CLIMATE LITIGATION AS STRATEGIC LITIGATION

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SUMMARY

What is climate litigation? Widely accepted definitions suggest it is any litigation pertaining directly or indirectly to climate change, which encompasses both strategic and routine litigation. Building on this framework, previous empirical assessments have found that climate litigation has not prompted a climate-oriented jurisprudence. However, empirical evidence suggests that strategic litigation—and not routine litigation—has contributed to development of a climate-oriented jurisprudence in jurisdictions across the globe. The different court receptiveness and variations in plaintiff behavior in strategic and routine litigation shed light on a distinctive framing for study: climate litigation as strategic litigation. While some commentators have criticized the disproportionate focus on "the tip of the iceberg," this emphasis is perhaps better described as a deliberate choice rather than a failure to spot the entire iceberg.

In the field of climate litigation, scholars have frequently focused on newspaper headline lawsuits against national governments and multinational oil companies.[1] However, the term "climate litigation" usually conveys a much broader array of lawsuits. Mainstream definitions of "climate litigation" encompass all cases that raise climate change either as a matter of fact or as an issue of law.[2] This includes both high-profile cases and less conspicuous—somewhat neglected—disputes.[3] In order to capture the particularities of climate litigation, scholarship has developed a distinction between "strategic" and "routine" litigation based on the design and implications of climate lawsuits.[4]

The dichotomy between strategic and routine litigation may have relevant implications over court behavior vis-à-vis climate change. With the aim of capturing distinctive patterns of court responsiveness to climate change and mitigation of greenhouse gas (GHG) emissions, this Article distinguishes between strategic and routine litigation. In contrast with previous scholarship, it reveals that strategic litigation has engendered a climate-oriented jurisprudence. By distinguishing strategic from routine litigation, this

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1. Joana Setzer & Lisa C. Vanhala, *Climate Change Litigation: A Review of Research on Courts and Litigants in Climate Governance*, 10 WIREs Climate Change 1, 2-3 (2019). For studies focused on strategic cases and climate litigation landmarks, see Alessandra Lehmen, *Advancing Strategic Climate Litigation in Brazil*, 22 German L.J. 1471 (2021); Benoit Mayer, *The Contribution of* Urgenda *to the Mitigation of Climate Change*, 35 J. Env't L. 167 (2023); Jacqueline Peel & Hari Osofsky, *A "Next Generation" of Climate Change Litigation? An Australian Perspective*, 9 Oñati Socio-Legal Series 275 (2018); Amy Rose et al., *The Crucial Role of Strategic Climate Litigation*, *in* Research Handbook on Climate Change Litigation 18 (Francesco Sindico et al. eds., Edward Elgar Publishing 2024).
2. Jacqueline Peel & Hari M. Osofsky, *Climate Change Litigation*, 16 Ann. Rev. L. & Soc. Sci. 21, 24 (2020) (proposing a concept of climate litigation in four concentric circles that range from litigation with climate as a central issue to litigation with implications for mitigation or adaptation); David Markell & J.B. Ruhl, *An Empirical Assessment of Climate Change in the Courts: A New Jurisprudence or Business as Usual?*, 64 Fla. L. Rev. 15, 27 (2012) (defining climate litigation as "any piece of federal, state, tribal, or local administrative or judicial litigation in which the party filings or tribunal decisions directly and expressly raise an issue of fact or law regarding the substance or policy of climate change causes and impacts"). This concept was also adopted by Meredith Wilensky, *Climate Change in the Courts: An Assessment of Non-U.S. Climate Litigation*, 26 Duke Env't L. & Pol'y F. 131, 134 (2015). Curiously, this definition has been considered narrow. Emily Bradeen, *What Is Climate Change Litigation?*, London Sch. Econ. & Pol. Sci. (Aug. 9, 2024), https://www.lse.ac.uk/granthaminstitute/explainers/what-is-climate-change-litigation/.

   The climate litigation database maintained by the Columbia Sabin Center for Climate Change Law includes cases that have "climate change law, policy, or science" as "material issue of law or fact." *See* Sabin Center for Climate Change Law, *About*, https://climatecasechart.com/about/ (last visited Nov. 18, 2024). This definition has also been adopted by the United Nations and by the literature. United Nations, Global Climate Litigation Report: 2023 Status Review 3 (2023); Joana Setzer & Catherine Higham, Grantham Research Institute on Climate Change and the Environment, Global Trends in Climate Change Litigation: 2024 Snapshot (2024). *See also* Chris Hilson, *Climate Change Litigation: A Social Movement Perspective* 2 (Working Paper, Univ. of Reading, 2010) (arguing that "many cases that would previously have been 'just'" routine litigation are climate litigation because they bring "a climate change element").
3. Setzer & Vanhala, *supra* note 1, at 3 ("[r]elatively few studies have looked into what constitutes the lion's share of climate litigation activity—hundreds of routine or 'everyday' cases"); Peel & Osofsky, *supra* note 2, at 25; Kim Bouwer, *The Unsexy Future of Climate Change Litigation*, 30 J. Env't L. 483, 503-04 (2018).
4. See, for a description, Ana Maria de Oliveira Nusdeo, *Litigância e Governança Climática: possíveis impactos e implicações*, *in* Litigância Climática: Novas Fronteiras para o Direito Ambiental no Brasil 139 (Joana Setzer et al. eds., Revista dos Tribunais 2019); Jacqueline Peel & Hari M. Osofsky, Climate Change Litigation: Regulatory Pathways to Cleaner Energy 30 (2015).

assessment offers a new diagnosis and insights into the rising strategic litigation jurisprudence and the climate turn it has prompted in various courts across the globe.

A key question is whether—and to what extent—judicial alternatives to climate governance have developed a novel climate-oriented jurisprudence in the courts. Previous studies have found that climate litigation has promoted little change in court decisionmaking and receptiveness toward climate change.[5] However, the past several years saw unprecedented growth of strategic climate litigation, with scholars noting the emergence of rights-based transnational narratives and successful climate advocacy patterns.[6] The rise of strategic litigation and the innovative approaches adopted by courts challenge the "business as usual" diagnostic in climate litigation.

Empirical evidence suggests that courts have been significantly more responsive to climate change mitigation in strategic litigation than in routine litigation. Courts demonstrate a greater likelihood of upholding claims that advocate for emissions mitigation in the context of strategic litigation. Similarly, plaintiffs are more likely to advance climate-aligned claims in strategic litigation compared to routine litigation.[7] While routine litigation may also have relevant implications, this Article suggests that strategic litigation is key to understanding the impacts of climate litigation on new trends in court behavior toward climate change.[8]

Strategic litigation has been a significant catalyst for legal innovation in the climate change legal framework. Moreover, strategic lawsuits account for the lion's share of climate litigation literature.[9] Scholars have criticized this myopic focus on "the tip of the iceberg" of climate litigation at the expense of routine cases.[10] While the literature has associated the emphasis on strategic litigation with the failure to acknowledge the whole picture of climate litigation, this Article offers a different explanation. Because strategic—and not routine—litigation has been a driver of a novel climate-oriented jurisprudence, scholarly focus on strategic litigation is a deliberate choice and not a failure to spot the entire iceberg.[11]

This Article proposes to reframe *climate litigation as strategic litigation*. This particular framing outlines uncaptured nuances in (strategic) climate litigation that have been obscured in previous empirical studies by the prevalence of routine litigation. The evolving strategies in climate lawsuits suggest the need to rethink current methodological approaches to climate litigation.[12] A critical step in this direction lies in the adoption of methodological and analytical frameworks that capture the different court decisionmaking patterns, litigation design, legal implications, and plaintiff approaches in strategic versus routine litigation. This perspective provides valuable analytical lenses to grasp the trends in this emerging climate-oriented jurisprudence.

This Article proceeds as follows. Part I details the distinction between strategic and routine litigation. Part II explains the different court responses to strategic and routine litigation. Part III explores key features of this rising climate-oriented jurisprudence, including the influence of international climate and human rights instruments over court decisionmaking in strategic lawsuits.

Based on the empirical results, Part IV proposes a new framing of research and study for the field: climate litigation as strategic litigation. Part V further addresses the main results obtained in the empirical assessment, such as

5. Markell & Ruhl, *supra* note 2, at 22 (arguing that U.S. courts have generally maintained a "business as usual" approach rather than developing a distinct climate-oriented jurisprudence); Wilensky, *supra* note 2, at 177 (noting, in light of David Markell and J.B. Ruhl's findings, "In general, the same proved true for non-U.S. litigation.").
6. Phillip Paiement, *Urgent Agenda: How Climate Litigation Builds Transnational Narratives*, *in* Transnational Environmental Law in the Anthropocene 122 (Emily Webster & Laura Mai eds., Routledge 2021) (noting the use of climate litigation by the Climate Justice Movement as a "tool" to develop transnational narratives of accountability). For related work, see Natasha Affolder & Godwin Dzah, *The Transnational Exchange of Law Through Climate Change Litigation*, *in* Research Handbook on Climate Change Litigation 207, 214 (Francesco Sindico et al. eds., Edward Elgar Publishing 2024) (exploring the transnational influence of high-profile climate-related cases); Anke Wonneberger, *Climate Change Litigation in the News: Litigation as Public Campaigning Tool to Legitimize Climate-Related Responsibilities and Solutions*, 23 Soc. Movement Stud. 94 (2024); Grace Nosek, *Climate Change Litigation and Narrative: How to Use Litigation to Tell Compelling Climate Stories*, 42 Wm. & Mary Env't L. & Pol'y Rev. 733, 742 (2018). *See also infra* notes 16 and 58 and accompanying text.
7. While strategic litigation is usually associated with pro-regulation efforts, it may be used for deregulatory purposes. *See* Peel & Osofsky, *supra* note 4, at 5 (distinguishing between pro-regulatory cases—which "promote climate change regulation"—and antiregulatory cases—those that "oppose existing or proposed regulatory measures"); Markell & Ruhl, *supra* note 2, at 21 (similarly differentiating between pro-regulation and antiregulation lawsuits); Setzer & Higham, *supra* note 2, at 8 (classifying between "climate-aligned" and "non-climate-aligned" cases).
8. For a contrasting perspective, see Joana Setzer & Catherine Higham, Grantham Research Institute on Climate Change and the Environment, Global Trends in Climate Change Litigation: 2022 Snapshot 46 (2022):

> [C]lassifying a case as "strategic" or "non-strategic" does not imply a judgement of one being better or more impactful than the other. Cases brought to achieve a relief that will apply to an isolated situation (i.e. nonstrategic) can be as important as cases that seek the realisation of broader changes in society (i.e. strategic litigation). Courts rarely have regard for the broader intentions of the parties when determining a case, meaning that cases brought with little or no strategic intent may nonetheless provide opportunities for courts to issue far-reaching judgments on novel legal issues.

9. Setzer & Vanhala, *supra* note 1 (explaining "the '*Urgenda* effect' on climate litigation research following the original 2015 *Urgenda* decision in the Netherlands" because "[s]ince this high-profile case . . . there has been a sustained spike in publications on climate litigation"). *See also* Rose et al., *supra* note 1, at 214; Peel & Osofsky, *supra* note 2, at 27 (noting "the concentration of the literature on high-profile cases, at the expense of more routine, lower-profile cases"); Bouwer, *supra* note 3, at 504.
10. Bouwer, *supra* note 3, at 501-02.
11. This Article concentrates on court-based responses and changes in court behavior—not on the complex overarching political, economic, and social impacts that strategic or "holy grail" cases may have. *See* Kim Bouwer, *Lessons From a Distorted Metaphor: The Holy Grail of Climate Litigation*, 9 Transnat'l Env't L. 347 (2020).
12. The literature has recently identified the exponential growth and consolidation of strategic cases in climate litigation, which reflects how climate litigation increasingly overlaps and identifies with strategic litigation. Setzer & Higham, *supra* note 2, at 1-2. In the well-known annual report of climate litigation prepared by the Grantham Research Institute on Climate Change and the Environment of the London School of Economics, mentions of the word "strategic" have grown exponentially over the years. In 2019, the report contained only 12 mentions. The numbers increased to 20 in 2021, 49 in 2022, and 68 in 2023. The more recent report makes reference to the word 65 times.

types of disputes and pro- and non-climate-aligned claims distribution. Part VI concludes.

