

# Climate in the Courtroom

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CU Climate Symposium  
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Climate Concern UK

# Outline

- Overview of climate litigation
- Summary of five cases
- Civic education and public debate
- Perceptions about climate science and scientists
- Role of uncertainty
- Advocacy
- Implications for decision makers

# Climate Litigation

- Cases relating to climate change
- Driven by:
  - Dissatisfaction with government action or inaction
  - Desire to make climate more visible
  - Desire to reduce greenhouse gas emissions
  - Desire to be compensated for perceived injuries
- Variety of legal theories with different
  - Claims
  - Stories
  - Use of science

# Methodology

- Descriptive- role of courts
- Limited to U.S. cases
  - Most litigation is here
  - Climate lit is typical of much environmental lit
  - 5 of the earliest and most visible U.S. cases
  - Outcomes not important; looking at role of the courts
  - Not promoting litigation, just exploring the role it plays in climate policy

## 2 Main Types of Cases

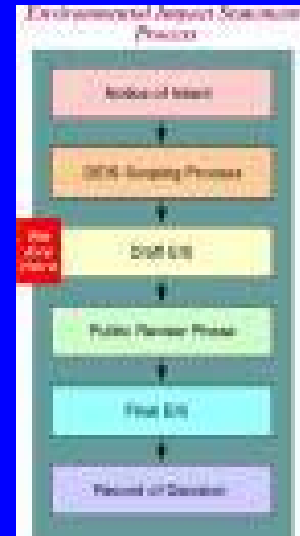
- Challenging government action or inaction
- Seeking to redress injuries
  - To the public
  - To private entities

# Challenging government action or inaction- 3 cases

- National Environmental Policy Act (NEPA)
- Clean Water Act (CAA) Authority
- Preemption

# Friends of the Earth v. Watson

- Plaintiffs:
  - 2 NGOs
  - 3 cities
- Defendants:
  - 2 federal agencies
- Issue: Whether the agencies failed to comply with the National Environmental Policy Act (NEPA) by neglecting to consider project impacts on climate when conducting environmental reviews



[www.dot.state.ny.us](http://www.dot.state.ny.us)

# Massachusetts v. EPA

- Plaintiffs:
  - 12 states
  - 3 cities
  - 3 territories
  - 14 NGOs
- Defendant: EPA
- Issue: Whether EPA has the authority and responsibility to regulate greenhouse gas (GHG) emissions from motor vehicles under the Clean Air Act (CAA)



# Central Valley Chrysler-Jeep, Inc. v. Witherspoon

- Plaintiff: Alliance of Automobile Manufacturers
- Defendant: State of California
- Issue: Whether the federal government has preempted the regulation of motor vehicle fuel economy, preventing states from regulating in this area

# These cases will clarify whether:

- EPA MAY regulate GHG emissions from vehicles under the CAA
  - And, if so, whether EPA MUST regulate
- Federal agencies MUST consider impacts on climate in environmental reviews
- States MAY regulate GHG emissions from vehicles

# Tort Claims- 2 cases

- Public Nuisance
- Human Rights and Personal Injury

# Connecticut v. American Electrical Power, Inc.



- Plaintiffs:
  - 8 states
  - City of New York
- Defendants: 5 biggest U.S. power companies
- Issue: Whether greenhouse gas emissions from power plants constitute an ongoing public nuisance

# Inter-American Commission on Human Rights Claim

- Plaintiff: Sheila Watt Cloutier
- Defendant: United States
- Issue: Whether the U.S. has violated the human rights of the Inuit people by failing to control emissions of greenhouse gases



# These cases will determine whether:

- Companies can be held responsible for GHG emissions
- Governments have a duty to people beyond their borders to control GHG emissions
- Parties injured by climate change may seek relief in the courts

# Civic Education and Public Debate

- Educates citizens about climate science
  - Must be comprehensible to non-scientist judges and jurors
  - Brings science to a level accessible to the public
- Tells competing stories
  - Makes the complex accessible
  - Stories can be compelling
- Enables and stimulates informed public debate

# Topics for Debate

- Nature and extent of problem
- Possible impacts on all sectors
- Response alternatives
- What is fair
- Responsibility
- Balancing risk and uncertainty

