development in the Office for Civil Rights in the U.S. Department of Education from 2019-2020. While there, he assisted with developing and implementing new policies and guidance and was responsible for the Civil Rights Data Collection, which covers all primary and secondary schools receiving federal funds.

Nominated as the chief counsel for advocacy at the U.S. Small Business Administration, Tryon was favorably voted out of the Senate Committee on Small Business and Entrepreneurship. In connection with his nomination, he had numerous meetings with small business organizations to learn the concerns and needs of small businesses.

Tryon has had more than 30 years of commercial litigation experience in state and federal courts, including trials and appeals. Several of these cases involved the U.S. Constitution or the Ohio Constitution. In *Arnold v. City of Cleveland*, he was successful in having the Ohio Supreme Court declare the right to bear arms a fundamental right under the Ohio Constitution.

Tryon has dedicated much of his time to civic affairs. He served on the local school board for four years, two of those as school board president. During his nine years on the Executive Board for the Greater Cleveland Council of the Boy Scouts of America, he organized two major parades, created a personnel committee for leadership training of professional staff, and was involved in restructuring the Council. From 2015 to 2020, he served on the Ohio Advisory Committee to the United States Commission on Civil Rights. He was part of a select group to participate in Leadership Cleveland, Class of 2016. He also led the Cleveland Lawyers Chapter of the Federalist Society for nearly 20 years.

Tryon received a Bachelor of Science Degree (*magna cum laude*) from Brigham Young University and his Juris Doctorate (*cum laude*) from the University of Michigan.

Sai C. Martha is an economic research analyst at The Buckeye Institute. In this role, he conducts original research on labor markets, public finance, tax policy, and energy policy, providing analysis that helps policymakers understand how state and federal policies impact economic growth, workforce participation, and fiscal stability.

Before joining The Buckeye Institute, Sai worked as a graduate research assistant at the University of Arizona, where he contributed to projects examining the effects of fiscal policy, energy efficiency programs, and income distribution. He also completed a capstone project with American Express, where he analyzed consumer behavior and financial risk as part of a broader effort to improve decision-making in credit and collections.

Sai holds a master's degree in applied econometrics and data analytics from the University of Arizona, where his academic work focused on labor economics, fiscal policy, tax modeling, and applied econometric techniques. His thesis explored the relationship between government size and its effects on economic growth, income distribution, and social development across countries. His training included building and interpreting dynamic econometric models with a focus on time-series and panel data analysis to evaluate long-term policy impacts.

Sai's research interests include labor market dynamics, tax reform and estimation, public finance, energy economics, and the long-term effects of fiscal and regulatory policy on economic development and income distribution. He also explores public policy literature and economic history and is passionate about using applied research to develop real-world solutions that support sustainable economic growth.

Originally from India, Sai enjoys playing cricket and chess, hiking, watching baseball, and staying engaged with economic policy and development debates.

Aswin Prabhakar is an economic research analyst at The Buckeye Institute, where he conducts original research on Ohio's energy, innovation, and tax policies and their impact on the state's economy.

Aswin holds a master's in economics from George Mason University, where he was a James Buchanan fellow, and an integrated master's degree in development studies with a minor in economics from the Indian Institute of Technology Madras. While at IIT Madras, he served as a teaching assistant for the course Money, Banking, and Financial Markets.

Before joining Buckeye, Aswin worked as a policy analyst at the Information Technology and Innovation Foundation, focusing on U.S. artificial intelligence strategy and competition in technology markets. He also interned at the Libertas Institute, where he analyzed content moderation policies on social media platforms.

Aswin's research interests include public finance, energy economics, and technology policy, especially how regulatory frameworks influence economic growth and innovation. Outside the office, he enjoys playing chess, following cricket, and watching basketball.

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