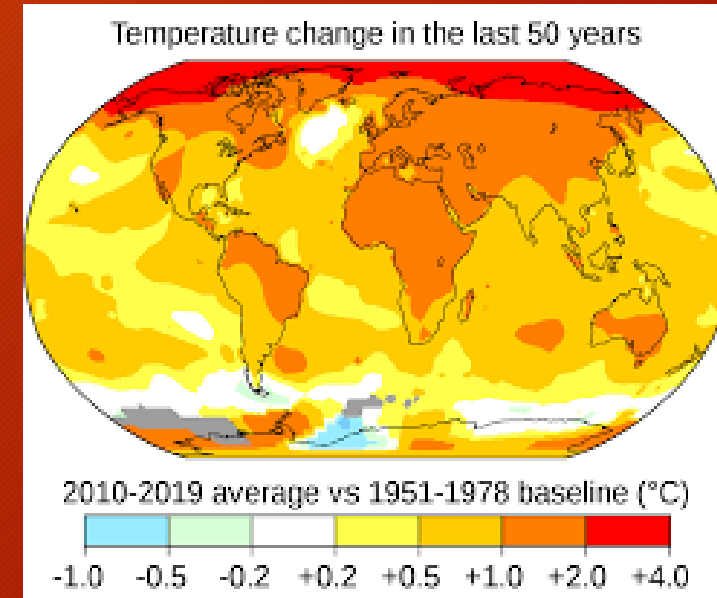


# The Biden Administration Climate Policy and Climate Compensation Litigation in the US

Professor Joel B. Eisen  
University of Richmond School of Law  
Bucerius Energy Day  
May 7, 2021  
*[jeisen@richmond.edu](mailto:jeisen@richmond.edu)*

# A New Era For US Climate Policy

- President Biden & his Administration recognize the “US & the world face a profound climate crisis”
- Ambitious plans at all levels of government
- Recommitted to the international effort





# A New Era For US Climate Policy

- Climate a major focus of Biden campaign & Presidency
- Rejoined Paris Agreement on 1st day in office
- Recognize crisis & mobilize government to respond
- National Climate Advisor - new White House office to coordinate & implementing domestic climate agenda



*National Climate  
Advisor Gina McCarthy*



# A New Era For US Climate Policy

- Executive Order on Tackling the Climate Crisis at Home-and Abroad (Jan. 2021)
- Federal directive issued by President
- Establishes national policy & manages federal government operations
- Further legislative & agency action required
- **GOAL:** “Build a modern and sustainable infrastructure, deliver an equitable, clean energy future, and put the United States on a path to achieve net-zero emissions, economy-wide, by no later than 2050”

BRIEFING ROOM

## Executive Order on Tackling the Climate Crisis at Home and Abroad

JANUARY 27, 2021 • PRESIDENTIAL ACTIONS

The United States and the world face a profound climate crisis. We have a narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents. Domestic action must go hand in hand with United States international leadership, aimed at significantly enhancing global action. Together, we must listen to science and meet the moment.



# A New Era For US Climate Policy

- Executive Order commitments:
- Center the Climate Crisis in U.S. Foreign Policy and National Security Considerations
- US aims for a significant increase in global ambition (example: April summit on US NDC)
- Whole-of-Government Approach
- Set domestic policies & regain international credibility - before US political control shifts again
- Build Back Better = major COVID economic recovery plan w/clean energy a central pillar

BRIEFING ROOM

## Executive Order on Tackling the Climate Crisis at Home and Abroad

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# International Commitment (Apr. 2021)

- Target for US: 50-52% reduction from 2005 levels in economy-wide net GHG pollution in 2030
- 100% carbon pollution-free electricity by 2035
- Reduce carbon pollution from transportation, industrial & agricultural sectors
- Major challenge—but achievable, according to numerous analyses

FACT SHEET: President Biden Sets  
2030 Greenhouse Gas Pollution  
Reduction Target Aimed at Creating  
Good-Paying Union Jobs and Securing  
U.S. Leadership on Clean Energy  
Technologies