# Perceptions about Climate Science and Scientists

- Role of science & expertise
  - Heavy reliance on science in climate cases
  - Enormous deference in U.S.
- Court conventions to manage experts
  - Cross-examination
  - Rules of evidence
- Can affect perceptions of
  - Salience
  - Credibility
  - Legitimacy

# Saliency:

## What is relevant to claims?

- Parties will use science to support claims
- Will highlight missing science
  - In party arguments
  - In court decisions

# Credibility:

## Is this good science?

- Does it meet accepted standards?
- Was it peer reviewed?
- Challenges to:
  - Assumptions
  - Methods
  - Models
  - Reasoning
  - Conclusions

# Legitimacy:

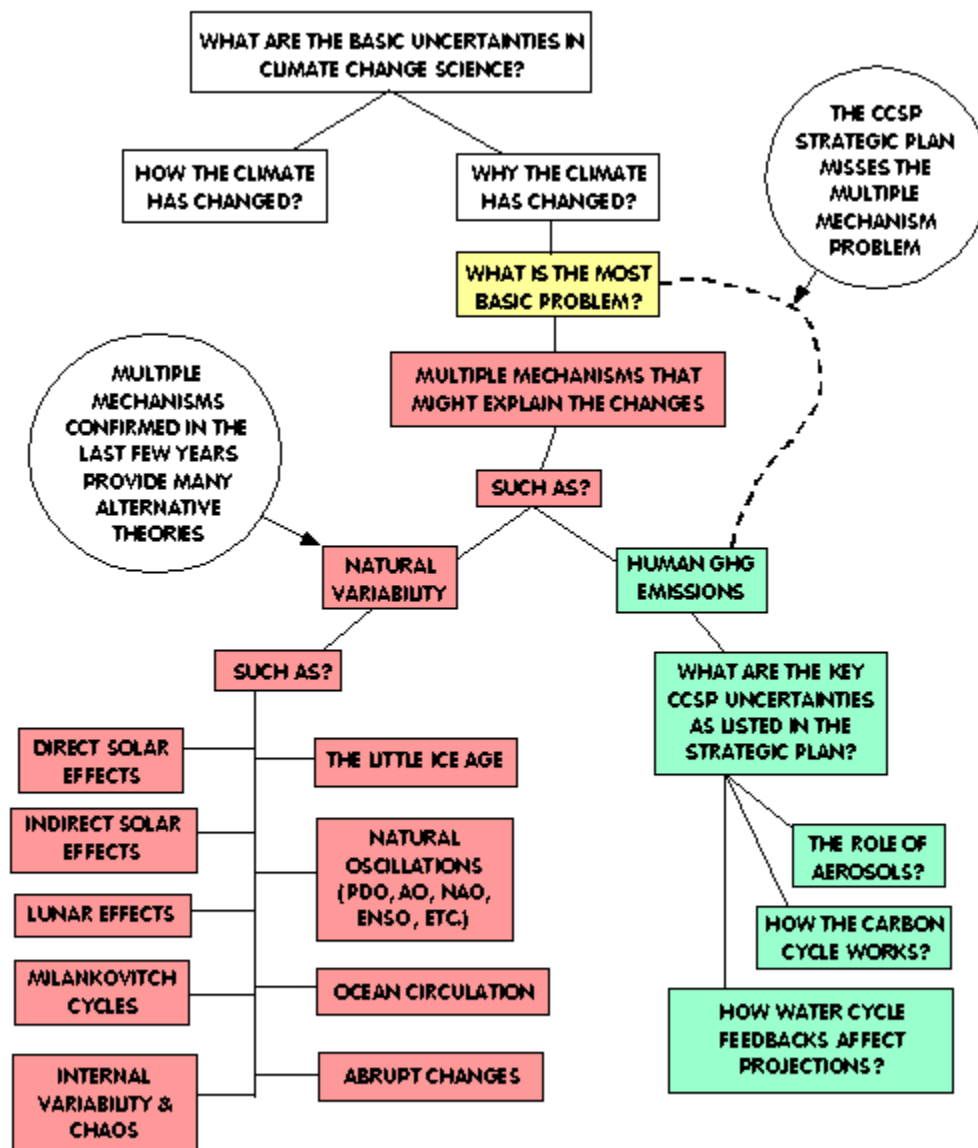
## Are results fair and unbiased?

