

佛蒙特法学院能源环
境学院



Federal and State Climate Litigation Case Studies in the US Presentation to National Judges College

美国联邦及州气候诉讼案研究
致国家法官学院

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Overview of Presentation 演讲概观

- 1) Meet Vermont Law School 了解佛蒙特法学院
- 2) The US Climate Challenge 美国气候挑战
- 3) A Federal Climate Litigation Case (Juliana) 一个联邦气候诉讼案 (Juliana)
- 4) A State Climate Litigation Case (Kain) 一个州气候诉讼案 (Kain)
- 5) Conclusions 结论



VERMONT LAW SCHOOL





HARVEY 飓风2017



IRMA飓风



MARIA 飓风



SANDY 2012 飓风

北达科他州、南
达科他州及蒙
娜旱灾 (2017年
春秋)

U.S. 2017 Billion-Dollar Weather and Climate Disasters



2017年损失十亿美元的气象灾害



This map denotes the approximate location for each of the 16 billion-dollar weather and climate disasters that impacted the United States during 2017.

2017年是美国有史以来灾害损失最大的一年
2017 Was the Costliest Year on Record for US Disasters

玛利飓风9月19-21

2017年气候变化诉讼类型的分布



Figure 1: Cases were assigned to a single category. Blue indicates "pro" cases in favor of climate-related protections and orange indicates "con" cases opposing climate-related protections. See Part 4 for further description of the cases assigned to each category.

图1：不同案件被归到特定类型里。蓝色代表“支持”气候变化有关的保护措施的案件，而橘色代表“反对”气候变化有关的保护措施的案件。欲知每个类型的具体案件的进一步描述，请参见第4部分



