

**Undermining Judicial Independence: How Climate Plaintiff-Driven Interests Improperly
Influence Federal Judges**

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EXECUTIVE SUMMARY

The defining feature of the American judicial system—from local municipal courts to the Supreme Court of the United States—is that every litigant receives a fair hearing. Judges are human, and Thomas Jefferson was candid about their limitations, writing that they share “the same passions for party, for power, and the privilege of their corps” as any man.¹ Yet Jefferson also understood that the integrity of the law depends less on how it is written than on how it is applied, insisting that “the execution of laws is more important than the making of them.”² Throughout our Nation's history, most judges have risen to meet that standard.

Increasingly, many judges are not truly independent. The judiciary faces a coordinated assault by special interests who have weaponized the legal system to advance their policy goals on climate change. Climate “lawfare” does not end with filing suits against energy companies. It extends to shaping what judges think about climate science, climate event attribution, causation and damages—*before* those disputed questions are ever tested through the adversarial process.

This report examines how two institutions—the Federal Judicial Center (“FJC”) and the Environmental Law Institute’s Climate Judiciary Project (“CJP”)—have exploited their access and institutional credibility to predispose judges toward pro-plaintiff positions in climate litigation. Through coordinated educational programs, slanted reference materials, and a network of ideologically aligned academics, these organizations have worked to tilt the scales of justice before cases ever reach the courtroom. This practice is exemplified in the biased scholarship contained in the “Reference Guide on Climate Science” (“Climate Chapter”) contained in the FJC’s and National Academies of Sciences, Engineering, and Medicine 2025 Reference Manual on Scientific Evidence.

In short, climate plaintiffs and their allies have been “working the referee”—undermining the neutral gatekeeping role judges are required to perform under Article III of the Constitution, Federal Rule of Evidence 702,³ and the leading Supreme Court precedent governing how judges assess expert testimony, *Daubert v. Merrell Dow Pharmaceuticals*.⁴

Our findings include:

- **Guidance for Federal Judges for Evaluating Expert Opinions on Climate Change** – The 2025 FJC Climate Chapter, published as part of a joint publication of the Federal Judicial Center and National Academies of Science, Engineering, and Medicine’s *Reference Manual on Scientific Evidence*—the standard guide used by federal judges to evaluate expert testimony—did not merely summarize background science. As a quasi-authoritative publication, it all-but directs courts to evaluate expert opinions by whether

¹ Thomas Jefferson, Letter to William Charles Jarvis (Sept. 28, 1820), in *16 The Papers of Thomas Jefferson, Retirement Series, 1 June 1820 to 28 February 1821* 287–89 (J. Jefferson Looney et al. eds., 2019), <https://founders.archives.gov/documents/Jefferson/03-16-02-0234>

² Thomas Jefferson, Letter to William Charles Jarvis (Sept. 28, 1820), in *The Papers of Thomas Jefferson: Retirement Series* (J. Jefferson Looney et al. eds.), excerpted in *Jefferson Quotes & Family Letters*, <https://tjrs.monticello.org/letter/1693>

³ *Peretz v. United States*, 501 U.S. 923, 929 n.6 (1991) (internal citations omitted).

⁴ *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

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they were accepted by the United Nations' Intergovernmental Panel on Climate Change ("IPCC") and similar bodies, effectively giving climate plaintiffs a government-branded roadmap for satisfying *Daubert* on disputed issues before any adversarial testing.

- **Nearly a Quarter of the FJC Climate Science Chapter Literally Copied and Pasted from a 2020 Paper by Sher Edling attorney and Columbia Law Professor Michael Burger** – The Michael Burger overlap is the clearest case of plaintiff-side advocacy being laundered into judicial guidance. Burger, a Columbia Law professor and lead author of the 2020 paper *The Law and Science of Climate Change Attribution*,⁵ which was produced in connection with climate plaintiff litigation strategy. An originality analysis of the FJC Climate Chapter using iThenticate, a research integrity service, shows a 33% overall similarity index with other public sources; the Burger 2020 paper alone accounts for a 23% identical match in the FJC climate science chapter—indicating substantial copy-and-paste reuse of plaintiff-aligned scholarship inside a reference guide for federal judges.
- **Lack of Public Disclosure of Michael Burger's Sher Edling Employment** – Burger is not a neutral academic reviewer. Beyond his academic work, Burger currently serves as Of Counsel with Sher Edling, the law firm that has coordinated and filed most of climate liability suits currently in active litigation on behalf of states, counties, and municipalities across the country. Burger's name is on the complaints by climate plaintiffs specifically in Honolulu, Delaware, and New York City in active litigation against energy companies—the same category of defendants whose fate would be shaped by the judicial guidance his work informed. Yet neither the FJC nor the National Academies of Science disclosed that a lawyer actively litigating against energy defendants had materially shaped the guidance being issued to the federal judges before whom those cases would appear.
- **Significantly Underselling Burger's Role in the Climate Science Chapter** – The chapter's own acknowledgments understate Burger's role, crediting him only with providing "insights and helpful feedback," language suggesting peripheral peer review rather than substantive authorship. The scale of the textual overlap tells a different story: Burger's work appears to have supplied a significant portion of the chapter's substance, not marginal input.
- **Jessica Wentz and Radley Horton's Biased, Pro-Plaintiff Agenda** – The chapter's listed authors—Jessica Wentz and Radley Horton—are not disinterested scientists. Wentz, a climate law scholar at Columbia, contributed to curriculum development for the Climate Judiciary Project and had publicly advocated for rapid fossil-fuel phaseout. Horton, a climate scientist at Columbia's Lamont-Doherty Earth Observatory, participated in CJP judge training programs while publicly calling for sweeping emissions reductions. Both authors, in other words, have institutional ties to an

⁵ Michael Burger, Jessica A. Wentz & Radley Horton, *The Law and Science of Climate Change Attribution*, 45 Colum. J. Envtl. L. 57 (2020),

https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1057&context=sabin_climate_change

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organization whose explicit mission is to train judges in climate cases, and have staked out public positions aligned with the litigation goals of climate plaintiffs.