- Who was involved?
- Challenges to expert
  - Credentials
  - Funding sources
  - Affiliations
  - Research agendas
  - Interests
  - Values

# Uncertainty Issues

- Where does uncertainty occur?
  - Nature and extent of climate change
  - Regional and local changes
  - Attribution to human and natural causes
- What are the sources of uncertainty?
  - Complexity of system
  - Incomplete information
  - Complex models
- How should we make decisions under uncertainty?

# NEW UNCERTAINTIES IN CLIMATE CHANGE SCIENCE



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# Uncertainty in the Courts

- Have tools to manage uncertainty
  - Burdens of proof
  - Rules of evidence
  - Cross-examination
- Make decisions under uncertainty all the time
- When does uncertainty prevent decisions?
- Uncertainty to justify inaction

# Limits of Climate Science in Litigation

- Science necessary but not sufficient
- Societal problems require more than science
- Litigation brings non-scientist voices and values into the climate debate
- Contested nature of science is exposed
- Uncertainty addressed & implications explained

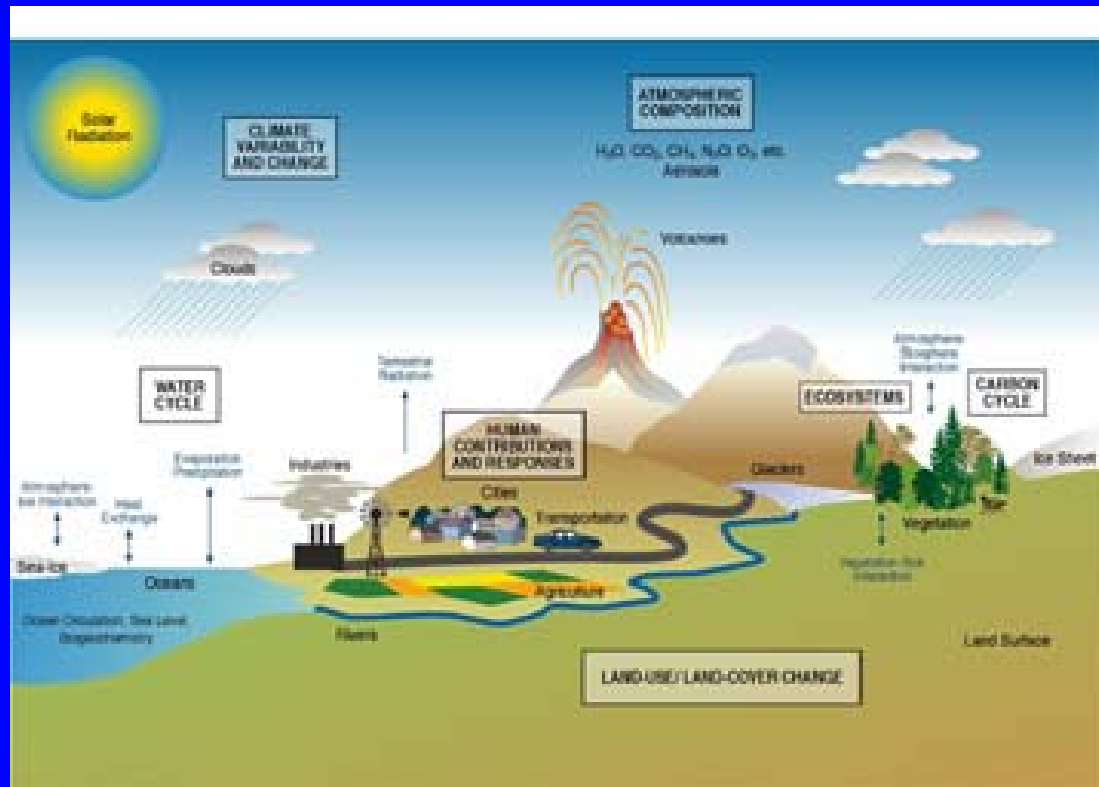
# Advocacy for Political Action

- Litigation stories capture imagination
- Trigger interest in change
- Concerned citizens may press for political action
- Legislatures may take action in response to a court decision
- Could stimulate action at all levels

# Implications of Climate Litigation for Decision Makers

- Clarify role of governments
- Clarify areas of responsibility
- Clarify sources of liability
- Educate public (through the media)
  - Tell stories
  - Teach science
  - Affect perceptions of science
  - Understanding of trade-offs
- Stimulate debate
- Stimulate political action

# Questions?



[www.climate-science.gov](http://www.climate-science.gov)