JULIANA V UNITED STATES

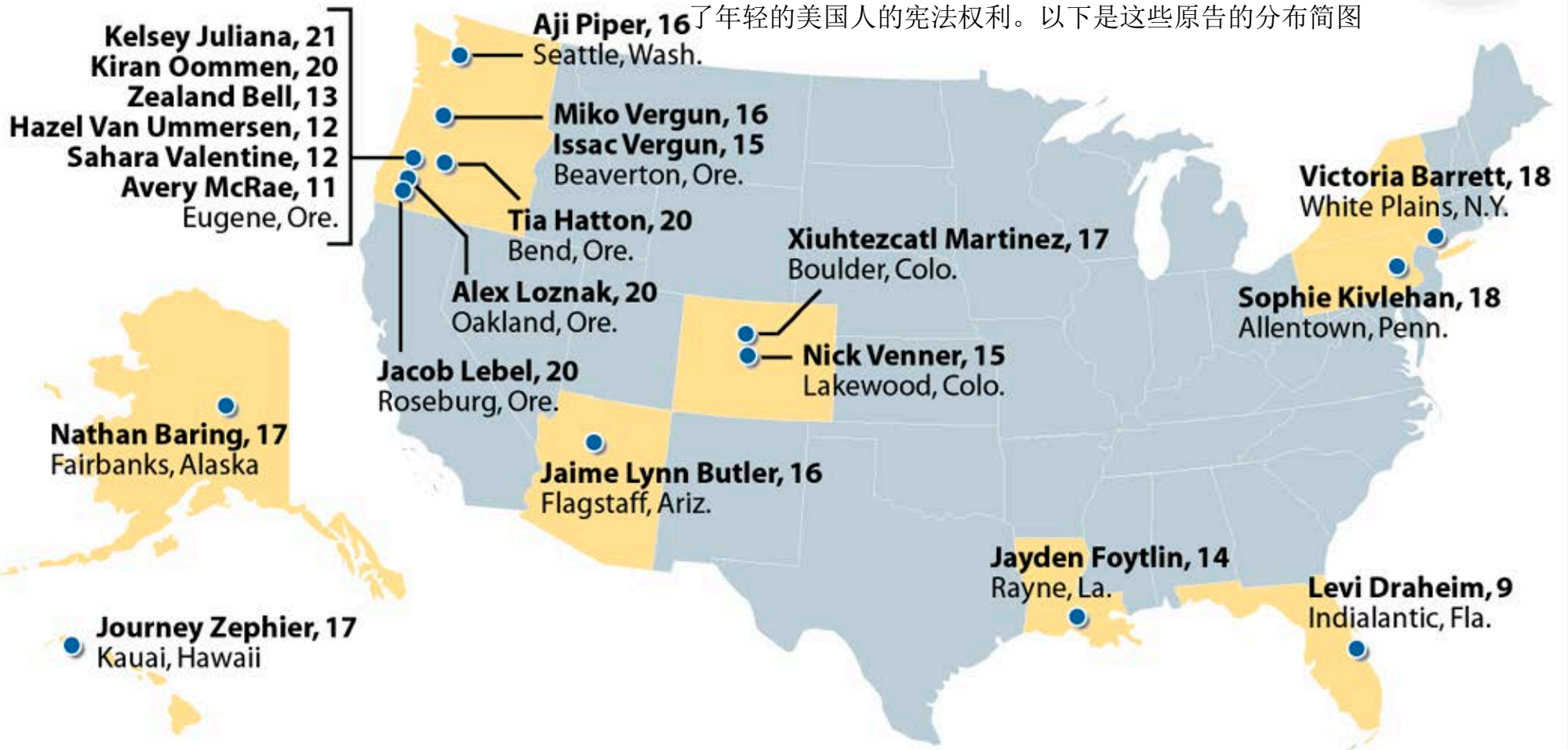


The young plaintiffs [assert](#) that the U.S. Government is depriving their constitutional rights to life, liberty and property by creating a national energy system based on climate-changing fossil fuels. They are asking the federal government to implement a science-based plan to curb climate change. 年轻的原告们宣称，美国政府通过会改变气候的化石燃料为基础的能源系统，正在剥夺他们在民生、自由和财产上的宪法权利。他们要求联邦政府实施科学为日寄出的计划来应对气候变化问题。

Meet the Young Plaintiffs 来认识一下这些年轻的原告们吧！

A group of children filed suit in 2015, arguing that the federal government's failure to address climate change violates the constitutional rights of young Americans. Here's a snapshot of the plaintiffs.

一群孩子在2015年提出诉讼，认为联邦政府未能解决气候变化问题，违反了年轻的美国人的宪法权利。以下是这些原告的分布简图





我们的儿童信托

The right to a climate system capable of sustaining human life is a fundamental right protected by substantive due process. 拥有一个能维持人类生活的气候系统的权利是受实质性正当程序保护的基本权利

Federal courts too often have been cautious and overly deferential in the arena of environmental law and the world has suffered because of it. Exercising my reasoned judgment, I have no doubt that the right to a 'climate system capable of sustaining human life' is fundamental to a free and ordered society. 在环境法领域，联邦法庭也经常显得谨小慎微。在我作出这个有理有据的判断之前，我毫不怀疑“拥有一个能维持人类生活的气候系统的权利”是一个自由有序的社会根基。

LEGAL ISSUES 法律问题

STANDING 出庭资格/陈述权

Cognizable Injury to Plaintiff's "Particularized" Interest对原告"具体"利益有明显伤害

Fairly Traceable to Defendant's Conduct 可以相当清楚地看到被告的关联行为

Redressable by the Relief Sought 通过法律救济可以解决

POLITICAL QUESTION 政治问题

***Baker v Carr* (1962):** federal courts should not hear cases which deal directly with issues that the Constitution makes the sole responsibility of the Executive Branch and/or the Legislative Branch. 联邦法庭不应受理宪法规定的属于执行部门或者立法部门直属的案件。

CONSTITUTIONAL RIGHT TO A "SAFE CLIMATE ."关于"安全气候"的宪法权利

Fifth Amendment (substantive due process)第五次修订（实体性正当程序）

Equal Protection 平等保护

PUBLIC TRUST DOCTRINE 公众信托教义

The Atmosphere 大气

The Oceans 海洋

State of Massachusetts Global Warming Solutions Act 《马塞诸塞全球变暖解决措施法案》

- § 3(d): “The department shall promulgate regulations establishing a desired level of declining annual aggregate emissions limits for sources or categories of sources that emit greenhouse gas emissions.”
- 该部门应颁布法规，设定降低使气候变暖的來源的年度总排放限值目标，或者减少排放温室气体的来源种类。