- **Misleading the Public on Climate Attribution** – The chapter treated contested climate attribution science as settled. Climate attribution—the methodology used to link specific emissions sources to specific harms, and therefore central to establishing causation and damages in climate liability suits—remains a subject of genuine scientific debate. Rather than presenting that debate, the chapter endorsed contested attribution methodologies as established fact, deferred to plaintiff-favored “authoritative bodies” such as the IPCC, and omitted serious contrary scientific views. Resolving those disputes is precisely what the adversarial process exists to do.
- **Substantial Overlap with the Federal Judicial Center and the Climate Judiciary Project’s Agenda** – The campaign extended beyond the manual itself. The Climate Judiciary Project, a program of the Environmental Law Institute, runs seminars and training programs specifically designed to educate judges on climate science and law. This report identifies substantial overlap between FJC chapter contributors and CJP judge-training faculty, finds evidence that CJP funds were used to pay judges’ travel expenses to at least one climate seminar, and flags a conflict of interest involving a member of the FJC Foundation’s board whose law firm represented the State of California in active climate litigation against energy companies.
- **Congress Investigates Climate Judiciary Project for Improper Conduct** – Congress treated the conduct as serious enough to warrant formal investigation. The House Judiciary Committee examined whether CJP’s judge training programs were designed to influence judicial decision-making in active climate cases rather than provide neutral scientific background. Lawmakers highlighted CJP’s own claim to have trained more than 2,000 judges—while refusing to disclose their identities or the content of those sessions. The committee subsequently expanded its inquiry to encompass the FJC and related entities, signaling concern that the problem reached into a federally funded institution.
- **State Attorneys General Independently Reached the Same Conclusion** – In formal communications to the Federal Judicial Center, a coalition of Attorneys General argued that the Climate Chapter did not function as neutral background material. Instead, it placed the judiciary on one side of active legal disputes, offered unsolicited views on questions of climate science and attribution that are directly at issue in pending litigation, and effectively communicated ex parte with judges on contested merits questions. Such intervention, they warned, undermines the adversarial process that is designed to test disputed claims through briefing, expert testimony, and cross examination.
- **Members of the Senate Judiciary Committee Are Conducting Oversight of FJC:** On April 13, 2026, four subcommittee Chairs of the Senate Judiciary Committee—Senators Ted Cruz, Eric Schmitt, Mike Lee, and Marsha Blackburn wrote to FJC highlighting how the climate science chapter of the 2025 Reference Manual undermines judicial independence and requesting information about the drafting and review process of the

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chapter.

- **FJC’s Stated Removal of the Chapter did not Resolve the Underlying Problem –** After mounting criticism, the Federal Judicial Center notified the West Virginia Attorney General that the FJC will withdraw the Climate Chapter from its version of the *Reference Manual on Scientific Evidence*. But the chapter did not disappear from circulation. It remains available through the National Academies of Sciences edition of the manual, which co-publishes the volume. Judges encountering that version would have no reason to know the chapter had been withdrawn, as it continued to appear with the implied authority of a federally affiliated reference guide and remained capable of shaping judicial understanding of contested issues in the very manner critics had warned about.
- **Congress Should Consider Defunding the Federal Judicial Center and National Academies of Science, Engineering, and Medicine –** Your tax dollars are being used to fund biased, quasi-scientific propaganda documents that are aimed to improperly influence judges that hear high-profile climate cases. The FJC—which is housed in the federal judiciary—has received between \$34 and \$35 million per year in federal tax dollars since 2023. The National Academies relies heavily—between 58 and 70 percent of its budget according to reports—on federal taxpayer funds in a given year. Given the outrageous bias displayed in the Climate Chapter of the 2025 Reference Manual, Congress should defund these entities and return the hard work of judicial decision making back to judges where they belong.

This report finds that the problem is not simply biased scholarship. It reflects a coordinated form of lawfare designed to shape judicial decision-making before the parties are heard.

Fortunately, some lawmakers and officials have woken up to the threat these institutions present to judicial independence, the economy, and the rule of law. Legal observers are rightfully sounding the alarm on how the climate network’s sophisticated and successful operations have advanced their controversial interests. But more needs to be done before it is too late. The situation warrants continued investigation, full disclosure of who writes and funds judicial training materials, withdrawal of advocacy-based reference guides, and structural reform that includes funding consequences when taxpayer supported institutions are used to advance one side of contested litigation.

INTRODUCTION

The independence of the American judiciary is under assault. The vanguard of the assault is led in-part by extreme organizations that use the courts to pursue their climate agendas. Two institutions in particular embody this significant threat to judicial independence.

The first is the Federal Judicial Center (“FJC”).⁶ The FJC is a *government* agency that markets itself as “the research and education agency of the judicial branch of the U.S.

⁶ Federal Judicial Center, <https://www.fjc.gov/> (last visited Mar. 18, 2026).

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government.”⁷ But in reality, The FJC has become a taxpayer funded, left-wing captured, judicial think tank that frames analysis in favor of climate activists in a way that could affect high stakes litigation in favor of climate plaintiffs. Congress should, at a minimum, mandate significant reforms to how FJC operates using congressionally appropriated funds. It should also consider defunding FJC altogether.

The second is the Environmental Law Institute’s Climate Judiciary Project (“CJP”).⁸ CJP’s website notes that as the body of climate litigation expands, “judges must consider complex scientific and legal questions.”⁹ To meet that end, CJP developed and disseminated a “climate science and law curriculum” and conducts “seminars and education programs” for judges and lawyers.¹⁰ While the website claims that the goal of the project is to “provide neutral, objective information to the judiciary about the science of climate change” that is “relevant to current and future litigation” this report will discuss how the CJP has acted as another pro-climate plaintiff advocacy group whose so-called “educational” work undermines judicial independence.¹¹

Contributors to the FJC also work closely with CJP to put on training seminars for judges and other work to advance the pro-climate-plaintiff litigant perspective. These people are left-wing academics who use their prestigious academic perches to advocate for a radical climate agenda. Their academic positions give them credentialed authority on the issue of climate litigation to allow them to train judges and influence legal decision-making through extra-judicial means.

Climate cases often turn on which side’s asserted facts win the day. These questions frequently turn on evaluating competing expert testimony. Together, the FJC and CJP wield significant influence over judges hearing climate-related cases. Their influence underscores how sophisticated climate plaintiffs have essentially hijacked the judiciary to put the thumb on the scales of justice in climate cases before they ever enter the court room. They do so by teaching judges that positions almost always held by climate litigation plaintiffs are settled scientific “fact” when judges and juries are the ones supposed to be the ones who weigh competing evidence and expertise from the litigants themselves in each individual case to make factual and credibility determinations.

By, to borrow a sports analogy, “working the referee” before walking into court, climate plaintiffs have a significant advantage in their cases by having significant institutional and quasi-scientific support for their asserted factual positions. This practice undermines multiple Supreme Court precedents.

This report examines how the FJC and CJP have undermined judicial independence in favor of climate litigant plaintiffs. Luckily, conservatives have woken up to the threat these institutions present to judicial independence, the economy, and the rule of law. A congressional

⁷ *Id.*

⁸ *Climate Judiciary Project*, Env’tl. L. Inst., <https://www.eli.org/climate-judiciary-project> (last visited Mar. 18, 2026).

⁹ *Id.*

¹⁰ *Recent Projects*, Env’tl. L. Inst., <https://www.eli.org/judicial-education/recent-projects> (last visited Mar. 18, 2026)

¹¹ *Climate Judiciary Project*, *supra* note 8.

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committee is investigating these practices and States Attorneys General have protested the ongoing assault on judicial independence and the rule of law. Legal observers are rightfully sounding alarm on how the climate network's sophisticated and successful operations have advanced their controversial interests. But more needs to be done before it is too late.