I. Strategic Versus Routine Litigation

The distinction between strategic and routine litigation has important implications in terms of court behavior toward mitigation of emissions. This classification was developed to distinguish regular day-to-day litigation from lawsuits deliberately designed to impact climate policy and public opinion.[13] Differentiating strategic from routine lawsuits is crucial in climate litigation due to the highly contrasting styles of litigation and issues discussed in courts. However, a key contrast between strategic and routine litigation has lingered unnoticed: courts are more prone to judge in favor of climate-aligned claims and have higher levels of climate receptiveness in strategic litigation than in routine cases.

Strategic litigation is on the rise across the globe, and has remained at the center of public attention over the past few decades.[14] More recently, the rapid growth of strategic cases has led scholars to suggest a process of "consolidation" and "concentration" of climate lawsuits in strategic efforts.[15] This approach to climate litigation revolutionized earlier formulas for taking climate change to court by placing climate discussions at the heart of the dispute. While court-based alternatives to climate governance have political, economic, and enforcement constraints, strategic cases usually seek to promote a wide array of out-of-court repercussions.[16]

In such instances, plaintiffs usually target government policies, large oil companies, emissions-reduction goals, and the constitutionality of certain laws about climate change.[17] This kind of litigation lies in the roots of the *rights turn* in climate litigation, which refers to the use of international human rights treaties as a legal basis to hold high-profile emitters liable for climate inaction and failure to reduce GHG emissions.[18] Although strategic cases are fewer than routine cases, they are highly influential beyond jurisdictional boundaries, and have built a transnational narrative in support of the development of climate-related rights and obligations.[19]

Routine litigation usually refers to typical environmental law cases—such as administrative proceedings to obtain energy or industrial permits—with small-scale effects over climate change mitigation or adaptation. Routine cases far outnumber strategic lawsuits, but their outcomes are usually confined to local contexts and applied on a case-by-case basis. Plaintiffs neither develop a strategy to articulate larger media coverage nor leverage human rights and climate obligations as legal grounds for their claims building on successful climate-related precedents.

As a rule, routine litigation has limited impacts and produces no overarching implications for climate policy.[20] In contrast, strategic litigation is usually highly influential in promoting climate awareness and regulation. For instance, in the well-known *Urgenda Foundation v. Netherlands*, the Dutch Supreme Court took an active role in imposing obligations on the executive and legislative branches, with nationwide economic repercussions.[21] On the other hand, a handful of cases from several jurisdictions discuss challenges to permit applications—whether granted or denied—in which courts have either ratified or reviewed administrative decisions.[22]

The distinction between strategic and routine litigation is often blurred. First, there are no uniform differentiation criteria in the literature. Second, delimiting a precise concept of strategic litigation can be tricky, as the assessment may be subjective instead of objective.[23] The category may convey a broad set of litigation approaches. Authors have argued that "the mere filing of a climate lawsuit" may be a driver of successful strategic litigation.[24] Third, it may be difficult to draw a clear line in practice because the strategic nature of a lawsuit is usually contextual. Even environmental permit disputes, a textbook example of routine

13. Setzer & Higham, *supra* note 2, at 9 (in strategic litigation, the "plaintiff seeks to both win the individual case and to influence the public debate on climate action").
14. *Id.* at 1-2 (noting the rising number of strategic cases); Ben Batros & Tessa Khan, *Thinking Strategically About Climate Litigation*, *in* Litigating the Climate Emergency 97, 99 (César Rodríguez-Garavito ed., Cambridge Univ. Press 2022). *See also* Press Release, United Nations Environment Programme, Climate Litigation More Than Doubles in Five Years, Now a Key Tool in Delivering Climate Justice (July 27, 2023), https://www.unep.org/news-and-stories/press-release/climate-litigation-more-doubles-five-years-now-key-tool-delivering.
15. Setzer & Higham, *supra* note 2, at 1-2.
16. For a discussion, see Scott L. Cummings & Deborah L. Rhode, *Public Interest Litigation: Insights From Theory and Practice*, 36 Fordham Urb. L.J. 603, 615 (2009) (arguing that litigation involving public interest must dialogue with political mobilization and policymaking).
17. Joana Setzer & Catherine Higham, Grantham Research Institute on Climate Change and the Environment, Global Trends in Climate Change Litigation: 2023 Snapshot 20 (2023). Several studies are devoted exclusively to strategic litigation landmarks. *See supra* note 1 and accompanying text.
18. Jacqueline Peel & Hari M. Osofsky, *A Rights Turn in Climate Change Litigation?*, 7 Transnat'l Env't L. 37 (2018); César Rodríguez-Garavito, *Litigating the Climate Emergency: The Global Rise of Human Rights-Based Litigation for Climate Action*, *in* Litigating the Climate Emergency 9, 11 (Cesar Rodríguez-Garavito ed., Cambridge Univ. Press 2022) (noting the rise of rights-based—or "*Urgenda*-like"—litigation after 2015). *See also* Setzer & Vanhala, *supra* note 1, at 3 (describing it as "*Urgenda* effect").
19. Paiement, *supra* note 6, at 130; Affolder & Dzah, *supra* note 6, at 213 (tracing cross-citation of climate litigation landmarks across different jurisdictions).
20. This has been criticized by scholars drawing attention to the relevance of small-scale impacts of routine litigation. *See* Bouwer, *supra* note 3, at 493.
21. After the State's condemnation before the court of appeals in 2018, the Dutch government adopted the Climate Act (May 2019) and the National Energy and Climate Plan (November 2019) in accordance with the mitigation goals set by the courts. The final decision was issued by the Supreme Court of the Netherlands in December 2019. The National Energy and Climate Plan of the Netherlands cites the *Urgenda* case several times, recognizing that "the public debate is highly focused on climate policy" and noting "the extra measures the government took recently in the context of Urgenda." Ministry of Economic Affairs and Climate Policy, Integrated National Energy and Climate Plan 2021-2030, at 34 (2019) (Neth.).
22. *See generally* Meridian Energy Ltd. v. Wellington City Council [2007] NZEnvC 128 (N.Z.); Macarthur & Others v. Secretary of State for Communities & Local Government & Others [2013] EWHC (Admin) 3 (U.K.).
23. Authors have noted that it is a "subjective" exercise. *See* Setzer & Higham, *supra* note 2, at 53; Riccardo Luporini, *Strategic Litigation at the Domestic and International Levels as a Tool to Advance Climate Change Adaptation?*, *in* Yearbook of International Disaster Law Online 202, 204 (Giulio Bartolini et al. eds., Brill 2023).
24. Lehmen, *supra* note 1, at 1473.

litigation,[25] may be considered strategic due to the larger advocacy strategy developed by plaintiffs.[26] Similarly, even though strategic lawsuits are associated with climate-aligned efforts, litigants may also seek to prevent climate action with strategic litigation.[27]

Although there are borderline cases, nobody questions the strategic nature of certain paradigmatic cases—the most notable example being *Urgenda*. In contrast with "early efforts focused on challenging a particular fossil fuel-intensive project or harmful regulation," strategic litigation is associated with "ambitious and systemic outcomes."[28] Plaintiffs' goals in litigation are crucial for classifying a case as routine or strategic.

Scholars have differentiated routine from strategic litigation by taking into account (1) the identity of plaintiffs, who are typically nongovernmental organizations (NGOs); (2) the identity of defendants, who are usually high-profile emitters; (3) the aims of the litigation, as strategic cases normally have larger ambitions that extend beyond individual situations, such as the adequacy of national climate policy and targets; and (4) the connection of litigation with larger advocacy strategies, because strategic lawsuits are commonly "part of a bigger puzzle."[29]

This Article distinguishes strategic from routine cases according to these criteria. While routine litigation represents the substantial majority, making up 84.04% of all cases, strategic cases represent a smaller portion, accounting for only 15.96%. Table 1 (next page) provides a detailed list of cases classified as strategic.

Most cases classified as strategic are widely recognized as such.[30] Strategic cases as defined here share a common profile. Plaintiffs are normally children and youth,[31] climate and environment NGOs,[32] and persons particularly affected by climate change.[33] They often develop well-articulated advocacy strategies seeking to influence public opinion, which usually include the provision of an English translation of relevant documents and large media coverage.[34] This kind of litigation aims at broader regulatory impact through rulings that produce *erga omnes*—or *quasi erga omnes*—effects, such as the establishment of a duty of care toward all citizens or the revision of national GHG mitigation goals.

The strategic versus routine litigation dichotomy has limitations. By focusing on plaintiff behavior in climate litigation, it fails to capture variations in court behavior toward similar legal issues. Moreover, the strategic nature of a case does not necessarily imply a positive response from the courts.[35] Heterodox rulings may turn routine cases into precedents with broader political, economic, and social momentum.[36] Out-of-court implications of routine cases may also produce relevant regulatory and policy change,[37] although these repercussions are beyond the scope of this assessment. While other lawsuits may arguably qualify as strategic, this Article compiles a list of strategic cases based exclusively on the criteria presented in Table 1.[38]

