

“Rhode Island AG Addressing Instances of Climate/Environmental Injustice Through Climate Liability Litigation”

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Adaptation

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Presentation Overview

- Fundamental and Inalienable Human Right to a Clean, Safe and Healthful Environment?
- Disproportionate Impacts from Climate Change
- Modern Expansion of Public Trust Laws

Topic 1

Fundamental and Inalienable
Human Right to a Clean,
Safe and Healthful
Environment?

Question

Aspirational Goal
or
Justiciable Right?

National Constitutions

- 149 out of 193 countries include explicit references to environmental rights and/or the central governments' environmental responsibilities
- 96 out of 149 constitutions recognize that citizens have a substantive human right to live in a clean, safe and healthful environment
(climate change litigation: Pakistan, Colombia; and Netherlands)
- U.S. Constitution is silent. No right to a clean, safe and healthful environment in the U.S. Constitution

Issue

Right vs. Privilege

March on Washington for Jobs and Freedom (August 28, 1963)



Nexus Between EJ and CJ

According to the University of Colorado Boulder Environmental Center, Climate Justice:

“Climate change is fundamentally an issue of human rights and environmental justice that connects the local to the global. With rising temperatures, human lives — particularly in people of color, low-income, and indigenous communities — are affected by compromised health, financial burdens, and social and cultural disruptions. Those who are most affected and have the fewest resources to adapt to climate change are also the least responsible for the greenhouse gas emissions — both globally and within the United States.”

<https://www.colorado.edu/ecenter/energyclimate-justice/general-energy-climate-info/climate-change/climate-justice>

Climate Injustice

**“The Effects of Historical Housing Policies
on Resident Exposure to Intra-Urban Heat:
A Study of 108 U.S. Urban Areas”**

Jeremy S. Hoffman, et. al.

(CLIMATE, January 2020)

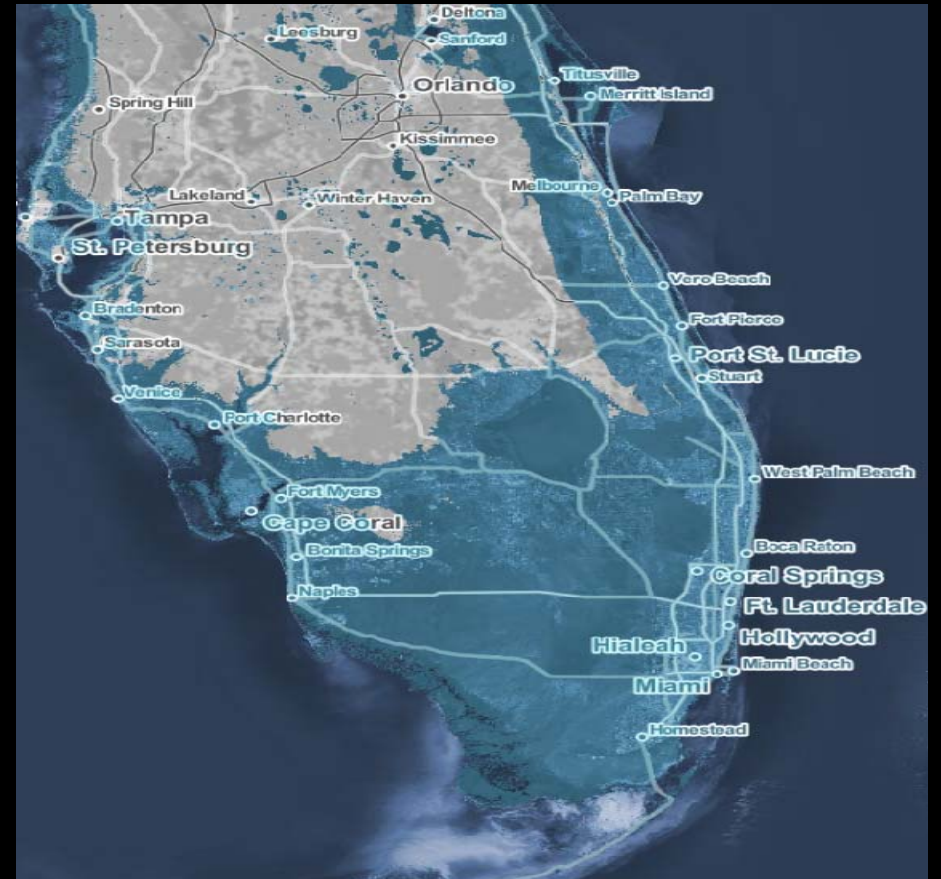
(URBAN AREAS = HEAT EVENTS)