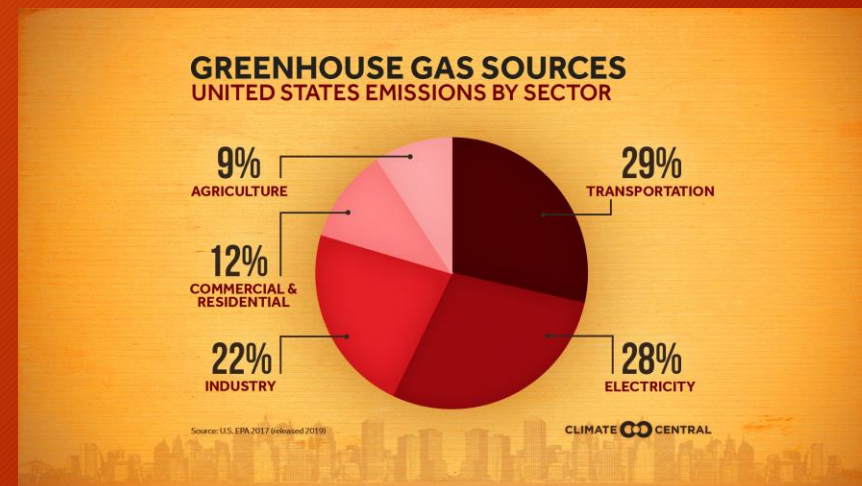
## EXECUTIVE SUMMARY: U.S. International Climate Finance Plan

*US intends to double annual public climate finance to  
developing countries by 2024*



# Domestic Policies (national level)

- Action by Congress = national legislature
- Action by federal agencies such as EPA, FERC, NHTSA
- Addressing all major sectors of economy
- Some (not all!) actions discussed here
- (Actions at state and local levels = discussed later)



# Domestic Policies (national level)

- Personnel actions = install climate leaders in new/revamped positions



Ann Carlson, NHTSA  
General Counsel

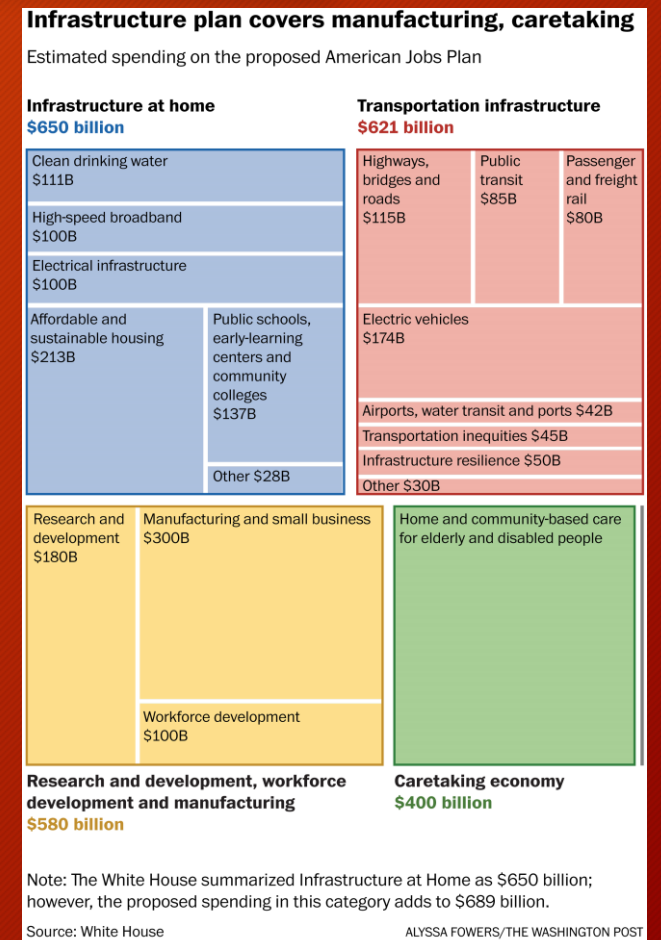
Shalanda Baker, DOE  
energy justice office