25. Joana Setzer & Rebecca Byrnes, Grantham Research Institute on Climate Change and the Environment, Global Trends in Climate Change Litigation: 2019 Snapshot 2 (2019) (exemplifying as routine cases those concerning "planning applications or allocation of emissions allowances under schemes like the [European Union] emissions trading system").
26. Joana Setzer & Rebecca Byrnes, Grantham Research Institute on Climate Change and the Environment, Global Trends in Climate Change Litigation: 2020 Snapshot 23 (2020) ("Others focus on challenging environmental assessment and permitting decisions, e.g. requiring that administrative decisionmakers consider climate change impacts in the approval of large-scale projects.").
27. Setzer & Higham, *supra* note 17, at 4.
28. Batros & Khan, *supra* note 14, at 99.
29. Setzer & Higham, *supra* note 17. Jacqueline Peel & Rebekkah Markey-Towler have also identified a "recipe for success" in strategic litigation based on the following elements: (1) selection of plaintiffs to communicate a message; (2) experienced legal team; (3) strategic choice of defendants; (4) mobilization of climate science arguments; (5) innovative arguments, including a duty of care regarding climate change; and (6) far-reaching remedies that extend beyond the parties to the lawsuit. *See* Jacqueline Peel & Rebekkah Markey-Towler, *Recipe for Success? Lessons for Strategic Climate Litigation From the* Sharma*,* Neubauer*, and* Shell *Cases*, 22 German L.J. 1484, 1487 (2021).
30. *See, e.g.*, Peel & Markey-Towler, *supra* note 29, at 1485 (citing Sharma v. Minister for the Environment [2022] FCAFC 35 and Bundesgerichtshof [BGH] [Federal Court of Justice] Mar. 24, 2021, 1 BvR 2656/18 (Ger.) (Neubauer v. Germany) as strategic cases); Setzer & Higham, *supra* note 2, at 26 (citing VZW Klimaatzaak v. l'État belge, 2eme chambre, affaires civiles (Nov. 30, 2023), Revue de Jurisprudence de Liège (J.L.M.B.) 2024/9, p. 356, as strategic); Setzer & Byrnes, *supra* note 26, at 24 (citing HR 20 december 2019, JB 2020, JBPr 2020/20 m. nt. van Wiersma (Stichting Urgenda/De Staat Der Nederlanden) (Urgenda Foundation v. State of the Netherlands); Plan B Earth & Others v. Secretary of State for Business, Energy & Industrial Strategy [2018] EWHC (Admin) 1892 (U.K.); Save Lamu v. National Environmental Management Authority & Amu Power Co. Ltd. (2019) e.K.L.R. (N.E.T.K.) (Kenya); EarthLife Africa Johannesburg v. Minister of Environmental Affairs & Others 2017 (Unreported Case No 65662/16) (ZAGPPHC) (S. Afr.)); Lisa Chamberlain & Melissa Fourie, *Using Climate Litigation to Strengthen Advocacy Strategies: The Life After Coal Campaign in South Africa*, 16 J. Hum. Rts. Prac. 248 (2024) (noting the strategic character of the *EarthLife* case); Elizabeth Donger, *Children and Youth in Strategic Climate Litigation: Advancing Rights Through Legal Argument and Legal Mobilization*, 11 Transnat'l Env't L. 236, 273-77 (2022) (citing *Neubauer*, Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala de Casación Civil, abril 5, 2018, M.P.: L. Armando Tolosa Villabona, Radicación 11001-22-03-000-2018-00319-01 (Generaciones Futuras v. Minambiente) (Future Generations v. Ministry of the Environment & Others) (p. 2) (Colom.), *VZW Klimaatzaak*, and *Sharma*); Jacqueline Peel & Jolene Lin, *Transnational Climate Litigation: The Contribution of the Global South*, 113 Am. J. Int'l L. 679, 715 (2019) (noting that *Thomson v. Minister for Climate Change Issues* [2017] NZHC 733, at 2 (N.Z.) was inspired by the *Urgenda* case).
31. *See, e.g.*, *Thomson*, [2017] NZHC 733, at 2 (plaintiff is described as "a law student concerned at that response and the consequences of its alleged inadequacy on future generations"); *Future Generations*, at 2 (plaintiffs are "a group of 25 boys, girls, teenagers and young adults between 7 and 25 years old") (free translation). This trend has been previously recognized by the literature. Donger, *supra* note 30, at 268.
32. *See, e.g.*, Friends of the Irish Environment v. Ireland [2020] IESC 49 (Ir.).
33. *See, e.g.*, *Plan B Earth* (in which plaintiffs range from young to older people, socially disadvantaged persons, and persons from small islands threatened by climate change).
34. *See, e.g.*, Aleksandrina V. Mavrodieva et al., *Role of Social Media as a Soft Power Tool in Raising Public Awareness and Engagement in Addressing Climate Change*, 7 Climate 1, 10 (2019) (noting the impact of social media over public perception of climate change). Plaintiffs provided English translations in, inter alia, *Urgenda*, *Future Generations*, and *VZW Klimaatzaak*.
35. Setzer & Higham, *supra* note 2, at 58.
36. For instance, *Gloucester Resources Ltd. v. Minister for Planning* [2019] NSWLEC 7 (N.Z.) (even though plaintiffs did not develop a significant advocacy strategy, the court handed down a landmark ruling with broader legal and political implications). While this case has been cited as an example of strategic litigation, it was excluded from the final list because it does not meet the selection criteria. *See* Setzer & Byrnes, *supra* note 26, at 24.
37. Setzer & Byrnes, *supra* note 25, at 10.
38. The methodology and a full table of cases analyzed in this Article may be found in Appendices I and II below.

II. Strategic Litigation and the Rise of Climate-Oriented Jurisprudence

Previous empirical studies have suggested that climate litigation has not developed a distinct climate-oriented jurisprudence. In 2010, David Markell and J.B. Ruhl found that courts had failed to create a climate-oriented jurisprudence—instead, climate litigation was just "business as usual."[39] In 2015, Meredith Wilensky confirmed these findings, noting that climate litigation had not prompted a distinct approach to climate change in tribunals.[40] Both studies adopt the mainstream definition of *climate litigation*, which classifies climate litigation as "any administrative or judicial litigation in which the decision raises

Table 1. List of Strategic Litigation Cases

Case	Plaintiffs	Defendants	Aims of the litigation	Advocacy strategy
Sharma v. Minister for the Environment	Citizens	Government minister	Challenge to environmental permit and establishment of a duty of care toward young people	Yes
VZW Klimaatzaak v. Kingdom of Belgium	Citizens and NGO	National and regional government	Establishment of government duty to reduce GHG emissions and of a duty of care toward citizens	Yes
Saskatchewan v. Canada re Greenhouse Gas Pollution Pricing Act	Provinces	National government	Constitutionality of federal carbon pricing law	Yes
Future Generations v. Ministry of the Environment & Others	Citizens and NGO	National and regional government	Government accountability for climate omission and deforestation	Yes
Commune de Grande-Synthe v. France	Municipality	National government	Government accountability to meet climate change targets	Yes
Neubauer v. Germany	Citizens	National government	Challenge to government emissions-reduction target	Yes
Friends of the Irish Environment v. Ireland	NGO	National government	Challenge to government emissions-reduction target	Yes
Shrestha v. Office of the Prime Minister	Citizens	National government	Government accountability for omission to enact law addressing climate change	Yes
Urgenda Foundation v. State of the Netherlands	Citizens and NGO	National government	Establishment of government duty to reduce GHG emissions and the existence of a duty of care toward citizens	Yes
Thomson v. Minister for Climate Change Issues	Citizen	National government	Challenge to government emissions-reduction target	Yes
Gbemre v. Shell Petroleum Development Company of Nigeria Ltd.	Citizen representing local community	National government and multinational company	Accountability for pollution caused by gas flaring in Niger Delta	Yes
Save Lamu v. National Environmental Management Authority & Amu Power Co. Ltd.	Citizens and NGO	Administrative authority and company	Challenge regarding environmental permit	Yes
Sheikh Asim Farooq v. Federation of Pakistan	Citizen	National government	Government accountability for large-scale deforestation	Yes
EarthLife Africa Johannesburg v. Minister of Environmental Affairs & Others	NGO	Government ministry	Challenge regarding environmental permit	Yes
Plan B Earth & Others v. Secretary of State for Business, Energy &Industrial Strategy	Citizens and NGO	Government ministry	Establishment of government duty to reduce GHG emissions	Yes

39. Markell & Ruhl, *supra* note 2, at 15-16.
40. Wilensky, *supra* note 2, at 177.

climate change as a matter of fact or as an issue of law, covering both high-profile and day-to-day litigation."[41]

This empirical assessment differentiates strategic and routine litigation in order to analyze variations in court decisionmaking in both categories. This Article finds significant differences in court responsiveness to strategic and routine litigation. In strategic litigation, courts are more inclined to uphold claims that promote GHG mitigation. Similarly, plaintiffs are more likely to pursue climate-aligned claims in strategic litigation.

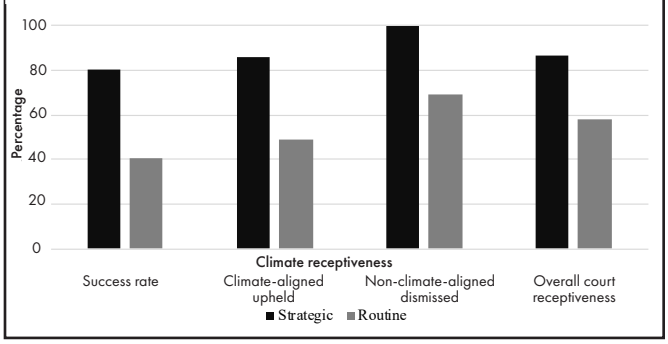
In contrast with previous findings, empirical evidence suggests that strategic litigation has formed a new climate-oriented jurisprudence that changed court approaches vis-à-vis routine litigation. Over the past few years, strategic cases have rapidly risen globally, with a growing number of scholars noting the innovative rights-based approaches adopted by courts.[42] Climate litigation as a governance strategy is particularly associated with strategic litigation. The boom of strategic litigation and the varying patterns of judicial responsiveness to strategic lawsuits challenge the assumption that climate litigation remains "business as usual."

Among strategic cases, a significant majority is climate-aligned (93.33%), while non-climate-aligned lawsuits represent only 6.67% of cases. Climate-aligned claims also have a significant success rate (85.71%) in strategic litigation. Overall climate responsiveness in courts—calculated based on the sum of decisions that upheld climate-aligned claims and dismissed non-climate-aligned claims—corresponds to 80% in strategic lawsuits. The numbers show the predominance and relatively higher level of success of climate-aligned lawsuits in strategic climate litigation. Non-climate-aligned claims in strategic cases are very few (6.67%) and have had no success.

Routine litigation demonstrates minimal variation in judicial responsiveness to climate change, which probably accounts for a "business as usual" approach in courts. Routine cases have a balanced climate-aligned (54.43%) and non-climate-aligned (45.57%) claims distribution. In comparison to strategic cases, the success rate of climate-aligned claims decreases to 48.84% in routine litigation. Courts show climate responsiveness (i.e., climate-aligned claims upheld and non-climate-aligned claims not upheld) in 58.23% of cases, which is approximately 1.37 times lower than in strategic litigation. Figure 1 compares benchmarks of climate receptiveness in strategic and routine cases.

In strategic cases, plaintiffs often rely on international human rights and climate instruments in their submissions, such as the Paris Agreement and the United Nations Framework Convention on Climate Change (UNFCCC).[43]

Figure 1. Case Outcome in Routine Versus Strategic Litigation



There has been a wave of *Urgenda*-inspired strategic cases seeking to establish a duty of care toward citizens and to challenge government mitigation targets. For instance, plaintiff submissions cite extracts of *Urgenda* in *Neubauer v. Germany*, *Friends of the Irish Environment v. Ireland*, *Plan B Earth v. Secretary of State*, and *R (on the Application of Friends of the Earth & Others) v. Heathrow Airport Ltd.*

While routine lawsuits are normally resolved within the existing legal framework without challenging or expanding it significantly, strategic litigation has emerged as a catalyst for the development of a climate-oriented jurisprudence. Although early efforts to integrate climate discussions into litigation may have been tentative, plaintiffs are increasingly bolder in pursuing the climate agenda through litigation.[44] Judicial decisions worldwide have welcomed wide-ranging claims in heterodox rulings and developed a climate-oriented jurisprudence that is both novel and distinct from, even if influential on, routine litigation rulings. This increased reliance of plaintiffs on strategic litigation may reflect a response to the climate-friendly approach adopted by courts.

Patterns in court behavior toward mitigation of emissions in climate litigation show distinctive levels of judicial responsiveness in strategic and routine litigation. Climate litigation is more effective, and courts are more receptive to climate change issues, in the context of strategic litigation. Plaintiffs have assumed proactive and innovative approaches to advance, in most cases, a climate-aligned agenda. Courts have likewise displayed higher levels of receptivity to strategic cases compared

41. Markell & Ruhl, *supra* note 2, at 27; Wilensky, *supra* note 2, at 134.
42. Annalisa Savaresi & Joana Setzer, *Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers*, 13 J. Hum. Rts. & Env't 7, 12-13 (2022). *See also* Peel & Lin, *supra* note 30, at 711 (noting the dominance of human rights-based climate litigation in the global South); Peel & Markey-Towler, *supra* note 29, at 1486.
43. For cases with plaintiff submissions that make reference to either climate instruments, such as the Paris Agreement and the UNFCCC, or to human rights treaties, see Plan B Earth & Others v. Secretary of State for Business, Energy & Industrial Strategy [2018] EWHC (Admin) 1892 (U.K.); R (on the Application of Friends of the Earth Ltd. & Others) v. Heathrow Airport Ltd. [2020] UKSC 52 (U.K.); HR 20 december 2019, JB 2020, JBPr 2020/20 m. nt. van Wiersma (Stichting Urgenda/De Staat Der Nederlanden) (Urgenda Foundation v. State of the Netherlands) §§5-6 (Neth.); CA [Court of Appeals] Bruxelles (2nd ch. F) (Belg.), Nov. 30, 2023, Arrêt du 30 novembre 2023, VZW Klimaatzaak v. l'État belge, 2eme chambre, affaires civiles (Nov. 30, 2023), Revue de Jurisprudence de Liège (J.L.M.B.) 2024/9, p. 356; Bundesgerichtshof [BGH] [Federal Court of Justice] Mar. 24, 2021, 1 BvR 2656/18 (Ger.) (Neubauer v. Germany); Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala de Casación Civil, abril 5, 2018, M.P.: L. Armando Tolosa Villabona, Radicación 11001-22-03-000-2018-00319-01 (Generaciones Futuras v. Minambiente) (p. 2) (Colom.).
44. Setzer & Higham, *supra* note 2, at 2.

to routine litigation. This dynamic interplay between proactive plaintiffs and receptive courts has been instrumental in the crafting and development of this climate-oriented jurisprudence.

