ENERGY PRODUCTION LIABILITY PROTECTION

POLICY PRIMER

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CONSUMER CHOICE CENTER

INTRODUCTION

America's ambitious plans for a technologically driven future will mean delivering significant energy to meet the moment.

Artificial intelligence, combined with high-capacity data centers, advanced manufacturing, electric vehicles, biotechnology and more, are hiking the market appetite for abundant and affordable energy.

Domestic demand for electricity alone is projected to increase by over 25% by 2030.[1] For natural gas and oil, projections are more modest due to adequate reserves and shifting consumer trends, but LNG production and exports are estimated to increase at 10% per year.[2 3] That amounts to more than doubling production before 2030, according to the US Energy and Information Administration (EIA).[4]

While policymakers, entrepreneurs, and consumers recognize that energy demand will continue to rise, the political and legal reality is locked in the 1970s.

1 Batra, Lalit, Deb Harris, George Katsigiannakis, Justin Mackovyak, Himali Parmar, and Maria Scheller. 2025. "Rising Current: America's Growing Electricity Demand." ICF, June 9, 2025. https://www.icf.com/insights/energy/impact-rapid-demand-growth-us.

2 "In Trump's 'Drill, Baby, Drill' World, EV Sales Cast Doubts on Oil Demand." Investor's Business Daily, March 14, 2025. https://www.investors.com/news/oil-prices-trump-drill-baby-drill-evs-oil-stocks-demand/.

3 Disavino, Scott. "Surging US LNG Exports to Fuel Growth in Shale Gas Production." Reuters, August 22, 2025. https://www.reuters.com/business/energy/surging-us-lng-exports-fuel-growth-shale-gas-production-2025-08-22/.

4 U.S. Energy Information Administration. "Eastern U.S. Natural Gas Increasingly Meets LNG-Fueled Demand Growth in AEO2025." Today in Energy, July 29, 2025. U.S. Energy Information Administration. https://www.eia.gov/todayinenergy/detail.php?id=65824.

LAWFARE AGAINST PRODUCERS

Few things are as obvious in the realm of public policy as the need to produce energy to heat our homes, fuel our cars, and drive our businesses, but there remain dedicated ideological campaigns committed to shackling the industry, and by extension, its customers.

Across the country, US energy producers are being increasingly targeted by lawsuits seeking to hold them liable for alleged impacts of climate change, a trend that threatens to raise consumer energy costs and stifle innovation. This field of litigation attempts to make individual companies pay damages for global climate change—an outcome shaped by centuries of emissions and billions of consumers worldwide.

According to the Sabin Center for Climate Change Law, there are currently 175 active lawsuits against energy firms for "climate-related harms".[5] Hundreds more invoke state advertising, nuisance, and consumer deception statutes, alleging that energy companies have duped and harmed consumers by not being more upfront about their product's climate impact.

Bear in mind, their product is your ability to cook food, turn on the TV, drive to work, and power your home WiFi.

Beyond litigation related to alleged climate harms, there are now over 1,850 lawsuits that have been filed in the United States that aim to place culpability for climate change at the feet of energy producers.[6]

Examples include lawsuits from municipalities and states seeking billions in damages, and even wrongful-death claims linked to heat waves. The logic of these lawsuits is flawed: no single company or set of firms can reasonably be held liable for global climate outcomes to which every country and industry (as well as consumer) contributes.

FIGURES AND EXAMPLES

One estimate of the average annual cost of litigation to private companies, whether meritorious or not, is roughly $3 million per case.[7] Specific to climate change lawsuits, a further study concludes in Nature that most major energy companies lose up to 1.5% in total stock market value per climate-related lawsuit, which can easily accrue to hundreds of millions of dollars and is passed on to consumers as a result. This concept is known as "litigation cost pass-through".[8]

Research by economist Wayne Winegarden indicates that combining energy lawsuits seeking damages at (a conservative) $100 billion equates to a 31-cents a gallon price increase for consumers at the pump, meaning an

5 "Adaptation Archives." Climate Case Chart. Sabin Center for Climate Change Law, Columbia Law School. Accessed September 2, 2025. https://climatecasechart.com/case-category/adaptation.