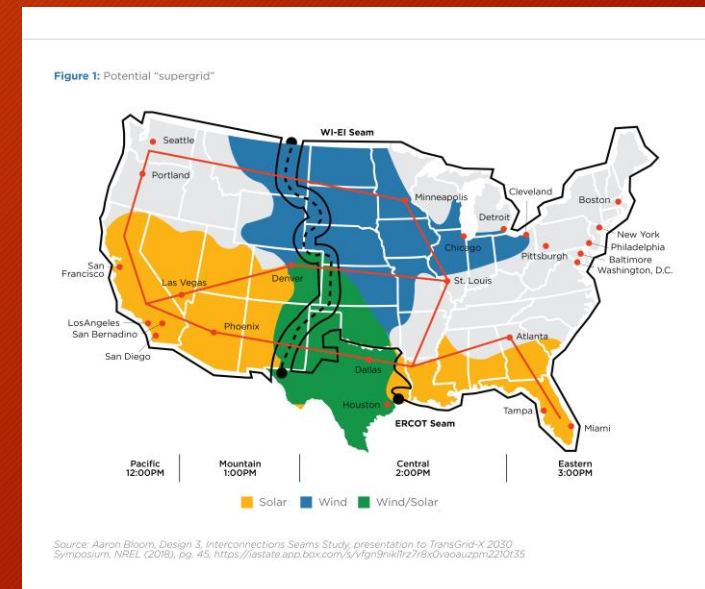
# Domestic Policies (national level)

- Legislative actions = major infrastructure & climate proposals = \$2 trillion American Jobs Plan
- \$400 billion for renewable energy = extend tax credits for 10 years, new energy efficiency & clean energy standards, require 100% carbon-free electricity by 2035
- \$174 billion for EV adoption = build 500,000 charging stations & convert federal vehicle fleet
- \$100 billion for power infrastructure = significant investments in transmission >> 20 GW goal for new long-distance transmission lines



# Domestic Policies (national level)

- Agency actions = new policies to implement Biden agenda
- Example: FERC technical conference on electric vehicles, April 2021, focused on:
- Upgrade transmission and distribution infrastructure that transports power >> revamp T planning process (Order 1000)
- Address siting bottlenecks (DOE corridor process)
- Deciding who should pay for new power lines and EV charging stations? (“energy justice”)





# Domestic Policies (national level)

- Agency actions = reverse harmful policies of Trump Administration = generally requires same process as making a rule in first place (can't just “cancel” it)
- Example: vehicle emissions standards - NHTSA proposal to reverse harmful SAFE rule & reinstate states' authority to set vehicle emissions standards (I discussed in 2019!)

## Environment

### U.S. moves to ax Trump rule banning California emission regulations

**April 22, 2021: NHTSA Proposed to Repeal SAFE I Rule**

In the CAFE Preemption Proposed Rule, issued today, NHTSA proposes withdrawing NHTSA's regulations and legal analysis regarding preemption under The Energy Policy and Conservation Act. NHTSA is seeking comment on whether the SAFE I Rule, which was finalized in 2019, overstepped the Agency's statutory authority by issuing regulations and announcing views that purported to impose broad preemption requirements. If finalized, the rule would wipe the regulatory slate clean.



# Domestic Policies (national level)

- Agency actions = modify or reverse policies that hamper climate action
- Example: “Minimum Offer Price Rule” = accommodate more renewable energy in regional wholesale electricity markets

## **FERC open to revisiting MOPR, as grid operators, utilities mull future of wholesale markets**

"Although I voted for our MOPR orders, and believe those determinations were supported by the record, I'm not wedded to the policy calls of the past," said Commissioner Neil Chatterjee.