III. Climate-Oriented Jurisprudence: Key Features and Analysis

Strategic litigation has propelled a climate-oriented jurisprudence. This climate-oriented jurisprudence shares a common profile characterized by the influence of international climate and human rights standards, as well as landmark climate litigation decisions from other jurisdictions. The legal arguments of strategic cases communicate, influence, and build upon each other, forming patterns that bundle together a heterogeneous set of climate litigation rulings as part of a larger interconnected narrative. This approach reflects court-based efforts to overcome the shortcomings of existing legal foundations to address climate change adequately.

As strategic litigation pushes the boundaries of existing legal frameworks, courts have resorted to international obligations in order to confront existing, ineffective statutes and laws. International climate-related and human rights instruments have been deployed as legal devices to break new ground through climate litigation. Courts have often relied on international commitments to impose obligations at the national level, particularly in strategic cases. The frequent use of international climate and human rights instruments is a defining characteristic of this emerging climate-oriented jurisprudence.

The data reveal significant disparities in the citation rates of international human rights instruments in routine and strategic cases. A total of 86.67% of strategic cases have used at least one international climate instrument—in contrast to a 24.05% rate for routine litigation. Moreover, nearly half of strategic cases rely on international human rights treaties (46.67%), whereas only 6.33% of routine cases cite human rights instruments.

Interestingly, citation of climate and human rights instruments is associated with higher success rates for climate-aligned claims. Cases citing international climate standards had a higher success rate (62.16%) than those that did not cite such instruments (36.84%). The most frequently cited treaties are the UNFCCC (32 citations), the Kyoto Protocol (27 citations), and the Paris Agreement (20 citations). Other less frequently cited conventions include the Copenhagen Accord, the Bali Action Plan, the Stockholm and Rio Declarations, the Cancún Agreements, and the Aarhus Convention.

As shown in Figures 2 and 3, citations are concentrated on strategic lawsuits. For instance, 86.67% of decisions in strategic cases cite the UNFCCC, while the numbers drop to 24.05% in routine cases. Other key treaties, such as the Kyoto Protocol (60% of cases) and the Paris Agreement (80%), are cited by the majority of decisions in strategic litigation. Moreover, rulings that make reference to climate-related treaties have heightened climate responsiveness. For one, 75% of decisions that cite the Paris Agreement have

Figure 2. Number of Decisions Citing Key Climate Instruments in Routine and Strategic Litigation

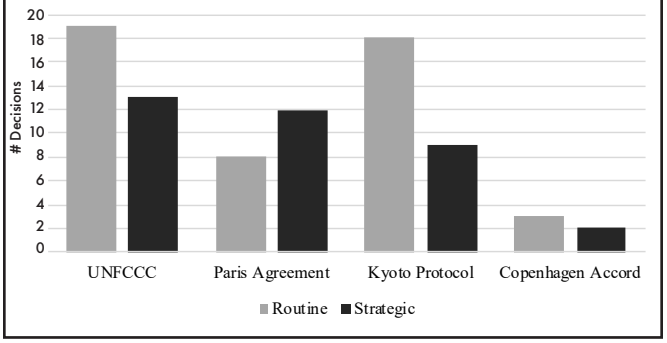
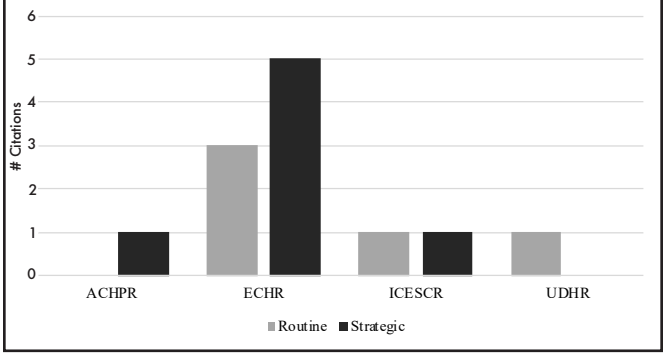


Figure 3. Citation of Human Rights Instruments in Routine and Strategic Cases



either upheld climate-aligned claims or dismissed non-climate-aligned claims.

The most frequently cited human rights treaty is the European Convention on Human Rights (ECHR) (8 citations). Courts have also cited the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (2 citations), the Universal Declaration of Human Rights (UDHR) (1 citation), and the African Charter on Human and Peoples' Rights (ACHPR) (1 citation). The majority of decisions using human rights instruments discuss climate-aligned claims (83.33%). In such instances, climate-aligned claims have a significant success rate (90%).

Citation of human rights instruments positively impacts climate responsiveness in court decisionmaking. In such instances, courts are more inclined to uphold climate-aligned claims. Decisions citing human rights treaties are associated with a higher plaintiff success rate (75%) vis-à-vis those that do not cite human rights instruments (42.68%). Curiously, in cases in which courts cited human rights treaties, none of the decisions upheld non-climate-aligned claims.

Another distinctive feature of this emerging climate-oriented jurisprudence is the cross-citation of paradigmatic cases from other jurisdictions. Decisions in strategic cases cite foreign rulings seven times more than decisions in routine cases. The *Urgenda* decision is the most cited precedent in decisions that use jurisprudence from foreign jurisdic-

tions.[45] Other recurrent cases include *Thomson v. Minister for Climate Change Issues*, *Neubauer*, *Massachusetts v. Environmental Protection Agency*, and *Juliana v. United States*. Similarly, courts have relied on rulings of the European Court of Human Rights to develop a climate-related duty of care of governments toward citizens.[46] Table 2 details the number of citations to each landmark ruling.

Table 2. Number of Citations of Climate Litigation Landmarks

Cases	Citations
Urgenda v. Netherlands	5
Massachusetts v. EPA	2
Juliana v. USA	1
Thomson v. New Zealand	1
Neubauer v. Germany	1

IV. A New Framing: Climate Litigation as Strategic Litigation

A few decades ago, climate governance was mostly based on autonomous statutory sources and international treaties.[47] However, their enforcement has remained among the main challenges in climate change law.[48] Single instruments, such as the Paris Agreement and the Kyoto Protocol, have proven ineffective in lowering global emissions.[49] In an attempt to fill this gap, courts have become central players in climate governance.[50] At least theoretically, climate litigation has emerged as a corrective tool for institutional failures in a polycentric governance paradigm seeking to enhance accountability for GHG emissions.[51]

Over the past couple decades, scholarship, NGOs, and governments have paid close attention to the growing number of cases labeled as climate litigation. Strategies for developing and implementing emissions mitigation policies have increasingly, and often successfully, relied on courts to enforce existing environmental laws and regulations. Climate litigation scholarship has built a narrative of progress in climate governance and regulation as a result of an active stance of courts in imposing climate-related obligations and shaping the climate legal outlook at a transnational level.[52]

There are many pros to using climate litigation as a corrective tool for institutional failures in climate policy.[53] Previous achievements of strategic litigation include the accountability of high-profile emitters and the strengthening of national climate policies.[54] Studies have shown the potential of climate litigation to influence state policymaking by ordering legislative changes or incorporating climate considerations in environment-related projects.[55] Yet, this positive account sustained by some scholars does not necessarily reflect with accuracy the complex dynamics and conflicting interests that have shaped climate litigation debates over the years.

Critics argue that overly optimistic approaches to climate litigation overestimate the ability of courts to tackle climate change and fail to offer real solutions to the problem. A key argument is that courts have limited power to promote concrete economic and political change.[56] Others have criticized the blurred lines between climate litigation and judicial activism.[57] Another problem lies in the inadequacy of the current legal framework for litigating climate matters.[58] From this perspective, even if courts were to accept the legal arguments advanced by plaintiffs

45. *See* CA [Court of Appeals] Bruxelles (2nd ch. F) (Belg.), Nov. 30, 2023, Arrêt du 30 novembre 2023, VZW Klimaatzaak v. l'État belge, 2eme chambre, affaires civiles (Nov. 30, 2023), Revue de Jurisprudence de Liège (J.L.M.B.) 2024/9, p. 356; Friends of the Irish Environment v. Ireland [2020] IESC 49 (Ir.).
46. *See generally* HR 20 december 2019, JB 2020, JBPr 2020/20 m. nt. van Wiersma (Stichting Urgenda/De Staat Der Nederlanden) (Urgenda Foundation v. State of the Netherlands).
47. *See generally* Joyeeta Gupta, The History of Global Climate Governance 189 (2014) (exploring the significant normative developments relating to climate change and proposing litigation as a potential solution for accountability).
48. Joyeeta Gupta, *Legal Steps Outside the Climate Convention: Litigation as a Tool to Address Climate Change*, 16 Rev. Eur. Cmty. & Int'l Env't L. 76, 77 (2007) ("By 2000, there was a realization among some scholars that a cost-effective leadership process was unlikely to address the major impacts of climate change . . . .").
49. Elinor Ostrom, *A Polycentric Approach for Coping With Climate Change* 3 (World Bank, Policy Research Working Paper No. 5095, 2009) (criticizing the search for a "single worldwide 'solution'" for climate change).
50. Jacqueline Peel et al., *Climate Change Law in an Era of Multi-Level Governance*, 1 Transnat'l Env't L. 245, 268-70 (2012) (affirming that "litigation has often been used in a strategic fashion as a response to inadequate lawmaking activity by government and to prompt wider policy change").
51. Peel & Osofsky, *supra* note 2, at 22.
52. *See supra* note 6 and accompanying text.
53. For an argument in favor of climate litigation, see Gupta, *supra* note 48, at 85; Catherine Higham et al., Grantham Research Institute on Climate Change and the Environment, Challenging Government Responses to Climate Change Through Framework Litigation (2022); Peel & Osofsky, *supra* note 2, at 34 ("A consistent message that emerges from scholarly assessments of the impact of public interest litigation programs is that 'litigation is an imperfect but indispensable strategy of social change[.]'").
54. *See supra* note 21.
55. *See* Brian J. Preston, *The Influence of Climate Change Litigation on Governments and the Private Sector*, 2 Climate L. 485, 485 (2011); Hari M. Osofsky, *The Continuing Importance of Climate Change Litigation*, 1 Climate L. 3, 7-8 (2010).
56. Eric Posner, *Climate Change and International Human Rights Litigation: A Critical Appraisal*, 155 U. Pa. L. Rev. 1925, 1935 (2007) (arguing that the costs of climate litigation outweigh the benefits). For a critique of climate litigation against private parties, see Ryan Gunderson & Claiton Fyock, *The Political Economy of Climate Change Litigation: Is There a Point to Suing Fossil Fuel Companies?*, 27 New Pol. Econ. 441 (2022) (noting the constraints associated with climate litigation against private parties).
57. Lucas Bergkamp & Scott J. Stone, *The Trojan Horse of the Paris Agreement on Climate Change: How Multi-Level, Non-Hierarchical Governance Poses a Threat to Constitutional Government*, 4 Env't Liab. 119 (2015) (criticizing the Paris Agreement's "ambition-obligation disparity," which creates a "large arena for climate activism" that is "inconsistent with the fundamental principles of constitutional government").
58. Douglas A. Kysar, *What Climate Change Can Do About Tort Law*, 41 Env't L. 1, 4 (2011). *See also* Shi-Ling Hsu, *A Realistic Evaluation of Climate Change Litigation Through the Lens of a Hypothetical Lawsuit*, 79 U. Colo. L. Rev. 701 (2008). But for an argument in favor of climate litigation, see David A. Grossman, *Warming Up to a Not-So-Radical Idea: Tort-Based Climate Change Litigation*, 28 Colum. J. Env't L. 1 (2003); Geetanjali Ganguly et al., *If at First You Don't Succeed: Suing Corporations for Climate Change*, 38 Oxford J. Legal Stud. 841 (2018).

in heterodox rulings, litigation is certainly not an adequate means to solve climate change.