Climate Refugees?

Rising Sea Levels:

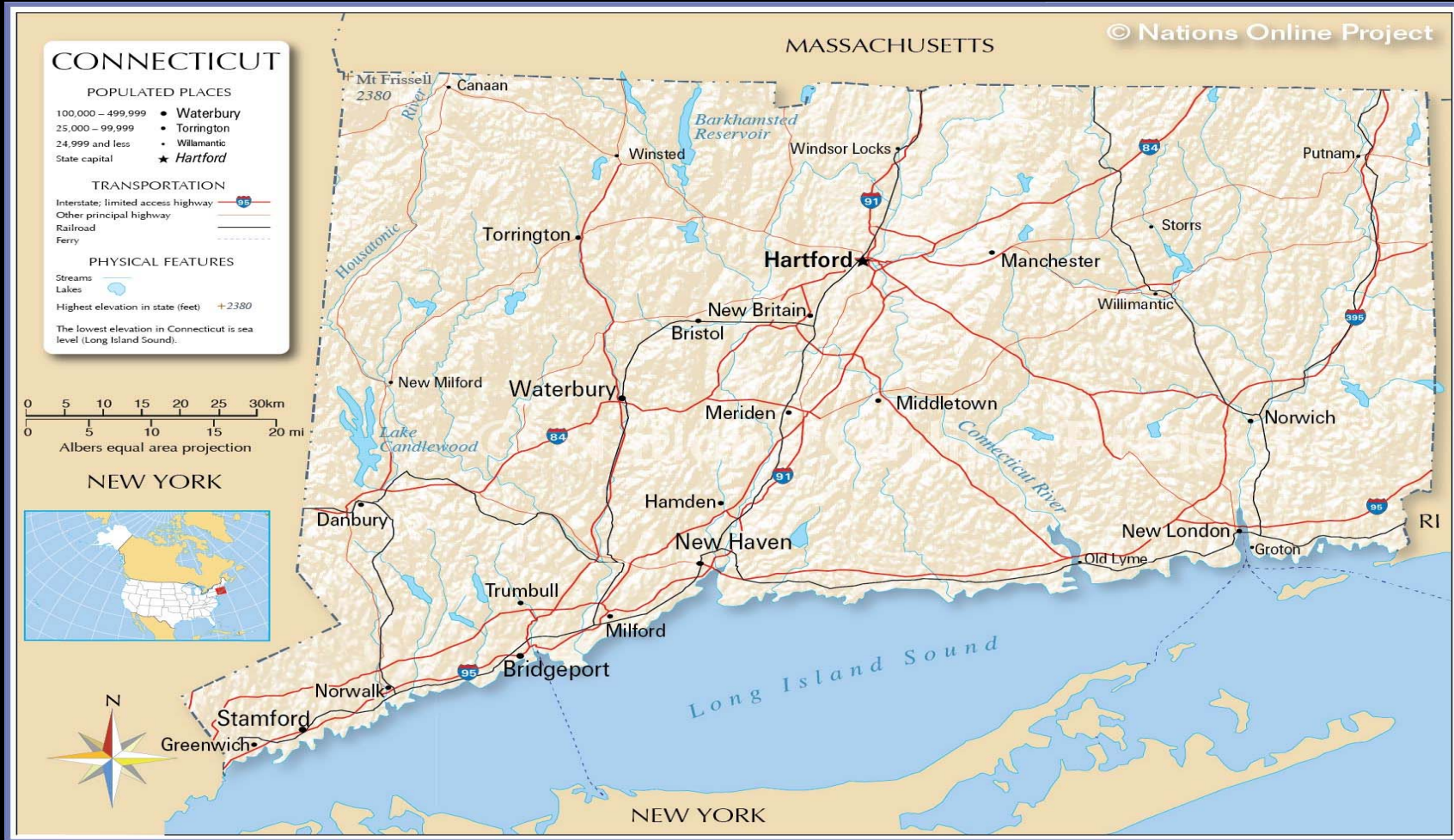
- Miami?
- Milford? New Haven? New London?