I. The FJC and CJP Undermine the Roles Judges and Juries Play as “Gatekeepers” For Screening Expert Scientific Testimony

Federal courts have jurisdiction to hear “cases” and “controversies.”¹² “Article III, § 1 [of the U.S. Constitution] guarantee[s] ... an independent and impartial adjudication by the federal judiciary of matters within the judicial power of the United States.”¹³ These constitutional provisions outlining the basic limits of judicial power means that the court system exists to resolve disputes between two adversarial parties. As Justice Scalia explained, the adversarial nature of American judicial proceedings “is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief.”¹⁴

Within the adversarial framework of the U.S. court system, judges and juries are the entities responsible for determining the facts in a given case. Trial courts, not appellate courts, serve as the fact finders in judicial proceedings.¹⁵ Under civil procedure rules and case law, the *parties* are almost entirely responsible for producing evidence for the court to weigh and assess.¹⁶ “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.”¹⁷

The work of FJC and CJP undermines the traditional role that courts and juries play in determining facts and making credibility determinations in climate litigation. The Supreme Court has spoken specifically on how courts should assess expert scientific testimony. These types of cases include climate litigation and often turn on the assessments of the credibility of competing experts. We will review the current legal standard for assessing expert scientific testimony and then explain how FJC and CJP undermine these core principles of judicial independence.

A. Supreme Court Precedents Make Clear that Judges Serve as Gatekeepers in Determining What Juries Hear From Expert Witnesses

The leading cases that establish the rules for how judges and juries assess the credibility of expert scientific witnesses is *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and its progeny. In *Daubert*, the Supreme Court explained that the standard for admitting

¹² U.S. Const. art. III, § 2.

¹³ *Peretz v. United States*, 501 U.S. 923, 929 n.6 (1991) (internal citations omitted).

¹⁴ *Castro v. United States*, 540 U.S. 375, 386 (2003) (Scalia, J., concurring).

¹⁵ *DeMarco v. United States*, 415 U.S. 449, 450 (1974), *see also Pullman-Standard v. Swint*, 456 U.S. 273, 291 (1982).

¹⁶ *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986) (“One of the principle purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims and defenses. . .”).

¹⁷ *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)).

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expert scientific testimony in a federal trial is governed by the Federal Rules of Evidence. The current version of Federal Rule of Evidence 702 governs testimony by expert witnesses. It states:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.¹⁸

In performing its analysis of how Rule 702 applies to scientific expert witnesses, the Court explained that trial judges act as gatekeepers for admissible scientific evidence and “must ensure that any and all scientific testimony or evidence is not only relevant, but reliable.”¹⁹

While discussing the reliability requirement for the admission of scientific expert testimony, the Court offered insights on key phrases contained in Rule 702. The Court focused on the provision of the rule discussing “scientific . . . knowledge” explaining that the word “‘scientific’ implies a grounding in the methods and procedures of science” and the word “‘knowledge’ connotes more than a subjective belief or unsupported speculation.”²⁰ The Court wisely noted that “it would be unreasonable to conclude that the subject of scientific testimony must be ‘known’ to a certainty; arguably *there are no certainties in science*.”²¹ It explained further that in order to qualify as scientific knowledge under Rule 702, “an inference or assertion must be derived by the scientific method” and proposed testimony “must be supported by appropriate validation. . . based on what is known”²²

The Court's relevance analysis is more straightforward. The text of the Rule admits evidence or testimony that “assist[s] the trier of fact to understand the evidence or to determine a fact in issue.”²³ The Court explained that “expert testimony which does not relate to any issue in the case is not relevant” and that information is relevant if it has a “valid scientific connection to the pertinent inquiry.”²⁴

So how does this standard work in practice? The *Daubert* Court expressly stated that it was “*confident that federal judges possess the capacity*” to assess “whether the expert is

¹⁸ Fed. R. Evid. 702.

¹⁹ *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 590 (1993).

²⁰ *Id.*

²¹ *Id.* (emphasis added).

²² *Id.*

²³ Fed. R. Evid. 702.

²⁴ *Daubert*, 509 U.S. at 591-92.

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proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue.”²⁵ The task for trial court judges includes performing an “assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue.”²⁶

The Court declined to set out a “definitive checklist or test” for how this assessment was to occur, but noted multiple factors that judges could consider.²⁷ These factors include whether the theory or technique that is the subject of the testimony could be tested, whether the theory or technique has been peer reviewed and published, what the known or potential error rate of a particular scientific technique, whether there is a system of controlling the technique’s operation, and whether the theory or technique is generally accepted.²⁸

The Court concluded by emphasizing that the standard is a “flexible one” and that the “focus” of the judge’s assessment “must be solely on the principles and methodology [of the theory or technique that is the subject of the testimony], not on the conclusions that they generate.”²⁹

Daubert makes clear that judges are the ones that decide the credibility of scientific expert testimony that is presented to a jury in a given case. It reaffirms the adversary nature of judicial proceedings by rightfully placing the judge as the neutral gatekeeper that adjudicates factual disputes between two parties on the opposite side of the coin. That is why the Supreme Court has extended *Daubert*’s core principles of judicial gatekeeping in two later cases.³⁰

B. The Climate Science Chapter of the FJC’s Reference Manual on Scientific Evidence is Left-Wing Climate Propaganda

In December 2025, FJC published the fourth addition of its Reference Manual on Scientific Evidence (“Reference Manual”).³¹ The Reference Manual is a joint publication between FJC and the National Academies of Science, Engineering, and Medicine (“National

²⁵ *Id.* at 592.

²⁶ *Id.* at 592-93.

²⁷ *Id.* at 593.

²⁸ *Id.* at 592-94.

²⁹ *Id.* at 594-95.

³⁰ See, *General Electric Co. v. Joiner*, 522 U.S. 136 (1997) (holding that the abuse of discretion standard governs appellate review of district court rulings on expert scientific evidence); *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999) (expanding the *Daubert* standard for reviewing all expert testimony, not just scientific expert testimony).

³¹ *Reference Manual on Scientific Evidence* (4th ed. 2025), Fed. Jud. Ctr. & Nat’l Acad. Scis., Eng’g, & Med., https://www.fjc.gov/sites/default/files/materials/15/Reference%20Manual_02052026.pdf (hereinafter “FJC Reference Manual”).

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Academies”).³² Versions of the Reference Manual are published on both the FJC and National Academies’ websites.³³

Supreme Court Justice Elana Kagan wrote the foreword of the Reference Manual. She explains that we “live in an era of science and technology, with legal controversies reflecting that fact” and that “in the coming years, judges will confront lawsuits relating, for example, to artificial intelligence, climate science, and epidemiology.”³⁴ Justice Kagan notes that judges are typically “generalists” and “often lack extensive background in the sciences.”³⁵ She writes further, that while judges can “learn, as they do on many subjects, through the adversary process, applying their critical faculties to the claim of the parties” it “also helps to have a dispassionate guide.”³⁶

She praises the Reference Manual as “the product of close collaboration among highly respected scientists, engineers, judges, and lawyers” that “delves into the scientific subjects that judges most often face.”³⁷ Justice Kagan concludes that that the “instruction that the manual offers in scientific principles and methods can improve the quality of judicial decision making” and that “the law will become stronger as it further reflects sound science.”³⁸

Justice Kagan is no doubt correct in the general point that judicial rulings will be stronger as they reflect “sound science.” But what if the Reference Manual adopts one side of a hotly debated scientific dispute, and is written by individuals with clear conflicts of interest and biases? Legal expert Michael Fragoso correctly laid these concerns out in an op-ed in *National Review*, writing:

“Nowhere in the adversary system is there room for an authoritative-seeming Reference Manual (fourth edition) on scientific facts, assembled by committee and intended for, essentially, *in camera* use with no opportunity for rebuttal. Unlike an actual legal treatise, which is understood to be a legal expert’s considered *argument* about what the *law says*, this purports to be a reference manual—the sort of thing in years past where you could call a librarian and she

³² *Id.*

³³ *Id.*, see also *Nat’l Acads. of Scis., Eng’g, & Med. & Fed. Jud. Ctr., Reference Manual on Scientific Evidence (4th ed. 2025)*, <https://www.nationalacademies.org/publications/26919> (hereinafter “National Academies Reference Manual”).