Today, climate litigation is often broadly defined as any dispute touching upon climate matters.[59] The first debates about climate-related litigation mainly explored two potential avenues: international dispute resolution and national tort-based environmental litigation. In international legal scholarship, emerging literature ventured the possibility of taking climate issues to international tribunals as a response to ineffective international treaties.[60] At the national level, environmental legal scholarship started to develop conceptual foundations to fit the problem of climate change within existing notions of tort law, standing, and causality.[61]

Over time, climate litigation developed as an autonomous branch of environment-related disputes. A primary distinguishing feature of climate litigation lies in the innovative approaches to climate change using the international legal apparatus, as well as the relatively successful emphasis on public policy.[62] Another significant difference is the transnational dimension of litigation, especially considering the impacts of strategic cases beyond their primary jurisdiction.[63] Whether effective or not in GHG mitigation, litigation has consolidated a central position in legal discussions concerning climate change.

Strategic litigation has received most of the scholarly attention in climate litigation.[64] Landmark decisions on strategic cases have fueled the growth and dissemination of climate litigation as a new and somewhat independent category vis-à-vis environmental litigation. Arguably, the notion of climate litigation emerged and gained popularity because of strategic litigation. Strategic (and not routine) litigation has brought about substantial changes in the design of litigation addressing climate change. This category of cases has contributed to the development of climate-centered litigation focused on either mitigation of emissions or adaptation to the climate crisis.

A source of criticism in climate legal scholarship stems from the myopia caused by excessive focus on a handful of paradigmatic cases. Routine cases have not received as much attention as strategic litigation did over the past few decades.[65] An illustrative example is the peak of scholarly production following the judgments in *Urgenda* and *Massachusetts v. Environmental Protection Agency*.[66] This analytical framing would restrict scholarly production to the "tip of the iceberg" of climate litigation, with the exclusion of a significant number of minor cases.[67] By putting a handful of lawsuits on a pedestal, accounts of climate litigation provide only an incomplete picture of the wide repercussions of litigation.[68]

Indeed, routine cases may have important implications and provide significant analytical insights. While the excessive focus on a limited set of cases may prove detrimental, this Article offers a different explanation for scholarly concentration on strategic cases. Instead of a failure to spot the entire iceberg, the attention devoted to strategic litigation might be a deliberate option in climate litigation scholarship. Empirical evidence suggests that strategic litigation has prompted higher court receptiveness to climate litigation with the development of climate-oriented jurisprudence. Because strategic but not routine litigation has been a driver of this new climate-oriented jurisprudence, this Article argues that the attention devoted to strategic litigation might be a conscious choice.

A significant amount of the literature considers routine litigation cases that merely recognize or have indirect implications over climate change.[69] Climate change issues are normally raised as incidental and not central issues

59. *See supra* note 2 and accompanying text.

60. Durwood Zaelke & James Cameron, *Global Warming and Climate Change—An Overview of the International Legal Process*, 5 Am. U. J. Int'l L. & Pol'y 249, 270 (1990) ("Attempting to fashion a global warming case that could be submitted to the [International Court of Justice] by special agreement may be a less difficult option."). *See also* Philippe Sands, *International Environmental Litigation and Its Future*, 32 U. Rich. L. Rev. 1619 (1999) (addressing alternatives to international environmental litigation in general). For recent developments at the International Court of Justice, see Katelyn Horne et al., Sabin Center for Climate Change Law, Status Report on Principles of International and Human Rights Law Relevant to Climate Change (2023), https://scholarship.law.columbia.edu/faculty_scholarship/3924.

61. *See, e.g.*, David R. Hodas, *Standing and Climate Change: Can Anyone Complain About the Weather?*, 15 J. Land Use & Env't L. 451 (2000); Eduardo M. Peñalver, *Acts of God or Toxic Torts—Applying Tort Principles to the Problem of Climate Change*, 38 Nat. Res. J. 563 (1998); David Hunter & James Salzman, *Negligence in the Air: The Duty of Care in Climate Change Litigation*, 155 U. Pa. L. Rev. 1741 (2007).

62. Scholars often refer to the "rights turn" in climate litigation. *See* Peel & Osofsky, *supra* note 18. For related works, see Savaresi & Setzer, *supra* note 42, at 8; Nicola Silbert, *In Search of Impact: Climate Litigation Impact Through a Human Rights Litigation Framework*, 13 J. Hum. Rts. Env't L. 265 (2022); Kim Bouwer, *The Influence of Human Rights on Climate Litigation in Africa*, 13 J. Hum. Rts. Env't L. 157 (2022); Batros & Khan, *supra* note 14, at 101.

63. *See supra* note 19 and accompanying text. For an account of the influence of international treaties over national litigation and court decisionmaking, see Brian J. Preston, *The Influence of the Paris Agreement on Climate Litigation: Causation, Corporate Governance, and Catalyst (Part II)*, 33 J. Env't L. 227 (2021).

64. Setzer & Vanhala, *supra* note 1, at 11 (noting that while "[h]igh-profile cases have received the lion's share of scholarly attention," there is "very little sense of how generalizeable the research findings about these cases are and whether the arguments about standing, cause of action, ability to substitute for government inaction on mitigation or adaptation and so forth translate from one case to another, let alone one jurisdiction to another"). For examples of scholarly work focused on paradigmatic strategy cases, see Roger Cox, *A Climate Change Litigation Precedent:* Urgenda Foundation v The State of the Netherlands, 34 J. Energy & Nat. Res. L. 143 (2016); Paola Andrea Acosta Alvarado & Daniel Rivas-Ramírez, *A Milestone in Environmental and Future Generations' Rights Protection: Recent Legal Developments Before the Colombian Supreme Court*, 30 J. Env't L. 519 (2018). *See supra* note 1.

65. Setzer & Higham, *supra* note 8, at 15 ("To date, scholarship, media attention and policy engagement have focused primarily on a subset of climate litigation known as 'strategic' climate litigation."). Similar findings may be found in Setzer & Higham, *supra* note 2, at 1, 3, and Joana Setzer & Catherine Higham, Grantham Research Institute on Climate Change and the Environment, Global Trends in Climate Change Litigation: 2021 Snapshot 4 (2021).

66. Setzer & Vanhala, *supra* note 1, at 3.

67. Bouwer, *supra* note 3, at 504.

68. *Id.* at 506 (noting that the metaphor of high-profile cases as the *tip of the iceberg* "should provide sufficient caution with respect to ignoring the less visible or interesting issues that lie beneath").

69. Joana Setzer & Mook Bangalore, *Regulating Climate Change in the Courts*, *in* Trends in Climate Change Legislation 186 (Alina Averchenkova et al. eds., Edward Elgar Publishing 2017) (explaining that "the majority of what we consider to be climate litigation today is not really climate litigation, but litigation that peripherally acknowledges climate change").

of the dispute.[70] Take the example of lawsuits over environmental permits before administrative bodies: even if climate change may have some influence over court decisionmaking, disputes often exist regardless of climate-related issues.[71]

Even more striking are the examples of litigation where plaintiffs discuss access to restricted documents on the government's climate policy and free speech claims regarding climate change.[72] This kind of litigation is not inevitably tied to climate-related discussions, even though it may contain a climate element or have climate-related implications.[73] Routine lawsuits have arguably foreshadowed emerging strategies toward climate litigation and eclipsed changing patterns in court behavior as a result of key strategic precedents.[74] While they may embody an emerging climate agenda (e.g., attempting to include climate impact assessments to permit concession decisions), climate change mitigation or adaptation is normally not the main purpose of litigation. Moreover, climate litigation is not conceived as a climate governance tool to promote climate change awareness and accountability.

Climate litigation has arguably gained excessively broad contours over the years. A paradigmatic example lies in the well-known definition of climate litigation as concentric circles.[75] Under this definition, climate litigation is a set of concentric circles representing the different levels of connection a given dispute may have with climate matters.[76] Cases that have climate change as a central issue are at the heart of climate litigation.[77] The other concentric circles encompass disputes that raise climate change as a peripheral issue or motivation and those that impact mitigation or adaptation efforts.[78]

Climate litigation has emerged to confront previous paradigms in environmental litigation by providing an innovative outlook on climate matters. This evolutionary shift is a result of the embodiment of social and political impact strategies into litigation to address climate change. Numerous climate-favorable decisions in strategic cases have built a transnational narrative that has challenged well-established legal underpinnings across the world. Excessively broad definitions of climate litigation may overlook important trends and defining traits of this novel approach to litigating climate matters and, more importantly, this emerging climate-oriented jurisprudence.

This Article proposes reframing climate litigation as strategic litigation. This is consistent with the findings that climate litigation is more effective and court responsiveness to climate change is higher in strategic litigation compared to routine litigation. By framing climate litigation as strategic litigation, the Article explains the distinct behavior of courts in both categories of cases. Strategic litigation—or perhaps simply climate litigation—has emerged in recent years as a distinctive approach designed and projected with climate change at its center. This kind of environmental litigation stands at the edge of the existing legal framework by challenging the foundations of legal systems that have grown incompatible with the imminent climate crisis.

V. Empirical Assessment: Other Key Features

A. *Type of Cases Distribution*

This assessment seeks to diagnose court decisionmaking toward GHG emissions mitigation in climate litigation. This quantitative empirical analysis divides cases according to the types of claims and judicial decisions. The data set comprises 94 cases, with 79 classified as routine (84.04%) and 15 as strategic (15.96%).

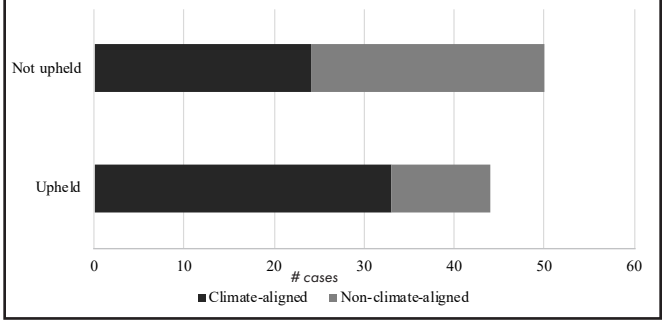
Claims were classified as climate- or non-climate aligned. This distinction, which has been used in previous empirical studies,[79] takes into account the potential impacts of the claims if successful in the mitigation of emissions. Climate-aligned claims generally seek to promote initiatives that directly or indirectly reduce GHG emissions. In contrast, non-climate-aligned claims aim at enforcing policies, decisions, or laws that directly or indirectly contribute to raising GHG emissions.