**Things Looking Up for Renewable Resources at  
Federal Energy Regulatory Commission**



# Domestic Policies (national level)

- Legislative actions = reverse agency actions from Trump Administration by legislation
- Allowed under Congressional Review Act = disapproval of federal agency rules, generally within 60 days
- Revisions to most Trump rules must go through agency process

## US Senate votes to restore methane rules for oil and gas sector

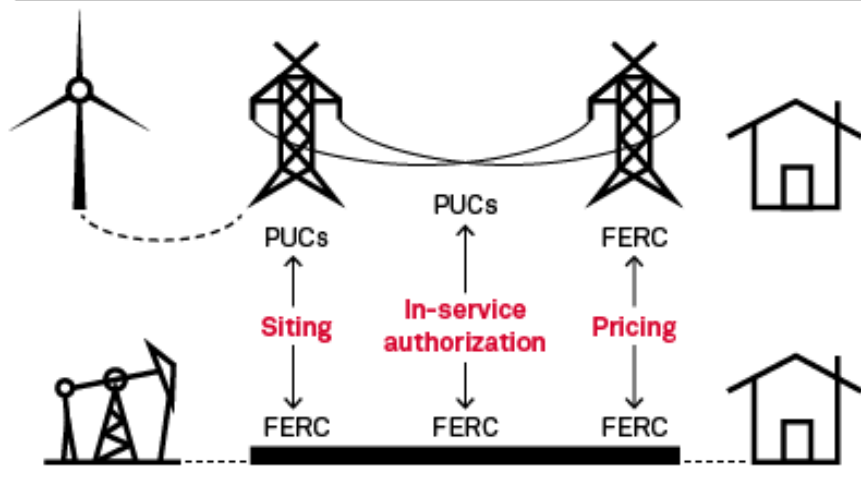
Resolution would undo Trump-era rollback for potent greenhouse gas



# Complex federal-state relationship (example: transmission siting)

## Federal and state roles in interstate energy infrastructure permitting

The **Federal Power Act** and the **Natural Gas Act** define whether the **Federal Energy Regulatory Commission** or state public utility commissions are responsible for siting, authorizing and setting rates for projects.



As of Jan. 12, 2021.  
Credit: Cat Weeks  
Source: S&P Global Market Intelligence



*Issue: federal siting process that overrides traditional state role?? (FPA 216/DOE “corridor” process)*

Dual federal-state roles



# Domestic Policies (State/local)

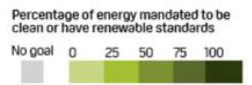
- States like California & Virginia have aggressive laws to force massive levels of new solar, wind, battery storage, demand side measures & electric vehicle programs
- Trend: requiring 100% renewable electricity in future (Virginia: 2045 for state's utilities)
- My involvement: expert witness in first Virginia case on utility plans to build solar & wind capacity to comply (order on April 30, 2021)

## Virginia SCC Gives IOUs a Pass on RPS Plans — for Now

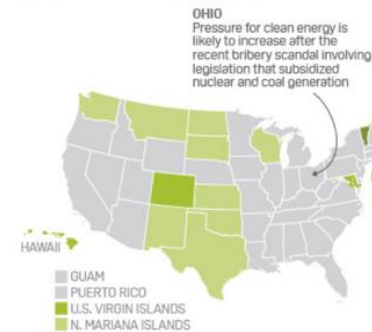
May 5, 2021

### NINE US STATES HAVE 100% CLEAN-ENERGY GOALS BY 2050

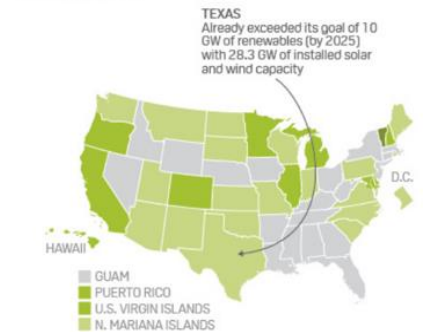
There are now nine states with 100% renewable energy or clean energy goals after Colorado joined that group late last year and Virginia joined in April. Many Southeast states do not have renewable portfolio standards, but many utilities in the region have net-zero emissions targets. Meanwhile a few states, such as New Hampshire, have backtracked on clean energy goals.