Miami





Connecticut





“Connecticut’s Rising Seas: Are Towns and Cities Ready?”

Erik Ofgang, et al.

Connecticut Magazine (March 28, 2017)

https://www.connecticutmag.com/health-and-science/connecticuts-rising-seas-are-towns-and-cities-ready/article_e97a46de-0a74-11e7-a2f8-172f13eeced2.html

St. James Parish, Louisiana



“Graves of enslaved people pose hurdle for
La. chemical plant”

Pamela King (E&E News, 10/29/20)

<https://www.eenews.net/greenwire/2020/10/29/stories/1063717265>

Environmental Injustice

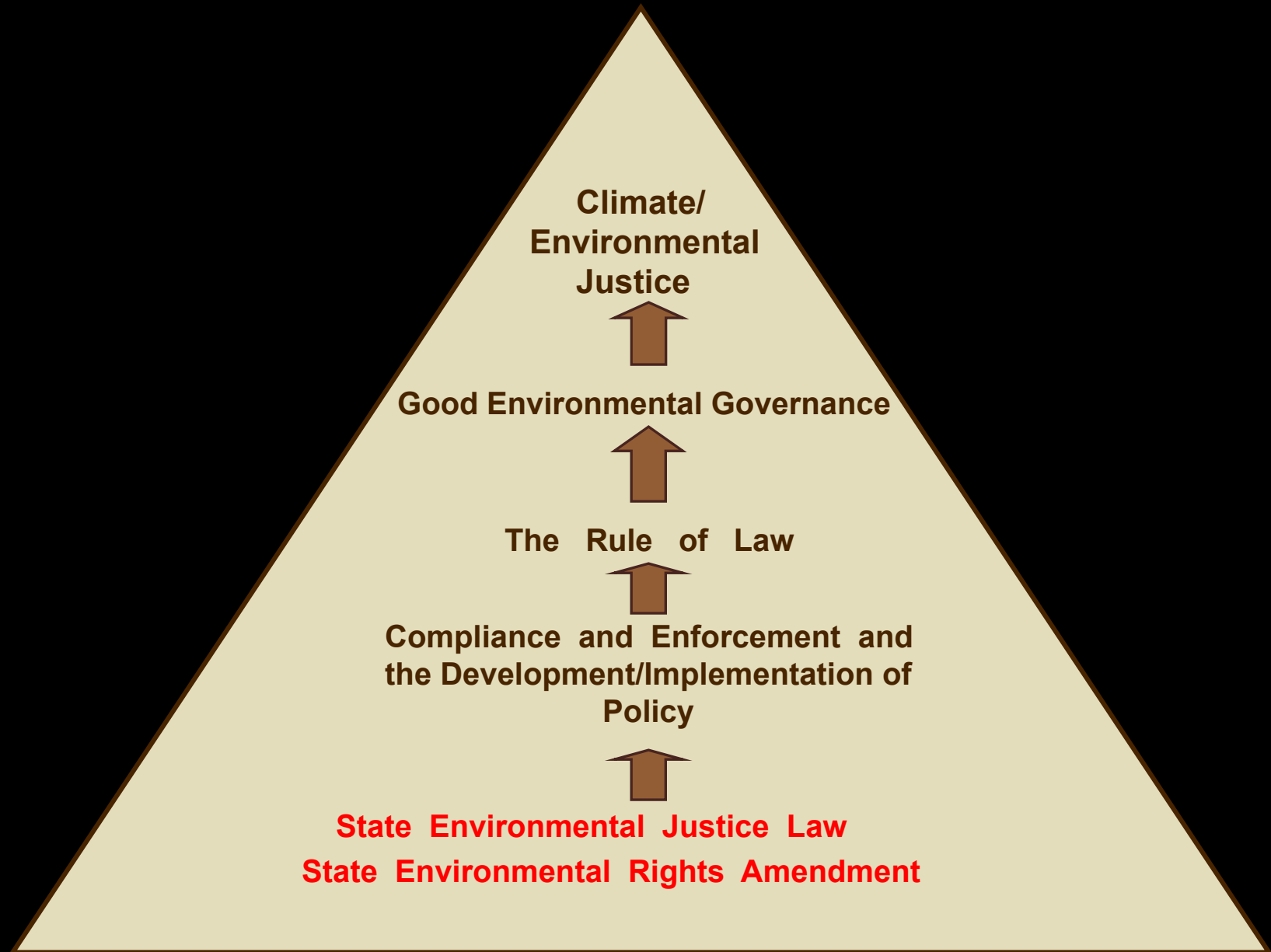
**E&E NEWS – “Inexcusable’: Ex-EPA Chiefs
Decry Uneven Pollution Impacts”**