³⁴ FJC Reference Manual, *supra* note 31 at xiii.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

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would use it to give you factual answers.”³⁹

Mr. Fragoso’s concerns are especially profound with respect to climate science provisions of the Reference Manual.

The 2025 Reference Manual contains a chapter entitled “Reference Guide on Climate Science” (“Climate Chapter”).⁴⁰ It is nothing short of left-wing climate propaganda. In the introduction, the Climate Chapter cites favorably from the United Nations’ Intergovernmental Panel on Climate Change (“IPCC”) that “[i]t is unequivocal that human influence has warmed the atmosphere, ocean and land’ and this has caused ‘[w]idespread changes in the atmosphere, ocean, cryosphere, and biosphere.’”⁴¹ It further states, citing the UN, “the global warming attributable to human activities is unprecedented in the last 2,000 years and ‘is already affecting every inhabited region across the globe, with human influence contributing to many observed changes in weather and climate extremes.’”⁴²

On the topic of expert testimony, the Reference Manual notes the “important role” expert witness play in “communicating and interpreting scientific evidence in climate litigation.”⁴³ It further explains that experts can fulfilling this role “may involve simply summarizing IPCC and other authoritative bodies and explaining the relevance of those findings to a particular case.”⁴⁴ If the witness needs to offer more specificity in their testimony, they “draw inferences about the effects of climate change in the absence of a targeted study on those effects.”⁴⁵

On the issue of whether expert testimony would pass the *Daubert* test, the Reference Manual says that “courts may consider factors such as: (1) whether the testimony is based on principles, methodologies, or findings that been accepted as credible by the IPCC and other scientific institutions;” (2) whether the methods and findings have been peer reviewed; and (3) whether the research is accompanied by information about confidence levels and error rates.”⁴⁶

The Climate Chapter of the Reference Manual helps climate plaintiffs pre-meet the *Daubert* standard for expert climate testimony because it is a document published by an institution housed in the federal judiciary that, on its face, deems whatever the United Nations says about climate change to be credible. Or, as Mr. Fragoso explains, “‘climate science’ is

³⁹ Michael A. Fragoso, Why Is Congress Funding the Judiciary’s Support for Climate Plaintiffs?, NAT’L REV., Jan. 15, 2026, available at <https://www.nationalreview.com/bench-memos/why-is-congress-funding-the-judiciarys-support-for-climate-plaintiffs/> (hereinafter “Fragoso Op-Ed”).

⁴⁰ National Academies Reference Manual, *supra* note 33.

⁴¹ *Id.* at 1565.

⁴² *Id.* at 1566.

⁴³ *Id.* at 1585.

⁴⁴ *Id.*

⁴⁵ *Id.* at 1586.

⁴⁶ *Id.* at 1586-87

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precisely what the plaintiffs in climate litigation say it is. It means that—according to the FJC—plaintiffs win and defendants lose”⁴⁷

C. FJC and CJP Share Key Staff that Wield Significant Influence Over Judicial Decision-making in Climate Litigation

The CJP’s fingerprints are all over the FJC’s Climate Chapter of the Reference Manual. In a February 2, 2026, letter to the House and Senate Judiciary Committees, 22 state Attorneys General (“AGs”) identified significant links between CJP and the authors and contributors to the FJC’s Climate Chapter.⁴⁸ They argue that through these links, the Climate Chapter is “a highly biased, agenda-driven view favoring radical interests pursuing lawsuits against producers and users of traditional forms of fossil fuel energy.”⁴⁹

The Climate Chapter lists Jessica Wentz and Radley Horton as its two authors.⁵⁰ The AGs explain that Wentz is a “climate change advocate” who works at Columbia Law School’s Sabin Center for Climate Change Law and at CJP where she authored a curriculum on “Government Action in Climate Science.”⁵¹ The AGs point out that Wentz authored an *amicus brief* opposing oil drilling in Alaska that argued, “the world needs to phase out fossil fuels as rapidly as possible in order to avert potentially catastrophic levels of global warming and climate change.”⁵²

The AGs note that Horton, a professor at Columbia University’s Climate School, “inappropriately trained judges on climate change at the Climate Judiciary Project’s first events.”⁵³ Horton has argued that “it is absolutely critical that there be a global effort to do everything we can do to dramatically draw down emissions.”⁵⁴

Michael Burger’s involvement, however, presents the most acute conflict of interest. In the acknowledgments for the Climate Chapter, Wentz and Horton thank Burger for his “insights and feedback” —language that suggests a peripheral reviewing role. The reality of his contribution appears to be far more substantial. The chapter repeatedly cites Burger’s article

⁴⁷ Fragoso Op-Ed, *supra* note 39.

⁴⁸ Letter from Mike Hilgers, Neb. Att’y Gen. et al to Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al, Feb. 2, 2026, https://ago.nebraska.gov/sites/default/files/doc/Letter_5.pdf (hereinafter “Nebraska AG Letter”).

⁴⁹ *Id.*

⁵⁰ National Academies Reference Manual, *supra* note 33 at 1563

⁵¹ Nebraska AG Letter, *supra* note 48.

⁵² See Doc. 101-1, Amicus Brief of the Sabin Center for Climate Change Law in Support of Plaintiffs, Sovereign Inupiat for a Living Arctic v. Bureau of Land Mgmt., No. 3:23-cv-00058-SLG (D. Alaska July 26, 2023), 2–3, <https://climate.law.columbia.edu/sites/climate.law.columbia.edu/files/content/Willow%20amicus%20brief%20-%20FILED.pdf>.

⁵³ Nebraska AG Letter, *supra* note 48.

⁵⁴ Radley Horton, Dangerous Climate Change Is Here and Worse to Come, Major Report Warns, THE REAL NEWS NETWORK (Nov. 28, 2017), <https://therealnews.com/rhorton1127climate>.

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“The Law & Science of Climate Change Attribution,”⁵⁵ and an independent originality analysis, using the research integrity service iThenticate, reveals that the Burger-led 2020 Columbia paper accounts for a 23% similarity match with the Climate Chapter, with an overall similarity index of 33%.⁵⁶

The following images are from the iThenticate report of the Climate Chapter. They reflect significant overlap between the Climate Chapter and the 2020 Burger paper. The sections highlighted red, appear verbatim in both the Climate Chapter and the 2020 Burger paper.