#### GOALS BETWEEN 2015 AND 2020



#### GOALS BY 2025



#### GOALS BY 2035



#### GOALS BY 2050

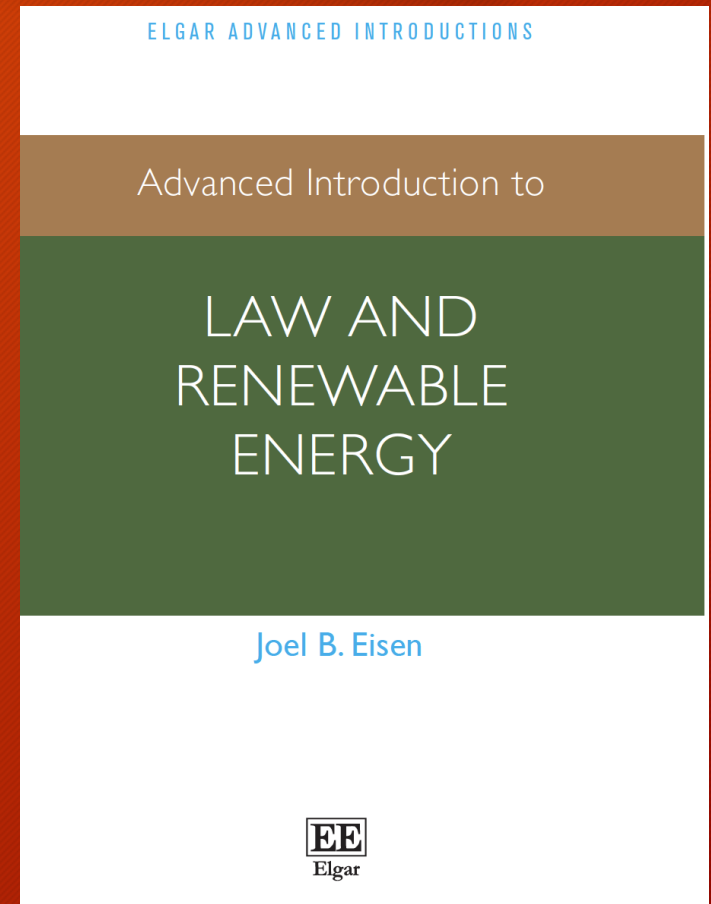


# National/state/local renewable energy policies

- New book on renewable energy support measures around the world
- Publication July 2021
- Examples chosen from nations around the world
- THANKS to Dr. Fehling for comments and support!!!



*Solar project at University of Richmond - + virtual PPA at another project to offset all emissions*