By combining the claims with their respective outcome, this study divides cases into four categories: (1) climate-aligned claims upheld; (2) non-climate-aligned claims not upheld; (3) non-climate-aligned claims upheld; and (4) climate-aligned claims not upheld. Under this classification, 35.11% of cases have climate-aligned claims

70. Setzer & Byrnes, *supra* note 25, at 1 (noting that routine cases "are increasingly including climate change arguments, exposing courts to climate science and climate-related arguments even where incidental to the main claim").
71. *Id.* at 2 (noting that routine cases "expose courts to climate change arguments where, until recently, the argument would not have been framed in those terms").
72. In Australia, plaintiffs sued governments for disclosure of restricted access documents on national climate policy. *Millar v Department of Premier & Cabinet (General)* [2011] VCAT 1230 (Austl.). A similar issue was discussed in the United Kingdom. Keiller v. Information Commissioner [2012] UKFTT 152 (U.K.). In the Canadian province of Ontario, plaintiffs challenged the constitutionality of a law determining that gasoline pumps should contain warnings about price increases caused by the Federal Carbon Tax Transparency Act, 2019, SO 2018, c. 7, Sched. 23. Corporation of the Canadian Civil Liberties Association v. Canada (Attorney General), [2020] O.N.C.A. 4838 (Can.). In the United Kingdom, a British citizen challenged the exhibition of a film about global warming in schools, whose content was allegedly "promoting political views." Dimmock v. Secretary of State for Education & Skills [2007] EWHC 2288 (U.K.).
73. Bouwer, *supra* note 3, at 496:
> The heroism of large-scale group actions does not justify overlooking the impact of adjudication taking place at smaller scales of governance that have potential to contribute to or undermine a good climate response, or, indeed to do both. Less high profile litigation in the climate context certainly has some impact on the behaviour and decisions of governments or private parties.
74. This is evidenced by the results obtained in previous empirical assessments. *See supra* note 5.
75. Peel & Osofsky, *supra* note 4, at 54, 63; Peel & Osofsky, *supra* note 2, at 23-24.
76. Peel & Osofsky, *supra* note 2, at 23-24.
77. *Id.*
78. *Id.*
79. *See supra* note 7 and accompanying text.

upheld, 25.53% have climate-aligned claims not upheld, 11.7% have non-climate-aligned claims upheld, and 27.66% have non-climate-aligned claims not upheld (see Figure 4).

Figure 4. Overall Case Distribution



Courts are considered climate-responsive or favorable when they either uphold climate-aligned claims or dismiss non-climate-aligned claims. Those cases represent 62.77% of the total, which indicates that courts are generally more inclined to rule in favor of mitigation of emissions. Overall, the success rate of climate-aligned claims (57.89%) is higher than that of non-climate-aligned claims (29.73%).

In routine lawsuits, climate-aligned claims are evenly distributed, with 27.85% upheld and 26.58% not upheld (see Figure 5). Non-climate-aligned claims are not upheld in a significant share of cases (31.65%) compared to those upheld (13.92%). Conversely, as shown in Figure 6 below, a substantial majority of climate-aligned claims are upheld (73.33%) in strategic lawsuits, while a smaller share is not upheld (20%). The sole non-climate-aligned claim was not upheld (6.67%). The numbers indicate that climate-aligned claims are more likely to be upheld in strategic cases vis-à-vis routine cases.

Figure 5. Routine Case Distribution

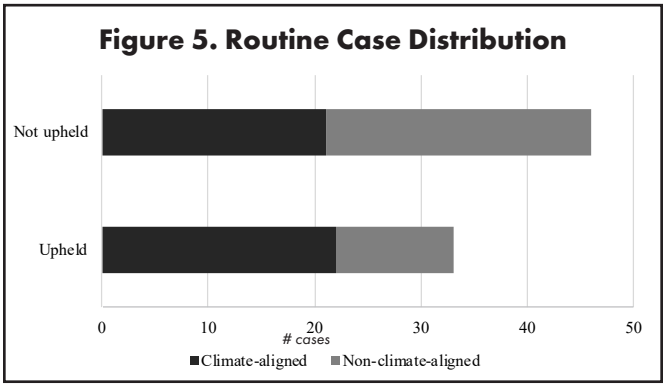
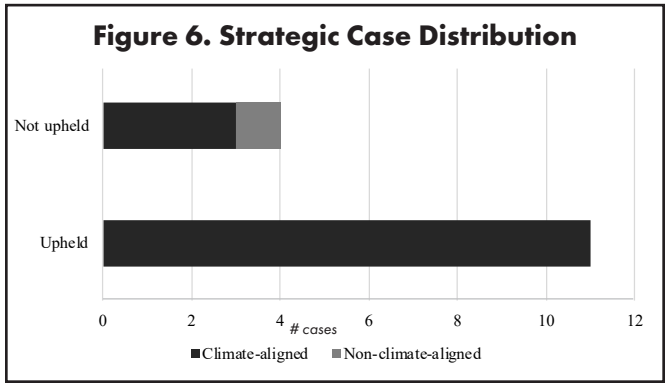


Figure 6. Strategic Case Distribution



B. *Climate-Aligned Claims*

Climate litigation is usually described as a governance solution that mobilizes courts to address climate change.[80] Plaintiffs play a central role in determining whether climate litigation may be an effective governance mechanism. Litigants may use climate litigation to advocate for the enforcement or strengthening of climate-related obligations. However, they may also use climate litigation to challenge existing laws and regulations and dismantle climate policies.[81]

In 94 cases, 60.64% advanced climate-aligned claims and only 39.36% advanced non-climate-aligned claims. In strategic litigation, 93.33% of cases had climate-aligned claims and 6.67% had non-climate-aligned claims. In routine litigation, 54.43% of lawsuits had climate-aligned claims and 45.57% had non-climate-aligned claims.

As illustrated in Figure 7 (next page), the plaintiffs in climate-aligned cases are mostly citizens (31.58%), NGOs (29.82%), companies (19.3%), and citizens with NGOs (10.53%). In non-climate-aligned claims, plaintiffs are predominantly companies (59.46%), citizens (16.22%), local governments or provinces (10.81%), and citizens with NGOs (5.41%). Most recurrent plaintiffs in successful climate-aligned cases are citizens (36.36%), NGOs (33.33%), and companies (15.15%). In successful non-climate-aligned cases, companies represent 90% of plaintiffs.

The most successful plaintiffs in climate-aligned claims are citizens, with 66.67% of success. They are followed by NGOs (61.11%), citizens with NGOs (50%), and companies (45.45%). On the other hand, plaintiffs with the higher success rate in non-climate-aligned claims are companies (45%). Generally, climate-aligned efforts by plaintiffs in climate litigation—particularly NGOs and citizens—have higher levels of success in courts.

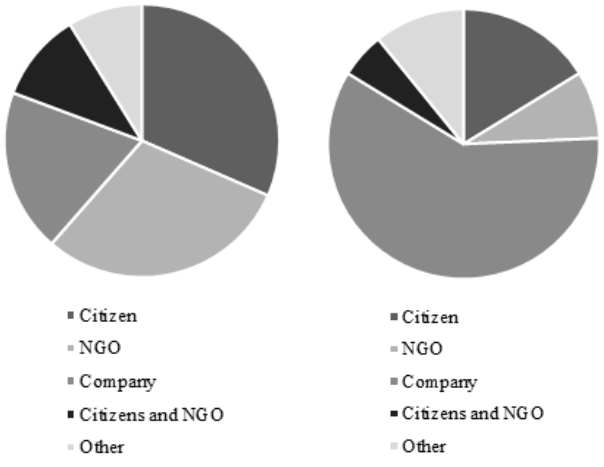
C. *Aims of Litigation*

Climate litigation may cover a wide range of disputes. The main categories of disputes involve environmental permits (43.61%), designation or regulation of emissions quotas (17.02%), government accountability for climate-related omission (12.76%), climate misinformation and free speech (8.51%), airport construction or expansion projects (6.38%), carbon pricing or taxation (5.31%), govern-

80. Jacqueline Peel, *Issues in Climate Change Litigation*, 5 Carbon & Climate L. Rev. 15, 24 (2011); Jessica Wentz et al., *Research Priorities for Climate Litigation*, 11 Earth Future 1, 3 (2023).

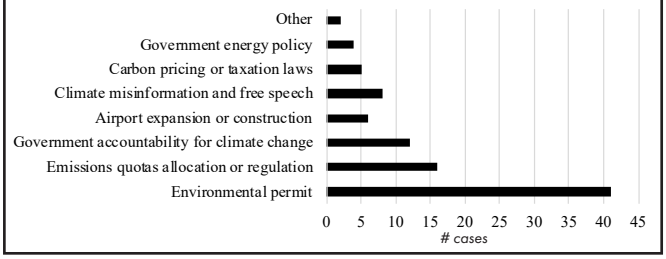
81. Setzer & Bangalore, *supra* note 69, at 175 (noting the double-edged sword character of climate litigation); Dena P. Adler, Sabin Center for Climate Change Law, U.S. Climate Change Litigation in the Age of Trump: Year One 56 (2018) (highlighting that plaintiffs often bring forth deregulatory climate litigation). Previous comparative studies have also divided litigation between "pro" and "anti" regulatory cases. *See, e.g.*, Markell & Ruhl, *supra* note 2, at 28, 65; Wilensky, *supra* note 2, at 135, 142.

Figure 7. Plaintiffs in Climate-Aligned and Non-Climate-Aligned Claims



ment energy policy (4.25%), and other matters (2.12%).[82] Figure 8 compares the amount of cases for each category of disputes.

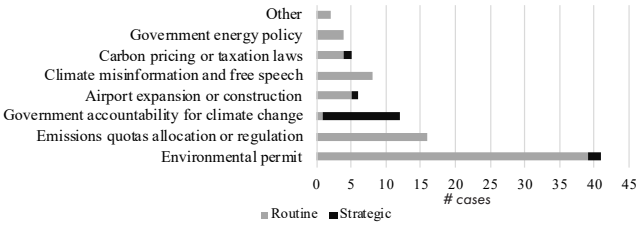
Figure 8. Main Categories of Cases



In most categories, litigation is predominantly routine. Disputes with the highest percentage of routine lawsuits are those involving emissions quotas allocation or regulation (100%), challenges to government energy policy (100%), climate misinformation and free speech (100%), and challenges to environmental permits (95.12%). Conversely, strategic cases account for most disputes seeking to promote government accountability for climate omission (91.67%). Other categories with a significant share of strategic lawsuits regard carbon pricing or taxation (20%) and airport construction projects (16.67%). Figure 9 lays out the distribution of strategic and routine cases per category of dispute.

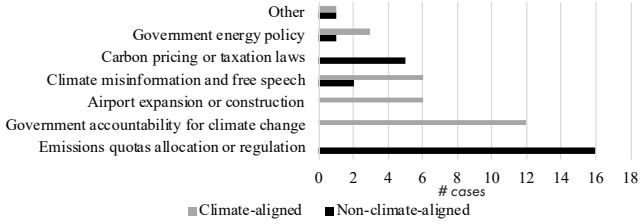
All disputes regarding government accountability for climate omission and airport expansion or approval projects have climate-aligned claims. Other categories with a high percentage of climate-aligned lawsuits include

Figure 9. Strategic Versus Routine Case Distribution



disputes over climate misinformation and free speech (75%), challenges to government energy policy (75%), and environmental permits (70.73%). Non-climate-aligned claims are concentrated on challenges to emissions quotas allocation or regulation (100%) and carbon pricing or taxation laws (100%). A significant share of environmental permit disputes comprises non-climate-aligned claims (29.27%). Figure 10 details the share of climate-aligned and non-climate-aligned claims per category of dispute.