6 Barry, Margaret, and Maria Antonia Tigre. "Climate Litigation Updates (August 18, 2025)." Sabin Center for Climate Change Law, Columbia Law School, August 18, 2025. https://climate.law.columbia.edu/news/climate-litigation-updates-august-18-2025.

7 Solana, Javier. "Climate Change Litigation as Financial Risk." Green Finance 2, no. 4 (2020): 344–72. https://doi.org/10.3934/GF.2020019.

8 Sato, Misato, Glen Gostlow, Catherine Higham, Joana Setzer, and Frank Venmans. "Impacts of Climate Litigation on Firm Value." Nature Sustainability 7 (2024): 1461–1468. https://doi.org/10.1038/s41893-024-01455-y.

extra $326 per household per year.[9] [10]

Additional research from the Maine Policy Institute shows electrical utility consumers pay $2.60 for every $1 that energy providers must pay in climate-related litigation:[11]

> End-of-the-line consumers of these energy companies' products, effectively anyone with an electric bill, would pay $2.60 for every dollar that corporate shareholders will pay from this lawsuit, and employees of these companies will pay $1.28 for every corporate dollar of cost. All of this, of course, is from passed-on price increases in energy production.

Legislative analysis from the California Center for Jobs & the Economy estimates gas prices will rise by 63% by 2026 if a state bill to further open up climate liability for energy firms is enacted (SB222).[12] That figure for diesel fuel increases to 55%, natural gas 76%, and electrical bills could rise by as much as 55%.

One recent example demonstrates the cost to consumers when similar lawsuits against energy companies are launched in our nation's courts, albeit related to liability for wildfires rather than climate change.

In the wake of a 2017 California brushfire in Santa Barbara and Ventura Counties, known as the Thomas Fire, the energy utility Southern Carolina Edison was blamed for the initial sparks that eventually burned over 280,000 acres and led to two deaths. Though the utility did not admit fault or accept liability, the resulting settlements in various lawsuits and penalties ended up costing the company $2.4 billion. [13]

The California Public Utilities Commission then approved a plan to allow SCE to use rate increases to cover $1.6 billion from customers, leading to jolting electricity bills for many Southern California households.[14] The costs of the legal settlement for the entire series of wildfires, which are common in California and caused by a myriad of policy and environmental failures, were therefore thrust onto unsuspecting customers. Whether uncontrollable fires in poorly maintained forests or debatable harms of climate change, the customer always ends up having to pay.

LITIGATION AS ENERGY POLICY

The consequences for consumers are serious. In our highly litigious society, energy producers must

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9 Winegarden, Wayne. Counterproductive: Why State and Municipal Climate Lawsuits Are Anti-Growth, Anti-Innovation, and Anti-Environment. Issue Brief, Pacific Research Institute, May 2022. https://www.pacificresearch.org/wp-content/uploads/2022/06/LitigationBrief_web.pdf.

10 Winegarden, Wayne. "Fossil Fuel Lawsuits Are a Tax on Consumers." Forbes, June 3, 2024. https://www.forbes.com/sites/waynewinegarden/2024/06/03/fossil-fuel-lawsuits-are-a-tax-on-consumers/.

11 Van Pate, Harris. "Testimony in Support of LD 635: 'Resolve, to Direct the Attorney General to Drop the Lawsuit Filed Against Big Oil Companies Concerning Climate Change.'" Testimony to the Judiciary Committee, Maine Legislature, March 6, 2025. Maine Policy Institute. PDF, 3 pp. https://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=10036006.

12 California Center for Jobs and the Economy. Consumer & Fiscal Impacts of SB 222: Preliminary Analysis. February 2025. PDF, 31 pp. https://centerforjobs.org/wp-content/uploads/SB-222-Consumer-Impact-Report-Final.pdf.