Image 1: Segment of Climate Chapter from iThenticate Report

85. IPCC AR6 WGI, *supra* note 6, at 196.

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also use a mechanistic approach to attribution, whereby they seek to examine how climate change has influenced one or more physical characteristics of an event or process.⁸⁵ Mechanistic studies can provide insights on, for example, the change in magnitude or severity of an extreme event that can be attributed to climate change.⁸⁶ In the rainfall example above, a mechanistic approach might look at the weather system that produced the heavy rain and describe how one part of climate change that we understand well—e.g., the warming of the atmosphere and its resulting increase in the amount of moisture the atmosphere can hold—contributed to the event. Mechanistic and probabilistic analyses can be combined in order to develop a more complete picture of whether and to what extent climate change is influencing various processes and events.⁸⁸

Researchers use both statistical techniques and climate models when detecting and attributing change. As an example of statistical techniques, scientists use linear regression methods⁸⁹ and variants such as “optimal fingerprinting” to determine whether a change in a climate variable is statistically significant or simply part of natural variability.⁹⁰ This analysis is part of the detection of climate change and corresponding impacts, but it can also be used to support attribution statements (e.g., a finding that the spatial pattern of warming in the atmosphere was likely caused by anthropogenic emissions because it is statistically unlikely that the spatial pattern would have occurred in the absence of anthropogenic forcing on the climate). This is sometimes referred to as observation-based attribution.⁹¹

86. See section titled “Projections of Future Climate Change” below for further discussion of the mechanistic approach and its role in extreme-event attribution (also referred to as the “storyline” approach to extreme-event attribution).

87. See, e.g., Michael Wehner & Christopher Samson, *Attributable Human-Induced Changes in the Magnitude of Flooding in the Houston, Texas Region During Hurricane Harvey*, 166 *Climatic Change* 19 (2021), <https://doi.org/10.1007/s10584-021-03114-z>. See also Luke J. Harrington et al., *Integrating Attribution with Adaptation for Unprecedented Future Heatwaves*, 172 *Climatic Change* 1 (2022), <https://doi.org/10.1007/s10584-022-03357-4> (discussing the differences and similarities between probabilistic and mechanistic approaches to extreme-event attribution).

88. For example, findings from both probabilistic and mechanistic studies are synthesized in IPCC assessments and other climate reports.

⁵⁵ See Nebraska AG Letter, *supra* note 48.

⁵⁶ A link containing the iThenticate report of the Climate Chapter can be found in this footnote. The provisions highlighted red are excerpts from the Climate Chapter that overlap with 2020 Burger-led paper. https://static.itsyourgov.org/Reference_Guide_on_Climate_Science.pdf

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Image 2: Segment from 2020 Burger Paper

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surface temperature, water vapor, precipitation, and sea ice; and aircraft measurements of cyclone wind speed. Observational data is primarily used in conjunction with statistical analysis to detect changes in the climate system, including changes in the frequency and severity of extreme events, and corresponding changes in natural and human systems—specifically, by comparing historical observational data sets with contemporary observations of a particular variable and determining whether there has been a statistically significant change in that variable. A statistically significant change would be detected in observations if the likelihood of occurrence by chance alone is determined to be small (e.g., less than 10%).³³

Statistical analysis refers to mathematical formulas, models, and techniques that are used in empirical analysis of data. Statistical analysis is used in both the detection and attribution of climate change. For attribution, statistical analysis is used to quantify the probability of an observed change occurring with and without anthropogenic forcing on the climate. For example, scientists use linear regression methods³⁴ and variants such as “optimal fingerprinting” to determine whether a change in a climate variable is statistically significant or simply part of natural variability.³⁵ This analysis is part of the detection of climate change and corresponding impacts, but it can also be used to support attribution statements (e.g., a finding that the spatial pattern of warming in the atmosphere was likely caused by anthropogenic emissions because it is statistically unlikely that the spatial pattern would have occurred in the absence of anthropogenic forcing on the climate). This is sometimes referred to as “observation-based” attribution.³⁶

In practice, there are very few studies that focus exclusively on observation-based statistical analysis for attribution due to short observation records and complex forcing changes over the

33. IPCC, CLIMATE CHANGE 2014: SYNTHESIS REPORT 121–22 (Rajendra K. Pachauri & Leo Meyer eds., 2014) [hereinafter IPCC AR5 SYR].

34. Linear regression is a statistical method used to summarize and study relationships between two continuous (quantitative) variables.

35. K. Hasselmann, *Optimal Fingerprints for the Detection of Time-Dependent Climate Change*, 6 J. CLIMATE 1957, 1957 (1993).

36. NAT'L ACAD. OF SCI., ENG'G, AND MED., ATTRIBUTION OF EXTREME WEATHER EVENTS IN THE CONTEXT OF CLIMATE CHANGE 51 (2016).

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Image 3: Segment of Climate Chapter from iThenticate Report

89. Linear regression is a statistical method used to summarize and study relationships between two continuous (quantitative) variables.

90. Optimal fingerprinting regresses observed climate variables on expected responses to, or signals of, specific forcings to determine whether and to what extent the signals are present in the observation. See Zhuo Wang et al., *Toward Optimal Fingerprinting in Detection and Attribution of Changes in Climate Extremes*, 116 J. Am. Stat. Ass'n 1 (2021), <https://doi.org/10.1080/01621459.2020.1730852>; K. Hasselmann, *Optimal Fingerprints for the Detection of Time-Dependent Climate Change*, 6 J. Climate 1957 (1993), [https://doi.org/10.1175/1520-0442\(1993\)006<1957:OFFTDO>2.0.CO;2](https://doi.org/10.1175/1520-0442(1993)006<1957:OFFTDO>2.0.CO;2).

91. Nat'l Acads. of Sci., Eng'g, & Med. (NASEM), *Attribution of Extreme Weather Events in the Context of Climate Change* (2016), <https://perma.cc/D56R-G9DJ>.

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However, in practice, most studies do not rely exclusively on observation-based statistical analysis for attribution because of short observation records and complex forcing changes over the historical period.⁸² Climate models are typically used for attribution because they allow scientists to separate out the effects of different forcings and processes on the observed variable. That said, observation-based attribution findings can serve as a useful supplement to model-based findings.⁸³

Attribution studies utilizing climate models generally involve at least two sets of simulations: one that reflects the actual world, and another that reflects a counterfactual world without anthropogenic climate change (or without some component of anthropogenic climate change). These model simulations are ideally run at least several times based on differing initial conditions and for long duration, allowing scientists to better differentiate the climate change signal from the noise of natural variability. Observational data and physical understanding provide the basis for calibrating and verifying models.

Several modeling centers have now developed standardized climate simulations designed for detection and attribution specifically, based on different parameters (e.g., researchers can evaluate the probability of an event or impact occurring both with and without certain observed changes in the climate, such as changes in sea surface temperature). Owing to advances in parallel computing and model simplifications, these can be run rapidly and at high spatial resolution, yielding quick results. Indeed, when the above packages are combined with forecasts of variables with high predictability, such as sea surface temperature, projected results can be made available *in advance* of actual events. Furthermore, the tools and outputs, and models themselves, are increasingly being made

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Image 4: Segment from 2020 Burger Paper

historical period.³⁷ Model approaches (below) are typically used because: (i) models allow scientists to separate out the effects of different forcings on the observed variable, and (ii) the observed record for many variables is too short to support reliable conclusions, especially given the large variability in the systems being analyzed. That said, observation-based attribution findings can serve as a useful supplement to model-based findings.³⁸

Models use quantitative methods, including predictive equations and statistical techniques, to simulate interactions within the climate system. Scientists can thus set up different model experiments to evaluate the effect of one or more climate drivers (like greenhouse gases, aerosols, and solar flux) on one or more variables. For the purposes of attribution, experiments with climate models generally involve at least two sets of simulations, differing only in that one is meant to reflect the world that is, and the other is meant to reflect a “counterfactual” world without anthropogenic climate change (or without some component of anthropogenic climate change). These model simulations are typically run multiple times and for long duration, allowing scientists to better understand the most likely outcomes, as well as a fuller range of potential outcomes. Observational data and physical understanding provide the basis for calibrating and verifying models.