Global Warming Solutions Act

全球变暖的解决措施法案

- **Massachusetts Global Warming Solutions Act 2008 (M.G.L. c. 21N) 《马塞诸塞2008年全球变暖解决措施法案》 MA Department of Environmental Protection failed to promulgate implementing regulations required by statute 马塞诸塞环保局未能颁发法律规定的执行法规。**
- **Conservation Law Foundation, MA Energy Consumer Alliance and four teenage plaintiffs.**
- 保护法基金会、马塞诸塞能源消费联盟及四个青少年原告

GWSA Judicial History

GWSA 司法历史

- **Lost in Superior Court** 在高等法院败诉
- **Supreme Judicial Court granted direct review** 最高法院直接审查
- **SJC ruled unanimously in favor of plaintiffs** 最高法院法官作出有利于原告的一致决定
 - *Kain v. Department of Environmental Protection, 474 Mass. 278 (2016)*
 - *Kain V. 环境保护部门, 马塞诸塞278, 474号 (2016)*

GWSA SJC Decision 最高法院决定

- Justice Robert Cordy wrote “unambiguous language of [the law] requires the department to promulgate regulations that establish volumetric limits on multiple greenhouse gas emission sources, expressed in carbon dioxide equivalents, and that such limits must decline on an annual basis.”
- **Robert Cordy**法官写道：“法律明确要求该部门颁布法规，确立各种温室气体排放源头等同于二氧化碳的的排放限值，并且这类限值必须逐年递减。”
- **Jenny Rushlow**, CLF’s Lead Attorney (now Associate Dean for Environmental Programs at Vermont Law School) added “our highest court declared clearly and unequivocally that our leaders can no longer sit on their hands while Massachusetts communities are put at risk from the effects of climate change.”
- **Jenny Rushlow**, CLF的头牌律师（现为佛蒙特法学院环境项目的副院长）补充道，“我们的最高法院说得一清二楚，我们的领导不可以在马塞诸塞社区遭受气候变化影响带来的危机面前无所作为。”
- **The MA Department of Environmental Protection over which sources to regulate but not whether to regulate.** 马塞诸塞环保部门要确立的是要对哪些源头进行管制，而不是是否要管制。

State Leadership - Massachusetts 州领头羊-马塞诸塞

- Transmission for Canadian Hydro - New England Clean Energy Connect transmission project would deliver up to 1,200 MW of Canadian hydropower to the New England grid via a 145-mile transmission line. The partners estimate the project to cost \$950 million.
- 加拿大水电输送---新英格兰清洁能源联网（NECEC）输送工程将通过一个145英里长的输电线输送高达120亿（12billion)瓦的加拿大水电至新英格兰电网。合作伙伴估计该工程将耗资95亿美元。
- Offshore Wind - Avangrid Inc. and Copenhagen Infrastructure Partners jointly won a Massachusetts auction to build an 800-megawatt wind farm south of Martha’s Vineyard and a transmission line to bring the power to shore. Overall 3,300 MW state goal.
- 沿海风力--Avangrid公司和哥本哈根基础设施合作伙伴共同拿下了马塞诸塞的一次竞拍，在马大葡萄园的南部建立一个800兆瓦特的风力农场，和将电力输送到岸上的电线。全州的总体目标是330亿瓦。
- Energy Storage Target - State established an energy storage target of 1,000 MWh by Dec. 31, 2025, the legislation authorizes state agency to implement a range of policies to achieve the 1,000 MWh target and to “encourage the cost-effective deployment of energy storage systems.”
- 能源储备目标---该州设立了一个能源储备目标，即到2025年12月31日之前达到100亿瓦，立法机构授权州机构执行一系列政策来实现该目标，并“大力推广使用低成本的能源储备系统“

In Conclusion 结论

- ✓ **Litigation will not save the planet** 诉讼不能挽救地球
- ✓ **Courts are not the best place to make climate policy** 法院不是做出最佳其后政策的地方
- ✓ **But the courts do have a role in enforcing the rule of law and adjudicating liability for climate damages** 但是法院确实在实施法律规定及裁定气候破坏责任上发挥着作用。
- ✓ **The solutions to the climate crisis are hidden in plain sight** 眼前还看不清气候危机的解决措施
- ✓ **We are faced with an insurmountable opportunity.** 我们正面临一个不可估量的机会