Figure 10. Climate-Aligned Versus Non-Climate-Aligned Case Distribution



VI. Conclusion

In climate litigation, courts demonstrate heightened levels of climate responsiveness in strategic litigation compared to routine litigation. Similarly, plaintiffs tend to leverage strategic cases to advance climate-aligned claims more frequently than in routine cases. The scholarly focus on strategic litigation is not a failure to recognize the broader context of climate litigation, but rather an acknowledgment of the unique role strategic cases have played in shaping climate-oriented jurisprudence. Strategic litigation has proven to be a major driver of legal innovation and progress for lawsuits addressing climate change. By challenging existing legal frameworks, strategic litigation has paved the way for unprecedented judicial input in climate change law.

Although this distinctive judicial approach to strategic litigation may seem intuitive, previous empirical studies have often failed to take into account the variations in court behavior vis-à-vis the different categories of litigation. In light of the global rise of strategic cases, it is imperative to grasp the emerging patterns in court responses to strategic climate lawsuits. While routine cases certainly

82. Disputes classified as "other" are one challenge to an environmental fine against deforestation and one lawsuit concerning a public investment decision. *See*, *respectively*, S.T.J., Recurso Especial No. 1,000,731-RO, Relator: Ministro Herman Benjamin, 25.9.19 (Braz.); R (People & Planet) v. HM Treasury [2009] EWHC (Admin) 3020 (U.K.).

have important repercussions, evolving frameworks and strategies in climate litigation demonstrate the urgency of rethinking current mainstream conceptions of climate change. An essential step in this process is the incorporation of methodological and analytical lenses that account for the distinction between strategic and routine litigation and its important implications over litigation design and court decisionmaking.

The distinctive impact of strategic litigation indicates a novel conceptual and analytical framing to the study and practice of climate litigation: climate litigation as strategic litigation. This new perspective offers significant insights to scholars and climate activists alike. Emphasis on strategic lawsuits is not inherently myopic. Instead, it may be a useful magnifying glass for climate litigation scholarship. The failure to distinguish between strategic and routine lawsuits may conceal important analytical insights in climate litigation. By examining climate litigation primarily through the lenses of strategic litigation, scholars and practitioners can gain a deeper understanding of the characteristics of this rising climate-oriented jurisprudence and the mechanisms used by plaintiffs in successful climate precedents.

Appendix I—Methodology

This study analyzed 94 cases extracted from the London School of Economics' Climate Change Laws of the World database, one of the world's leading collections in the field.[83] It has also been used in previous empirical assessments of climate litigation.[84] This assessment provides a comparative empirical analysis of climate litigation that both unbundles the key components of climate litigation and identifies central elements in court behavior patterns.

This analysis concentrates on litigation addressing mitigation of GHG emissions. The well-established distinction between mitigation and adaptation emphasizes the different goals of climate litigation. While mitigation cases seek to curtail emissions levels, adaptation litigation aims to promote measures that accommodate and minimize the impacts of climate change. Empirical studies indicate that the majority of climate litigation consists of mitigation lawsuits, which have also received the lion's share of scholarly attention.[85] This assessment concentrates on judicial decisions addressing the mitigation of emissions directly or indirectly, as classified in the database.[86]

While this Article expands the set of jurisdictions covered, the sample retains significant North-South imbalances. Although the sample of cases has a wide variety of jurisdictions, there are substantial regional differences. The set of cases is unevenly distributed across countries and regions.[87] Likewise, lawsuits are unevenly distributed across economic sectors.[88] Most cases (45%) concentrate on energy production projects installation and development, such as coal mines, wind power plants, and fossil fuel exploitation. Other categories include industrial disputes over emissions quotas (17%), transportation and aviation-related GHG emissions (9%), economywide strategic cases (9%), and disputes over climate-related information disclosure and freedom of expression (9%).

The database defines climate litigation as cases that "raise issues of law or fact regarding the science of climate change and/or climate change mitigation and adaptation policies or efforts before an administrative, judicial or other investigatory body," covering both high-profile and day-to-day litigation.[89] Under this definition, climate litigation cases include challenges to environmental permits, emissions quotas allocation, the validity of climate legislation, wider government policies to mitigate GHG emissions, and access to climate-related information and freedom of expression disputes.

83. The Grantham Research Institute of the London School of Economics maintains the database. It contains a comprehensive set of decisions from various jurisdictions and is periodically updated. Grantham Research Institute of the London School of Economics, *Climate Change Laws of the World*, https://www.lse.ac.uk/granthaminstitute/climate-change-laws-of-the-world-/ (last visited Nov. 18, 2024).
84. Setzer & Bangalore, *supra* note 69, at 180; Wilensky, *supra* note 2, at 135. *See also* Setzer & Higham, *supra* notes 2, 17, 65; Setzer & Byrnes, *supra* notes 25, 26. This study filtered an initial sample of 130 cases obtained on August 17, 2021, to remove all disputes before international courts and tribunals. The final sample of 94 cases was mapped according to jurisdiction, year, type of dispute, type of decision (upheld or not upheld), claims, type of claims (pro- or non-climate-aligned), plaintiffs, and type of plaintiff.
85. Setzer & Higham, *supra* note 65, at 17. Additionally, the literature has also focused on mitigation-related litigation over the years. *See* Peel & Osofsky, *supra* note 2, at 27.
86. In the filtering stage, I have eliminated cases involving adaptation and cases with pending status. I have also selected exclusively cases that had governments or administrative organs as defendants. *See, e.g.*, Wilensky, *supra* note 2, at 142 (finding that of 173 cases, 159 were claims against government entities); Markell & Ruhl, *supra* note 2, at 74. However, scholars have noted the growing share of litigation against private parties. *See* Mackenzie Kern, *Climate Litigation's Pathways to Corporate Accountability*, 54 Case W. Rsrv. J. Int'l L. 477, 488 (2022); Subodh Mishra, *The Rise of Climate Litigation*, Harv. L. Sch. F. on Corp. Governance (Mar. 3, 2022), https://corpgov.law.harvard.edu/2022/03/03/the-rise-of-climate-litigation/. The original sample of cases was collected on August 17, 2021, according to the criteria above. This sample underwent a preliminary analysis to remove international or supranational litigation, which is beyond the scope of this Article. The remaining 94 cases composed the final sample for the empirical assessment.
87. The percentage of cases in the Global North is approximately 86.32%, while the percentage of cases in the Global South is approximately 13.68%. This imbalance may distort the results by inflating the numbers of the Global North and underreporting Global South litigation. Particularly, the literature has criticized the excessive focus of climate litigation scholarship on Global North jurisdictions at the expense of the developments in the Global South. *See* Peel & Lin, *supra* note 30, at 681-82; Joana Setzer & Lisa Benjamin, *Climate Litigation in the Global South: Constraints and Innovations*, 9 Transnat'l Env't L. 77 (2020); Maria Antonia Tigre et al., *Climate Litigation in Latin America: Is the Region Quietly Leading a Revolution?*, 14 J. Hum. Rts. & Env't 67, 68 (2023); Melanie Jean Murcott & Maria Antonia Tigre, *Developments, Opportunities, and Complexities in Global South Climate Litigation: Introduction to the Special Collection*, 16 J. Hum. Rts. Prac. 1, 9 (2024).
88. Most cases (45%) concentrate on energy production projects installation and development. Industrial disputes (17%) mostly concentrate on emissions quotas for industrial activities in general. Economywide cases (9%) target larger climate policies that affect the entire economy and are usually associated with strategic litigation. Cases concerning the transportation sector (9%) usually focus on aviation-related emissions. Disputes classified as "other" (9%) typically address freedom of expression and access to information.
89. *See supra* note 2 and accompanying text. Criteria and methods for case filtering and selection may be found in detail at https://www.lse.ac.uk/granthaminstitute/climate-change-laws-of-the-world-/.

Appendix II—List of Cases

Victorian Civil and Administrative Tribunal, Thackeray v. Shire of South Gippsland [2001] VCAT 922 (Apr. 11, 2001)
Land and Resources Tribunal of Queensland, Re Xstrata Coal Queensland Pty. Ltd. & Others [2007] QLRT 33 (Feb. 15, 2007)
Victorian Civil and Administrative Tribunal, Synergy Wind Pty. Ltd. v. Wellington Shire Council [2007] VCAT 2454 (Dec. 21, 2007)
Victorian Civil and Administrative Tribunal, Millar v. Department of Premier & Cabinet (General) [2011] VCAT 1230 (June 30, 2011)
Supreme Court of Queensland, Coast & Country Association of Queensland Inc. v. Smith & Anor; Coast & Country Association of Queensland Inc. v. Minister for Environment & Heritage Protection & Ors [2015] QSC 260 (Sept. 4, 2015)
Federal Court of Australia, Australian Conservation Foundation Inc. v. Minister for the Environment [2017] FCAFC 134 (Aug. 25, 2017)
Victorian Civil and Administrative Tribunal, Russell & Others v. Surf Coast Shire Council & Anor [2009] VCAT 1324 (July 13, 2019)
Land and Environment Court of New South Wales, Gloucester Resources Ltd. v. Minister for Planning [2019] NSWLEC 7 (Feb. 8, 2019)
District Court of Queensland, EH v. Queensland Police Service; GS v. Queensland Police Service [2020] QDC 205 (Aug. 28, 2020)
Federal Court of Australia, Sharma v. Minister for the Environment [2022] FCAFC 35 (Mar. 15, 2022)
Cour d'appel de Bruxelles, Arrêt du 30 novembre 2023, VZW Klimaatzaak v. l'État belge, 2eme chambre, affaires civiles (Nov. 30, 2023)
Superior Tribunal de Justiça, Recurso Especial No. 1,000,731-RO, Relator: Ministro Herman Benjamin (Aug. 25, 2019)
Court of Appeal for Saskatchewan, Saskatchewan v. Canada re Greenhouse Gas Pollution Pricing Act, [2019] S.K.C.A. 40 (May 3, 2019)
Court of Appeal for Ontario, Ontario v. Canada re Greenhouse Gas Pollution Pricing Act, [2019] O.N.C.A. 544 (June 28, 2019)
Court of Appeal of Alberta, Reference re Greenhouse Gas Pollution Pricing Act, [2020] A.B.C.A. 74 (Feb. 24, 2020)
Superior Court of Justice of Ontario, Corporation of the Canadian Civil Liberties Association v. Attorney General of Ontario, [2020] O.N.S.C. 4838 (Sept. 4, 2020)
Supreme Court of Canada, Saskatchewan v. Canada re Greenhouse Gas Pollution Pricing Act, [2019] S.K.C.A. 40 (Mar. 25, 2021)
Tercer Tribunal Ambiental, "Corporación Privada para el Desarrollo de Aysén y otros c. Servicio de Evaluación Ambiental" (Jan. 4, 2018)
Tercer Tribunal Ambiental, "Gabriela Simonetti Grez y otros c. Servicio de Evaluación Ambiental" (Aug. 23, 2019)
Corte Suprema de Justicia, STC4360-2018, Radicación No. 11001-22-03-000-2018-00319-01 (Generaciones Futuras v. Minambiente) (Apr. 5, 2018)
Conseil d'État, 6ème et 1ère sous-sections réunies decision No. 287110 (June 3, 2009)
Conseil d'État, 6ème-5ème chambres réunies decision No. 421004 (IPC Petroleum France SA v. France) (Dec. 18, 2019)
Tribunal Administratif de Marseille, Association Les Amis de la Terre et autres v. Préfet des Bouches-du-Rhône et SAS Total (Apr. 1, 2021)
Conseil d'État, 6ème-5ème chambres réunies decision No. 427301 (July 1, 2021)
Higher Administrative Court of Saxony-Anhalt, Miersch/Maxeiner v. Bundesministerium fór Umwelt, 1 A 304/13 HAL (Jan. 26, 2017)
Bundesverfassungsgericht, Order of the First Senate—1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20 (Mar. 21, 2021)
High Court of the Supreme Court of Judicature of Guyana, Constitutional and Administrative Division, Thomas v. Environmental Protection Agency (2020-HC-DEM-CIV-FDA-460) (Oct. 5, 2020)
National Green Tribunal, Sher Singh v. State of Himachal Pradesh (Application No. 237 (THC)/2013 (CWPIL No. 15 of 2010)) (Feb. 6, 2014)
Supreme Court of India, Hanuman Laxman Aroskar v. Union of India & Others (M.A. No. 965 of 2019 in Civil Appeal No. 12251 of 2018) (Jan. 16, 2020)
National Green Tribunal, Vimal Bhai v. Ministry of Environment & Forests (Appeal No. 5 of 2011) (Dec. 14, 2021)
High Court of Ireland, An Taisce v. An Bord Pleanála [2015] IEHC 633 (Sept. 10, 2015)