Several modeling centers have now developed standardized climate simulations designed for detection and attribution specifically, based on different parameters (e.g., researchers can evaluate the probability of an event or impact occurring both with and without certain observed changes in the climate, such as changes in sea surface temperature). Due to advances in parallel computing and model simplifications, these can be run rapidly and at high spatial resolution, yielding quick results. Indeed, when the above packages are combined with forecasts of variables with high predictability, such as sea surface temperature, results can be made available *in advance* of actual events. Furthermore, the tools and outputs, and models themselves, are increasingly being made publicly available. This has furthered the proliferation of

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This level of overlap is not consistent with the acknowledgment of a reviewer who offered occasional comments. It is consistent with a contributor who supplied a significant portion of the chapter's analytical framework and content.

What makes this overlap so significant is who Burger is outside of academia. Burger is not a disinterested scholar. He is an active litigator on the plaintiff side of the very category of cases for which the Climate Chapter purports to offer neutral judicial guidance. He represents the City of Honolulu in its high-profile lawsuit against energy companies.⁵⁷ He represents Delaware⁵⁸ and New York City⁵⁹ in their lawsuit against energy producers. Burger's name is listed in each of these three complaints when they were initially filed and on the brief before the Supreme Court in the Honolulu case. Burger notably works at Sher Edling, the law firm that has positioned itself as the coordinating force behind the wave of municipal and state climate liability suits, described by observers as “leading most of the climate lawsuits pending in the United States.”⁶⁰

In each of these cases, Burger's clients seek to establish precisely the causal chain—between fossil fuel production, global warming, and localized harm—that the Climate Chapter presents as scientifically settled. The attribution methodologies the chapter endorses, the authoritative bodies it defers to, and the scientific conclusions it treats as background fact are not abstract questions of knowledge. They are the live merits issues on which Burger's clients depend to prevail in court. The chapter, in other words, does not merely cite Burger's scholarship. To the extent it incorporates that scholarship, it has imported the analytical conclusions of an active plaintiff-side litigator into a reference guide used by the federal judges before whom his cases may appear.

None of this is disclosed in the Climate Chapter. Burger's representation of Honolulu, Delaware, and New York City – among his involvement in other cases – appears nowhere in the chapter's acknowledgments, author notes, or citations. Former Attorney General William Barr noted the overlap between the Climate Chapter and the 2020 Burger piece and lack of disclosure

⁵⁷ *Compl., City & Cnty. of Honolulu v. Sunoco LP, et al.*, ICCV-20-0000380 (Hawai'i 1st Cir. Mar. 9, 2020), https://www.climatecasechart.com/documents/honolulu-sued-fossil-fuel-companies-in-state-court_550e; see also *Br. for Respondents City and County of Honolulu, and Honolulu Bd. of Water Supply, Sunoco LP v. City & Cnty. of Honolulu*, Nos. 23-947 & 23-952 (U.S. May 1, 2024), https://www.supremecourt.gov/DocketPDF/23/23-947/308817/20240501143151593_2024-05-01%20HNL%20Resp%20to%20Writ%20Petitions%204855-4880-3514%20v.1.pdf.

⁵⁸ *Complaint, State of Del. ex rel. Jennings v. BP Am. Inc.*, No. N20C-09-097 (Del. Super. Ct. Sept. 10, 2020), https://www.climatecasechart.com/documents/delaware-lawsuit-sought-damages-from-fossil-fuel-companies-for-climate-change-injuries_4d49?

⁵⁹ *Complaint, City of New York v. Exxon Mobil Corp.*, No. 451071/2021 (N.Y. Sup. Ct., N.Y. County filed Apr. 22, 2021) https://www.climatecasechart.com/documents/new-york-city-filed-consumer-protection-lawsuit-against-oil-and-gas-companies-and-trade-group_b225.

⁶⁰ Nebraska AG Letter, *supra* note 48.

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of the use of Burger's work in an editorial in the *Washington Post*.⁶¹ A judge reading the chapter would have no way of knowing that the scholar whose work substantially shaped its content is simultaneously litigating to establish the very propositions the chapter treats as settled science. That omission is not a technical oversight. It is the kind of nondisclosure that, in any other context involving judicial guidance materials, would be considered a serious breach of the standards governing impartiality and transparency.

The AGs further note that the authors also thanked Michael Gerrard for his "insights and feedback." According to the letter, Gerrard co-authored a book published by ELI titled, *Legal Pathways to Deep Decarbonization in the United States* which he hoped to finish "in time to present it to an incoming Hillary Clinton administration."⁶² After President Trump's 2016 victory, the AGs explain, Gerrard changed his focus to the judicial system as the vehicle to advance his climate agenda.⁶³

The *Wall Street Journal* has identified additional potential conflicts of interest among key contributors to the FJC and the Climate Chapter. It noted, "FJC Foundation board member and her firm, Leiff, Cabraser, Heimann & Berstein, represent California in a suit claiming energy companies have been lying about their role in climate change."⁶⁴ The *Journal* further reported that in 2020, the FJC Foundation's own website disclosed that "funds from the Environmental Law Institute paid the travel expenses for judges to attend a seminar on climate science."⁶⁵ The *Journal's* reporting confirms a direct financial link between ELI, the parent organization of CJP, and the provision of climate education to sitting judges. The Climate Chapter of a quasi-authoritative, ostensibly politically neutral Reference Manual, *published by a government entity housed within the federal judiciary*, "was reviewed by, and relies on, a plaintiffs' attorney in pending climate change cases."⁶⁶ The AGs point out that the Climate Chapter "presents as settled the very methodologies that plaintiffs rely on to impose liability on fossil-fuel defendants."⁶⁷ They add, that the Climate Chapter "presents this science as authoritative without acknowledging contrary views or disclosing the many conflicts of the authors, reviewers, and sources."⁶⁸ The authors are clearly biased actors who use their credentials and expertise to push their radical climate agenda on judges across the country.

⁶¹ William Barr, *Federal judges rely on this guide. It just took a sharp left turn*, Wash. Post, March 12, 2026, <https://www.washingtonpost.com/opinions/2026/03/12/bill-barr-judges-climate-manual-bias/>

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Wall St. Journ., *A Climate Manual Bait and Switch*, March 2, 2026, <https://www.wsj.com/opinion/climate-manual-federal-judicial-center-national-academy-of-sciences-john-mccuskey-0454b62f> (herein after "WSJ Op-Ed").

⁶⁵ *Id.*

⁶⁶ Nebraska AG Letter, *supra* note 48.