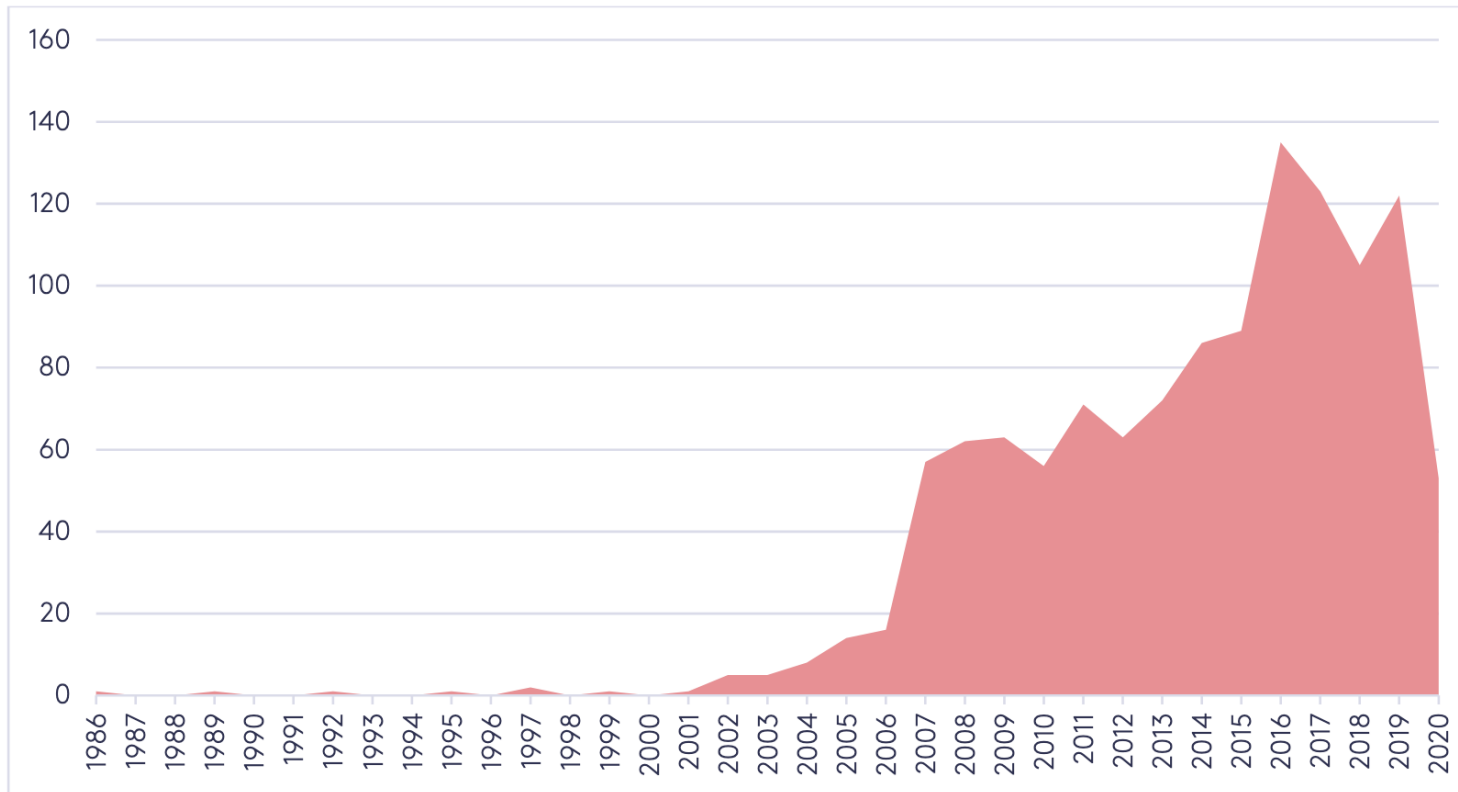




# Climate compensation litigation in the US

Figure 1.1. Climate change litigation, 1986–May 2020

a) Cases in the United States (all types of plaintiff)



- Courts emerging as a critical battleground in climate fight
- Dozens of new cases filed in US in 2020
- Of course, cases in Europe too (e.g., *Urgenda*)

# Major types of cases in the US

- Force companies to account for damage they caused (e.g., *Baltimore v. BP*)
- Force governments to take more action on climate change (e.g., *Juliana*)
- Force consideration of climate change under existing laws (e.g., FERC/NEPA/pipelines; "upstream" & "downstream" impacts)



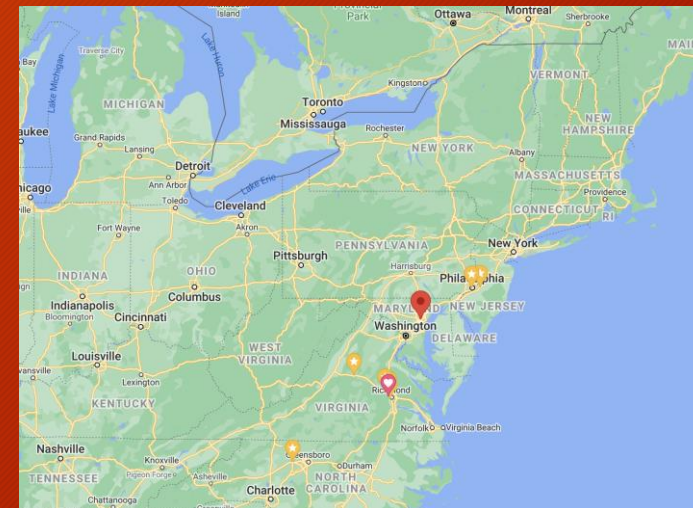


# BP PLC v. Baltimore (2021)

- 2018: City of Baltimore sued oil & gas companies, seeks to hold them responsible for their role in climate change
- >20 similar suits by cities, states & counties in recent years
- Arguments such as misled public about threat burning oil and gas poses to the climate
- Technical point argued before US Supreme Court in January
- Decision expected soon