13 Miller, Ronald V., Jr. "LA Wildfires Lawsuit Settlement (July 2025 Update)." Lawsuit Information Center, August 18, 2025. https://www.lawsuit-information-center.com/la-wildfires-lawsuit.html.

14 Petersen, Melody. "State officials approve Edison rate hike for 2017 wildfire sparked by its equipment." Los Angeles Times, January 30, 2025. https://www.latimes.com/environment/story/2025-01-30/state-officials-approve-edison-rate-increase-for-thomas-fire.

dedicate significant resources to their legal defense budgets, which could otherwise be used to invest in new plants, upgrades to grids and transmission lines, or the deployment of cleaner and more sustainable technologies.

If climate lawsuits continue without significant scrutiny, **they threaten long-term energy affordability for consumers and risk the security of our future energy production wholesale**. This would mean that consumers could face higher bills not because of a lack in resources or investment, but rather because the threat of lawsuits and costly litigation has made energy too risky to produce.
This is **litigation as de facto energy policy**—and it puts American families on the hook with zero accountability on the part of plaintiffs.

Granted, many of the more well-known American climate change liability cases are still pending in court or have thus far been dismissed or held in limbo in state courts.

This includes the pending case of the City of Honolulu against ExxonMobil, Shell, and Chevron, New York's lawsuit against ExxonMobil (dismissed due to no liability), and the city of Baltimore's lawsuit on sea-level rise against BP and other major oil companies.

The 2020 climate change lawsuit filed by Minnesota Attorney General Keith Ellison against oil companies and petroleum lobby groups was explicitly filed to try to shift national energy policy and even go so far as to bankrupt firms, as case advisors have claimed.[15]

"If these cases all go to their logical extreme, [the oil companies] all go bankrupt. They should," said Pat Parenteau, a former EPA regional counsel and emeritus professor at Vermont Law and Graduate School, in an interview with Stateline.[16] Parenteau has since been revealed to be part of an informal advisory group that "supports" several of these climate change lawsuits against energy producers.[17]

What's more, this goes beyond oil and gas firms to also target utilities prioritizing nuclear and other renewables. A local lawsuit in North Carolina against Duke Energy, one of the largest nuclear energy utilities in the nation, provides the most baffling case.[18]

Officials in the small suburb town of Carrboro want the company to pay for the "climate-related harm" caused by its electricity generation, even though Duke Energy's carbon-free nuclear energy fleet powers half the homes in North and South Carolina, and the region's use of natural gas is one of the lowest per capita in the country.[19]

In 2020, the South Carolina city of Charleston filed a state lawsuit against nearly a dozen energy providers, arguing that the companies failed to warn about climate

15 Catenacci, Thomas. "'Anti-Energy Lawfare': Millions in Dark Money Fueling Local Climate Lawsuits Across the Country, Congressional Investigation Finds." Washington Free Beacon, October 7, 2024. https://freebeacon.com/latest-news/anti-energy-lawfare-congressional-investigation-uncovers-dark-money-fueling-climate-change-lawsuits-nationwide/.

16 Brown, Alex. "Some Cities, States Say Big Oil Should Pay for Climate Damage." Stateline (States Newsroom), April 13, 2022. https://stateline.org/2022/04/13/some-cities-states-say-big-oil-should-pay-for-climate-damage/.

17 "The Supreme Court Let Lawsuits Against Oil Companies Proceed." Inside Climate News, January 18, 2025. https://insideclimatenews.org/news/18012025/supreme-court-let-lawsuits-against-oil-companies-proceed/.

18 "A North Carolina Town Is Suing Utility Duke Energy Over Climate Change." NPR, December 4, 2024. https://www.npr.org/2024/12/04/nx-s1-5213784/climate-utility-lawsuit.

19 U.S. Energy Information Administration. "North Carolina State Energy Profile." U.S. Energy Information Administration. February 20, 2025. https://www.eia.gov/state/print.php?sid=NC.

risk and therefore used “deceptive marketing” practices to sell their products.[20] They sought compensatory damages in the billions of dollars to help “mitigate” climate-related impact.