⁶⁷ *Id.*

⁶⁸ *Id.*

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II. The FJC and CJP's Influence Operation is the Subject of Multiple Inquiries by Federal Lawmakers and State Attorneys General

A. The House Judiciary Committee is Currently Investigating CJP and FJC

The House Judiciary Committee has been investigating the Environmental Law Institute for CJP's judge-influencing operation since August 2025.⁶⁹ On August 29, 2025, House Judiciary Committee Chairman Jim Jordan, Subcommittee on Courts, Intellectual Property, Artificial Intelligence and the Internet Chairman Darrell Issa, and Representative Wesley Hunt wrote a letter requesting documents and information to Jordan Diamond, President of the Environmental Law Institute.⁷⁰

The August 29 letter announced an investigation into the CJP's work to "influence judges who potentially may be presiding over lawsuits related to alleged climate change" and of concerns that CJP's work "appear[s] to have the underlying goal of predisposing federal and state judges in favor of plaintiffs alleging injuries from the manufacturing, marketing, or sale of fossil-fuel products."⁷¹ The letter notes that CJP has boasted that it has educated more than 2,000 judges at state and federal level, though the identities of those judges have not been disclosed.⁷² The Committee requested all documents and communications since April 1, 2019 regarding CJP's funding and expenditures, training materials presented to judges, the identities of the judges who attended CJP's seminars, and more.⁷³ It is unclear whether and how ELI responded to this document request.

On January 14, 2026, Chairmen Jordan and Issa expanded their investigation into how CJP influences judges, writing to FJC,⁷⁴ the Environmental Integrity Project,⁷⁵ the law firm Worthington & Caron,⁷⁶ and the Judicial Conference of the United States.⁷⁷ The letters are

⁶⁹ Letter from Hon. Jim Jordan, Chairman H. Comm. on Judiciary, et al to Jordan Diamonds, President, Environmental Law Institute, Aug. 29, 2025, <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2025-08-29-jdj-dei-wh-to-eli-diamond-re-cjp.pdf>.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Letter from Hon. Jim Jordan, Chairman H. Comm. on Judiciary, et al to Hon. Robin Rosenberg, Director, Fed. Judicial Center, Jan. 14, 2026, <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2026-01-14-jdj-dei-to-fjc-judge-rosenberg-re-eli.pdf>

⁷⁵ Letter from Hon. Jim Jordan, Chairman H. Comm. on Judiciary, et al to David Bookbinder, Director of Law & Policy, Environmental Integrity Project, Jan. 14, 2026.

⁷⁶ Letter from Hon. Jim Jordan, Chairman H. Comm. on Judiciary, et al to Roger Worthington, Jan. 14, 2026, <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2026-01-14-jdj-dei-to-worthington-re-eli.pdf>.

⁷⁷ Letter from Hon. Jim Jordan, Chairman H. Comm. on Judiciary, et al to Hon. Robert Conrad, Jr., Director, Administrative Office of the U.S. Courts, Jan. 14, 2026 <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2026-01-14-jdj-dei-to-ao-judge-conrad-re-eli.pdf>.

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similar insofar as the Committee clearly states in all of them that it is “investigating allegations of improper attempts by the Environmental Law Institute (‘ELI’) and its Climate Judiciary Project (‘CJP’) to influence federal judges.” The letters to FJC and Worthington request documents and communications with CJP and ELI, training materials, information about events between the entities and CJP, the identities of people that attended and put on the training seminars, and more. It appears that the Committee’s investigation is ongoing.

B. Senate Judiciary Committee Oversight of FJC

On April 13, 2026, four Subcommittee Chairs of the Senate Judiciary Committee sent a letter to Judge Robin Rosenberg, a judge in the U.S. District Court for the Southern District of Florida and Director of the Federal Judicial Center about the Climate Chapter.⁷⁸ In the letter, Senators Cruz, Schmitt, Lee, and Blackburn explain that they are conducting oversight of FJC and are seeking to “gain clarification on how the FJC safeguards its credibility and ensures that its programming remains rigorously neutral.”⁷⁹

The senators explain, “it is deeply problematic for the FJC to circulate a chapter that presents disputed scientific assertions as settled, relief heavily on politically mediated sources, and offers prescriptive conclusions without the safeguards that normally accompany the admission and testing of expert evidence under the Federal Rules of Evidence.”⁸⁰ They added that the Climate Chapter represents a “naked attempt” to “bypass” the Federal Rules of Evidence and the gatekeeping role that judges play under the *Daubert* standard.⁸¹

The senators ask FJC to answer 11 questions within 10 business days. The questions focus on the drafting and review process of the Climate Chapter, the criteria used to select the authors, and other information requests.⁸²

C. State Attorneys General

In Part I.C of this report, we highlighted a February 2, 2026 letter from 22 Attorneys General to the House and Senate Judiciary Committees that linked CJP staff to the authors of FJC.⁸³ In addition to raising those issues to federal lawmakers, the letter urged the Committees to expand their CJP investigation to include the FJC.⁸⁴ It appears that House Judiciary Committee Chairman Jordan heeded their advice.

⁷⁸ Letter from Sen. Ted Cruz, et al, to Hon. Robin Rosenberg, Director, Fed. Judicial Center, Apr. 13, 2026, https://www.cruz.senate.gov/imo/media/doc/letter_to_fjc.pdf.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ Nebraska AG Letter, *supra* note 48.

⁸⁴ *Id.*

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On January 29, 2026, West Virginia Attorney General John McCuskey and 26 other Attorneys General wrote a letter to Judge Rosenberg.⁸⁵ In the letter, the AGs note that the 2025 Reference Manual “places the judiciary firmly on one side of some of the most hotly disputed questions in current litigation: climate-related science and ‘attribution.’”⁸⁶ They added, that the Manual “undermines the judiciary’s impartiality and places the thumb on one side of the scale” including on issues that are “pending before the Supreme Court and other parts of the federal judiciary.”⁸⁷

The letter discusses Wentz and Horton’s prior pro-climate plaintiff academic work and notes that they see “litigation as a tool to advance their preferred political objectives” and have complained that the “political sphere in the United States continues to be clouded with false debates over the validity of climate change.”⁸⁸

The Attorneys General explain multiple ways in which the Climate Chapter undermines judicial independence and upends the traditional adversary nature of legal proceedings: (1) suggesting that an expert’s consistency with the UN’s IPCC should be integrated as part of the *Daubert* analysis without acknowledging the significant criticisms that experts have levied against the IPCC’s work, (2) making flawed conclusions on the causes of climate change based on flawed sourcing, and (3) offering conclusive, unsolicited (by judges) *ex parte* opinions on matters of dispute both scientifically and in litigation.⁸⁹

The letter concluded with the following:

Article III guarantees every litigant—whether a State, an energy company, or an environmental group—the right to an independent and impartial tribunal. When the judiciary’s own research arm predetermines contested questions in active litigation, that guarantee becomes meaningless. The Center should withdraw this chapter immediately, not out of political expedience, but out of fidelity to the Constitution it serves. The Center should also establish procedures to prevent similar advocacy-based chapters in future editions.⁹⁰

III. The FJC has Removed the Climate Chapter from the 2025 Reference Manual, but it is an Insufficient Half-Measure

On February 6, 2026, Judge Rosenberg, Director of FJC wrote to West Virginia Attorney General John McCuskey informing him that the FJC had omitted the Climate Chapter from the

⁸⁵ Letter from John B. McCuskey, W.V. Att’y Gen. et al to Hon. Robin Rosenberg, Director, Fed. Judicial Center, Jan. 29, 2026, <https://ago.wv.gov/sites/default/files/2026-01/2026.01.29%20--%20AG%20Climate%20Science%20Manual%20Letter.pdf>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* (internal citations omitted).