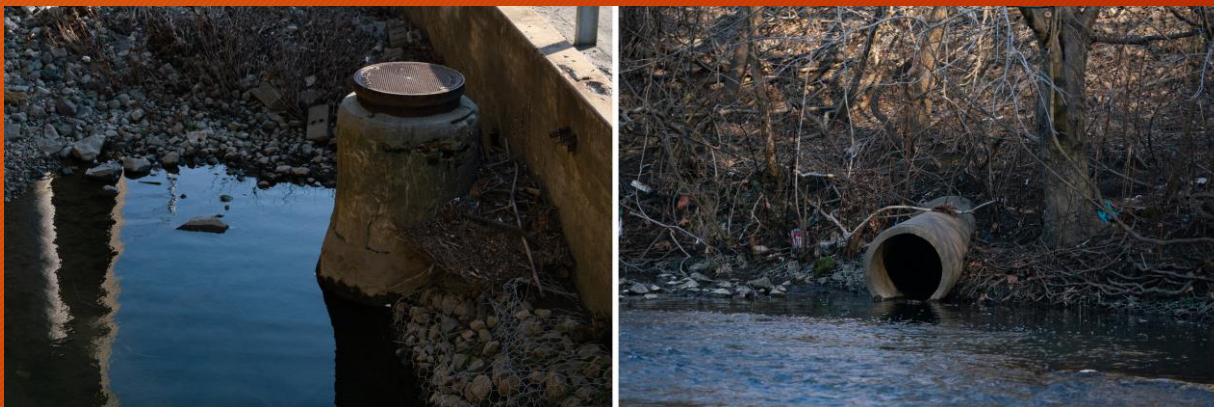
Baltimore,  
Maryland





# BP PLC v. Baltimore (2021)

- Baltimore argues companies continued to produce and sell fossil fuel products even though they knew it would lead to global warming
- Complaint alleges violations of state tort law = public nuisance and products liability
- City seeks compensatory & punitive damages

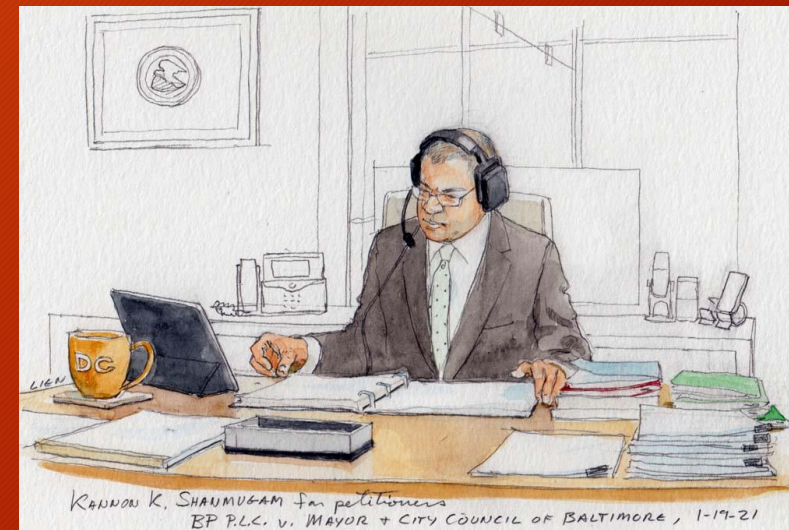


One type of damage:  
More rain due to climate change = overwhelmed stormwater system



# BP PLC v. Baltimore (2021)

- Cases can be powerful if finally argued on merits
- Deceptive marketing practices by companies that billed their products as safe = different from earlier arguments that companies caused emissions
  - That argument effectively lost in *AEP v. Connecticut* (2011)
- BUT: issue before Supreme Court is not the merits
- Instead: whether case must be tried in federal court
- Much more promising for Baltimore if stay in state court
- Decision expected by this June = long way from actually deciding how much compensation & to whom



# THANK YOU ONCE AGAIN FOR HAVING ME!

- Please feel free to contact me:
- Professor Joel B. Eisen
- University of Richmond School of Law
- *[jeisen@richmond.edu](mailto:jeisen@richmond.edu)*