In August 2025, the case was dismissed with prejudice due to jurisdiction. In his ruling, South Carolina Circuit Judge Roger M. Young, Sr. made it clear that these types of spurious lawsuits issued in state courts are unconstitutional on their face, and are nothing more than attempts at stopping energy production.

> “The U.S. Constitution makes certain matters the exclusive domain of federal law for good reason. If all fifty states, let alone the tens of thousands of political subdivisions therein, were permitted to apply their own laws to such federal issues as interstate and international emissions, the result would be conflicting state standards that would be impossible for energy companies to navigate—what the U.S. Supreme Court called a “chaotic confrontation between sovereign states.” Ouellette, 479 U.S. at 496. That chaos would hamstring national energy production, which the Executive Branch has highlighted as a priority across Administrations.”

To be clear, meritorious debates about climate change and potential legislative remedies to it are important and justified when they occur at the right time and place. However, using judges and juries to assign liability is not only inappropriate but also unproductive and even illogical when considering the scale of pollution and carbon dioxide emissions from developing economies such as China and India.[21]

When oil, gas, and electricity providers dig wells, extract resources to refine, spin turbines, and lay transmission lines, they are generating the energy we need to heat our homes, power our cars, and provide all the necessary elements of a modern life and economy. Though renewable energy remains a key focus, still over 40% of consumer electricity is generated by natural gas turbines.[22]

SECTION 230 AS A PRECEDENT

When Congress passed the 1996 Communications Decency Act, which contained Section 230, the Internet was still a novel invention. Before this, online websites and platforms faced immense legal risk when users posted their own content. Without intervention and legal clarity to shield tech providers and platforms, innovation would have been paralyzed and would have never grown to the scale it has now.

Section 230’s “twenty-six words that created the Internet”—preventing platforms from being treated as the publisher of user content—created a **safe harbor.**[23] The result was explosive growth: from early forums to today’s global platforms and social media apps.

Importantly, Section 230 was not absolute immunity. Platforms remained liable for their own wrongdoing (such as federal crimes or intellectual property violations), but that liability did not extend to the people and industries using their platforms.

This law birthed a free-flowing and lightly regulated

20 City of Charleston v. Brabham Oil Co. Climate Case Chart, Sabin Center for Climate Change Law, Columbia Law School. Accessed September 2, 2025. https://climatecasechart.com/case/city-of-charleston-v-brabham-oil-co/.

21 “World Carbon Dioxide Emissions Rise Again, Driven by China and India.” AP News, December 4, 2023. https://apnews.com/article/carbon-dioxide-climate-change-china-india-aa25e5a4271aa45810c435280bb97879.

22 Keefe, Thomas L., and Kate Hardin. “2025 Power and Utilities Industry Outlook.” Deloitte Insights, December 9, 2024. Deloitte Center for Energy & Industrials. https://www.deloitte.com/us/en/insights/industry/power-and-utilities/power-and-utilities-industry-outlook.html.

23 Kosseff, Jeff. The Twenty-Six Words That Created the Internet. Ithaca, NY: Cornell University Press, 2019.

Internet, free from liability claims, to deliver millions of online services and websites now worth trillions.

This balance—shielding companies from unreasonable liability while preserving accountability—provides the model for an energy-sector equivalent. Just as Congress once recognized that the internet needed space and a flexible legal framework to grow, today's energy sector needs relief from lawsuits that threaten its ability to deliver affordable energy for consumers.

A SAFE HARBOR AND CLIMATE LIABILITY SHIELD FOR ENERGY PRODUCTION

Congress should enact legislation establishing that energy producers cannot be held civilly liable for climate change–related harms caused by the lawful and appropriate use of their products.

Scope:
- This would apply to all energy producers (oil, gas, coal, nuclear, renewables, utilities, etc.)
- Covers claims that seek damages for broader climate impacts.
- Would not preempt or negate accountability for direct harms or violations of law.