High Court of Ireland, Friends of the Irish Environment CLG v. Fingal County Council (2017 No. 201 JfR) (Nov. 21, 2017)
Supreme Court of Ireland, Friends of the Irish Environment v. Ireland, Appeal No. 205/19 (July 31, 2020)
National Environmental Tribunal of Kenya, Tribunal Appeal No. NET 196 of 2016, Save Lamu v. National Environmental Management Authority & Amu Power Co. Ltd. (June 26, 2019)
Supreme Court of Nepal, Division Bench, Advocate Padam Bahadur Shrestha v. Office of the Prime Minister & Council of Ministers, Singhadurbar, Kathmandu & Others (Decision no. 10210) (Dec. 25, 2018)
Supreme Court of the Netherlands, Civil Division, Urgenda Foundation v. State of the Netherlands, ECLI:NL:HR(2019(2007, 19/00135 (Dec. 20, 2019)
Environmental Court of New Zealand, Environmental Defence Society Inc. v. Auckland Regional Council & Contact Energy Ltd. [2002] 11 NZRMA 492 (Sept. 6, 2002)
Environment Court of New Zealand, Genesis Power Ltd. & the Energy Efficiency & Conservation Authority v. Franklin District Council (Sept. 7, 2005)
High Court of New Zealand, Greenpeace New Zealand v. Northland Regional Council CIV 2006-404-004617 [2007] NZRMA 87 (Oct. 12, 2006)
Environment Court of New Zealand, Outstanding Landscape Protection Society Inc. v. Hastings District Council [2007] NZEnvC 87 (Apr. 13, 2007)
Environment Court of New Zealand, Meridian Energy Ltd. v. Wellington City Council [2007] W031/07 NZEnvC 128 (May 14, 2007)
High Court of New Zealand, Unison Networks Ltd. v. Hastings District Council CIV 2007-485-896 (Dec. 11, 2007)
Environment Court of New Zealand, Motorimu Wind Farm Ltd. v. Palmerston North Council [2009] NZEnvC 33 (Sept. 26, 2009)
Environmental Court of New Zealand, Maniototo Environmental Society Inc. v. Central Otago District Council [2009] NZEnvC 293 (Nov. 6, 2009)
High Court of New Zealand, Imported Motor Vehicle Industry Association Inc. v. Minister of Transport CIV-2011-485-1972 [2011] NZHC 1702 (Dec. 1, 2011)
High Court of New Zealand, New Zealand Climate Science Education Trust v. National Institute of Water & Atmospheric Research Ltd. CIV-2010-404-005092 [2012] NZHC 2297 (Sept. 7, 2012)
High Court of New Zealand, Thomson v. Minister for Climate Change Issues CIV 2015-485-919 [2017] NZHC 733 (Nov. 2, 2015)
Federal High Court of Nigeria, Gbemre v. Shell Petroleum Development Company of Nigeria Ltd. (FHC/B/CS/53/05) (Nov. 14, 2005)
High Court of Lahore, Sheikh Asim Farooq v. Federation of Pakistan & Others, Writ Petition No. 192069 of 2018 (Aug. 30, 2019)
High Court, EarthLife Africa Johannesburg v. Minister of Environmental Affairs & Others (65662/16) [2017] ZAGPPHC 58; [2017] 2 All SA 519 (GP) (Mar. 8, 2017)
Tribunal Supremo, Sala de lo Contencioso, Recurso Contencioso-Administrativo No. 98/2005, Ponente: Eduardo Calvo Rojas (Feb. 5, 2008)
Tribunal Supremo, Sala de lo Contencioso, Recurso Contencioso-Administrativo No. 315/2005, Ponente: Pedro Jose Yague Gil (Sept. 30, 2008)
Tribunal Supremo, Sala de lo Contencioso, Recurso Contencioso-Administrativo No. 309/2005 (Oct. 1, 2008)
Tribunal Supremo, Sala de lo Contencioso, Recurso Contencioso-Administrativo No. 100/2005, Ponente: Eduardo Calvo Rojas (Oct. 6, 2008)
Tribunal Supremo, Sala de lo Contencioso, Recurso Contencioso-Administrativo No. 332/2006, Ponente: Rafael Fernandez Valverde (Nov. 18, 2008)
Tribunal Supremo, Sala de lo Contencioso, Recurso Contencioso-Administrativo No. 318/2005, Ponente: Rafael Fernandez Valverde (Nov. 19, 2008)
Tribunal Supremo, Sala de lo Contencioso, Recurso Contencioso-Administrativo No. 259/2005, Ponente: Jesus Ernesto Peces Morate (Dec. 2, 2008)
Tribunal Supremo, Sala de lo Contencioso, Recurso Contencioso-Administrativo No. 322/2005, Ponente: Jesus Ernesto Peces Morate (Dec. 3, 2008)
Tribunal Supremo, Sala de lo Contencioso, Recurso Contencioso-Administrativo No. 315/2005, Ponente: Pedro Jose Yague Gil (Dec. 3, 2008)

Tribunal Supremo, Sala de lo Contencioso, Recurso Contencioso-Administrativo No. 303/2005, Ponente: Pedro Jose Yague Gil (May 29, 2009)
Tribunal Supremo, Sala de lo Contencioso, Recurso Contencioso-Administrativo No. 119/2004, Ponente: Jesus Ernesto Peces Morate (July 15, 2009)
Tribunal Supremo, Sala de lo Contencioso, Recurso Contencioso-Administrativo No. 103/2005, Ponente: Maria del Pilar Teso Gamella (July 17, 2009)
Tribunal Supremo, Sala de lo Contencioso, Recurso Contencioso-Administrativo No. 21/2007, Ponente: Eduardo Calvo Rojas (Mar. 4, 2010)
High Administrative Court of Ukraine, Environment-People-Law v. Cabinet of Ministers of Ukraine & National Agency of Environmental Investments (June 26, 2014)
Queen's Bench Division (Administrative Court), R (on the Application of Greenpeace Ltd.) v. Secretary of State for Trade & Industry [2007] EWHC (Admin) 311 (Feb. 15, 2007)
High Court of Justice, Dimmock v. Secretary of State for Education & Skills [2007] EWHC (Admin) 2288 (Oct. 10, 2007)
Queen's Bench Division Administrative Court, Bard Campaign & Anor v. Secretary of State for Communities & Local Government [2009] EWHC (Admin) 308 (Feb. 25, 2009)
Queen's Bench Division Administrative Court, Barbone & Ross (on Behalf of Stop Stansted Expansion) v. Secretary of State for Transport [2009] EWHC (Admin) 463 (Mar. 13, 2009)
Queen's Bench Division (Administrative Court), R (People & Planet) v. HM Treasury [2009] EWHC (Admin) 3020 (Oct. 20, 2009)
Queen's Bench Division (Administrative Court), R. (on the Application of the London Borough of Hillingdon & Others) v. Secretary of State for Transport [2010] EWHC (Admin) 626 (Mar. 26, 2010)
Court of Appeal (Civil Division), R. on the Application of Corbett v. Cornwall Council [2020] EWCA (Civ) 508 (Apr. 9, 2020)
Queen's Bench Division (Administrative Court), R. on the Application of Tate & Lyle Industries Ltd. v. Secretary of State for Energy & Climate Change [2010] EWHC (Admin) 2752 (Nov. 2, 2010)
Queen's Bench Division (Administrative Court), R. on the Application of Griffin v. Newham London Borough Council [2011] EWHC (Admin) 53 (Jan. 20, 2011)
Planning Inspectorate, Veolia ES Shropshire Ltd. v. Shropshire Council, Appeal Ref: APP/L3245/A/11/2146219 (Jan. 10, 2012)
General Regulatory Chamber, Keiller v. Information Commissioner (EA/2011/0152) (Jan. 18, 2012)
Queen's Bench Division (Administrative Court), Jarrett & Others v. Secretary of State for Communities & Local Government & Others [2012] EWHC (Admin) 3642 (Dec. 19, 2012)
Queen's Bench Division (Administrative Court), Macarthur & Others v. Secretary of State for Communities & Local Government & Others [2013] EWHC (Admin) 3 (Jan. 15, 2013)
Queen's Bench Division (Administrative Court), In the Matter of An Application by Brian Quinn & Michael Quinn [2013] NIQB 24 (Feb. 22, 2013)
Queen's Bench Division (Administrative Court), Newark & Sherwood District Council v. Secretary of State for Communities & Local Government [2013] EWHC (Admin) 2162 (July 19, 2013)
High Court of Justice, Planning Court, Pugh v. Secretary of State for Communities & Local Government [2015] EWHC (Admin) 3 (Jan. 5, 2015)
Supreme Court, Sustainable Shetland v. Scottish Ministers & Another [2015] UKSC 4 (Feb. 9, 2015)
Court of Appeal (Civil Division), Swiss International Air Lines AG v. Secretary of State for Energy & Climate Change & Others [2015] EWCA (Civ) 331 (Apr. 1, 2015)
Supreme Court, Trump International Golf Club Scotland Ltd. & Trump Organization LLC v. Scottish Ministers [2015] UKSC 74 (Dec. 16, 2015)
Queen's Bench Division (Administrative Court), North Cote Farms Ltd. v. Secretary of State for Communities & Local Government [2015] EWHC (Admin) 292 (Feb. 25, 2015)
Planning Inspectorate, Laughton Wind Farm Ltd. v. West Lindsey DC [2006] PAD 37 (Jan. 1, 2016)
Court of Appeal, Solar Century Holdings Ltd. v. Secretary of State for Energy & Climate Change [2016] EWCA (Civ) 117 (Mar. 1, 2016)
Court of Appeal (Civil Division), R (Rockware Glass Ltd.) v. Chester City Council [2006] EWCA (Civ) 992 (June 15, 2016)
Queen's Bench Division (Administrative Court), Cemex UK Cement Ltd. v. Department for the Environment, Food & Rural Affairs [2006] EWHC (Admin) 3207 (Dec. 13, 2016)

Court of Appeal (Civil Division), Preston New Road Action Group v. Secretary of State for Communities & Local Government, Lancashire County Council, Cuadrilla Bowland Ltd., Cuadrilla Elswick Ltd. [2018] EWCA (Civ) 9 (Jan. 12, 2018)
Queen's Bench Division (Administrative Court), R. (on the Application of Littlewood) v. Bassetlaw DC [2008] EWHC (Admin) 1812 (June 20, 2018)
High Court of Justice, Plan B Earth & Others v. Secretary of State for Business, Energy & Industrial Strategy [2018] EWHC (Admin) 1892 (July 20, 2018)
Queen's Bench Division, R (on the Application of McLennan) v. Medway Council [2020] Env. L.R. 5 (2019) (July 10, 2019)
Supreme Court of Justice, R (on the Application of Friends of the Earth Ltd. & Others) v. Heathrow Airport Ltd. [2020] UKSC 52 (Dec. 16, 2020)
Queen's Bench Division (Administrative Court), Lark Energy Ltd. v. Secretary of State for Communities & Local Government & Anor [2014] EWHC (Admin) 2006 (June 20, 2024)