⁸⁹ *Id.*

⁹⁰ *Id.*

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2025 Reference Manual.⁹¹ The version of the Reference Manual posted by FJC denotes that “the FJC omitted [the] Reference Guide on Climate Science on 2/6/2026” and the chapter is unavailable on the version report hosted by FJC.⁹²

The omission of the chapter from the FJC was met with much media fanfare with The New York Times,⁹³ Reuters,⁹⁴ Fox News,⁹⁵ Pro Publica,⁹⁶ Bloomberg Law,⁹⁷ Politico,⁹⁸ and other publications writing about its omission from the 2025 Reference Manual. Democratic lawmakers wrote to FJC to lodge their objections to the omission of the Climate Chapter and asked for its reinsertion to the Reference Manual.⁹⁹

The omission by FJC does not tell the whole story. Recall, the 2025 Reference Manual was a *joint publication* between the FJC and the National Academies of Science, Engineering, and Medicine. The Climate Chapter of the Reference lives on to this day on the version published by the National Academies.¹⁰⁰ The National Academies’ version of the Reference Manual highlights the omission by FJC of the Climate Chapter but reiterates that it is keeping the Climate Chapter in their version, writing in the table of contents, “Following the December 31, 2025, publication of the Fourth Edition of Reference Manual on Scientific Evidence, on February 6, 2026, the Federal Judicial Center decided to omit the climate science chapter from their website.”¹⁰¹ The National Academies doubled down in a February 26, 2026 letter to

⁹¹ Letter from Hon. Robin Rosenberg, Director, Fed. Judicial Center to John B. McCuskey, W.V. Att’y Gen., Feb. 6, 2026, <https://ago.wv.gov/sites/default/files/2026-02/2026.02.06%20--%20Federal%20Judicial%20Center%20Letter%20Chapter%20Withdrawal.pdf>.

⁹² See, FJC Reference Manual, *supra* note 31.

⁹³ Karen Zraick, *Climate Change is Erased From a Manual for Judges*, N.Y. Times, Feb. 10, 2026, <https://www.nytimes.com/2026/02/10/climate/judge-manual-climate-change-chapter.html>.

⁹⁴ Nate Raymond, *US judiciary scraps climate chapter from scientific evidence manual*, Reuters, Feb. 9, 2026, <https://www.reuters.com/legal/government/us-judiciary-scrap-climate-chapter-scientific-evidence-manual-2026-02-09/>.

⁹⁵ Charles Creitz, *Judicial research center cuts climate section from judges’ manual after Fox News Digital report*, Fox News, Feb. 9, 2026, <https://www.foxnews.com/politics/judicial-research-center-cuts-climate-section-from-judges-manual-after-fox-news-digital-report>.

⁹⁶ Abraham Lustgarten, *Under GOP Pressure, Federal Agency Pulls Climate Change Chapter From Official Manual for U.S. Judges*, Pro Publica, Feb. 10, 2026, <https://www.propublica.org/article/federal-judicial-center-climate-change-republican-pressure>.

⁹⁷ Suzanne Monyak, *Judiciary Cuts Climate Part of Science Manual After Backlash*, Bloomberg Law, Feb. 9, 2026, <https://news.bloomberglaw.com/us-law-week/judiciary-cuts-climate-section-of-science-manual-after-backlash>.

⁹⁸ Lesley Clark, *Climate science removed from judicial manual after GOP complaints*, Politico, Feb. 9, 2026, <https://subscriber.politicopro.com/article/eenews/2026/02/09/climate-science-removed-from-judicial-manual-after-gop-complaints-00770395>.

⁹⁹ Letter from Hon. Ron Wyden, U.S. Senator, et al, to the Hon. Robin Rosenberg, Director, Federal Judicial Center, Feb. 27, 2026, https://www.wyden.senate.gov/imo/media/doc/fjc_climate_letter.pdf.

¹⁰⁰ National Academies Reference Manual, *supra* note 33.

¹⁰¹ National Academies Reference Manual, *supra* note 33.

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Montana Attorney General Austin Knudsen expressly stating that the Reference Manual with the Climate Chapter will “continue to be available on the Academy’s website.”¹⁰²

The Wall Street Journal Editorial Board picked up on this bait and switch in an editorial published on March 2, 2026.¹⁰³ The Editorial Board noted that the version on the National Academies’ website “continued to carry the name of the Federal Judicial Center” and that “judges may use it as a reference, without a disclaimer from the research and education arm of the federal court system.”¹⁰⁴ They concluded by questioning whether it was wise for Congress to continue funding the FJC and National Academies when they continue to publish “polemical texts pretending to be neutral reference guides.”¹⁰⁵

The fact remains that judges can still easily access and be influenced by the biased Climate Chapter of the 2025 Reference Manual. The removal of the chapter by the FJC does not change this fact.

IV. Conclusion and Recommendation

Your taxpayer dollars are being used to fund biased, quasi-scientific propaganda documents that are designed to influence judges hearing high profile cases. The FJC has received between \$34 and \$35 million per year in federal tax dollars since 2023.¹⁰⁶ The National Academies receives between 58 and 70 percent of its budget from federal taxpayer funds in a given year, totaling hundreds of millions of dollars.¹⁰⁷ Given the outrageous bias displayed in the Climate Chapter of the 2025 Reference Manual, Congress should defund these entities and return the hard work of judicial decision making back to judges where they belong.

¹⁰² Letter from Marcia McNutt, President National Academy of Sciences to Austin Knudsen, Mont. Att’y Gen., Feb. 26, 2026, https://content.govdelivery.com/attachments/MTAG/2026/03/10/file_attachments/3579240/2026-03-11%20AGs%27%20Ltr%20to%20Agencies%20re%20NASEM_ex%20A.pdf.

¹⁰³ WSJ Op-Ed, *supra* note 64.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Administrative Office of the U.S. Courts, *The Judiciary: Fiscal Year 2025 Congressional Budget Summary* (Feb. 2024), available at https://www.uscourts.gov/sites/default/files/fy_2025_congressional_budget_summary.pdf

¹⁰⁷ Andrew Mark Miller, et al, *Leftist ; taxpayer-funded academy sparks backlash after moving against Trump’s rollback of key regulation*, Fox News, August 22, 2025, <https://www.foxnews.com/politics/leftist-taxpayer-funded-academy-sparks-backlash-after-moving-against-trumps-rollback-of-key-regulation>; Andrew Mark Miller, *‘Structural racism’: Top taxpayer-funded academy rife with DEI programs, hefty executive salaries*, Fox News, Feb. 27, 2025, <https://www.foxnews.com/politics/structural-racism-top-taxpayer-funded-academy-rife-dei-programs-hefty-executive-salaries>.