Accountability Preserved:
The safe harbor and liability provision would not shield bad actors. Energy producers would remain liable in civil and criminal courts for:
- Environmental violations (illegal pollution, spills, damages, etc.).
- Fraud or deceptive practices.
- Safety failures causing direct and acute injuries.

This guarantees that the law establishes a legal difference between **legitimate misconduct**, which courts must and should punish, and **overbroad climate litigation**, which chiefly has the goal of extracting money from energy producers.

POLICY RECOMMENDATIONS

1. **Enact an Energy Production Liability Protection Act**
- Establish a federal safe harbor shielding responsible energy producers from liability for perceived climate damages resulting from general use of their products.
- Provide for **early dismissal** of climate lawsuits falling under this safe harbor to prevent years of costly judicial interventions

2. **Embed Clear Exceptions**
- Explicitly exclude from the safe harbor any cases involving environmental violations, fraud, or direct physical harms.
- Reflect Section 230's general exceptions to ensure that companies breaking the law remain fully accountable in our courts of law.

3. **Preempt Conflicting State Laws**
- Use Congress's Commerce Clause authority to ensure uniformity nationwide and avoid wayward State Attorneys General.
- Preempt state or local climate tort claims that attempt to hold energy producers liable for global climate outcomes.
- Establish federal jurisdiction for any remaining permissible cases, preventing forum shopping in more favorable state jurisdictions.

Benefits for Consumers and the Economy

- **Affordable Energy Prices**: Preventing speculative climate lawsuits prevents the "litigation tax" from being passed on to consumers in the form of higher bills.
- **Future Energy Security**: With legal clarity, energy investors and companies can dedicate resources confidently in new production and innovation, ensuring supply keeps pace with surging demand
- **Innovation**: Freed from courtroom squabbles, energy firms can invest in cleaner and better technologies, including renewables and next-generation grids.
- **Consumer Choice:** A competitive, innovation-friendly market will add to the energy mix and deliver more affordable energy options for consumers who demand them.

POTENTIAL CRITICISM

"This is a license to pollute."
False. The safe harbor and liability waiver only blocks lawsuits that blame energy companies for hard to define climate harms. Energy producers remain fully liable for spills, violations, fraud, and direct harms.

"It undermines state authority."
A patchwork of state litigation is inefficient and unfair to consumers and elevates certain jurisdictions at the expense of others. A federal preemption would ensure uniform and predictable rules that would keep energy affordable for the American consumer.

"It weakens climate action."
Using the courts to solve or mitigate climate change is an inefficient and flawed policy. Using market incentives, competition, and reasonable regulations are the only way to reduce emissions and hope to make an impact. The safe harbor strengthens the focus on effective solutions.

CONCLUSION

The United States faces a surge in energy demand that will require the full output of each of our energy mix: fossil fuels, nuclear energy, wind, solar, and growing electricity generation and transmission.

Consumers need affordable, reliable, and innovative energy solutions offered to them by companies competing for their dollars. Yet litigation against energy producers threatens to undermine these priorities.

Congress should act now to create a Section 230-style safe harbor for energy production. This reform would:

- Protect consumers from higher costs.
- Ensure energy supply security.
- Encourage investment in cleaner technologies.
- Ensure accountability mechanisms for genuine misconduct remain in place

Endlessly feeding a climate litigation complex that enriches lawyers while raising costs for families, all the while not addressing how to improve climate solutions, is an expensive gambit.

Passing legislation that safeguards consumers and America’s energy future is the best method we must ensure we can continue to enjoy the growth that consumers benefit from.

The Consumer Choice Center is a non-profit organization dedicated to defending the rights of consumers around the world. Our mission is to promote freedom of choice, healthy competition, and evidence-based policies that benefit consumers. We work to ensure that consumers have access to a variety of quality products and services and can make informed decisions about their lifestyle and consumption.

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