Sean Reilly (September 30, 2020)

- Bill Reilly
- Gina McCarthy
- Carol Browner

[https://www.eenews.net/greenwire/stories/
1063715107/feed](https://www.eenews.net/greenwire/stories/1063715107/feed)

Constitutional Environmentalism



Differences in Amendments:

-
- Environmental Amendments**
- Policy Declarations
 - Substantive Rights: Outside Bill of Rights
 - Substantive Rights: Inside Bill of Rights

New York

ERA: Art. 1, § 19 (11/21)

EJ Legislation: Art. 48 of ECL (1/1/20)

Climate Change Legislation: Climate
Leadership & Comm. Prot. Act
(7/18/19)

Topic 2

Disproportionate Impacts From Climate Change

Rhode Island

ERA: Art. 1, § 17 (1987)

EJ Legislation: Industrial Property
Remediation and Reuse Act (1995)
Remediation Regs (Chap. 23 - 19.14)

Climate Change Legislation: Resilient
Rhode Island Act (2014)

Climate Liability Litigation

Rhode Island v. Chevron

(filed 7/2/2018: notice of removal 7/13/18)

Rhode Island v. Chevron

213. *The State has incurred and will continue to incur expenses in planning, preparing for, and treating the public health impacts associated with anthropogenic global warming. Rhode Islanders are more likely to seek emergency on hotter days.* On days when the temperatures reach 90°F, hospitalizations in the State for heat and dehydration increase 60% amongst those aged between 18 and 64, compared to the hospitalization rate on 80°F days. Climate models predict that ambient surface temperatures will increase by an average of 1.6°F by 2022, resulting in 378 more emergency department visits due to extreme heat in the months of April through October. *Vulnerable populations such as the disabled, elderly, children, communities of color, and low income are more likely to suffer health effects from high temperatures. Increased prevalence of vector-borne diseases, increased pollution, and increased allergens caused by increased surface temperatures will further contribute to increased hospitalizations in the State.*

Rhode Island v. Chevron (cont.)

216. Increased incidents of extreme weather have still more public health consequences, including danger to personal safety, economic disruption, and *population displacement*. As climate change impacts and severe weather events increase, they will place greater demands on emergency response and *sheltering services*. *The Rhode Island Emergency Management Agency ("RIEMA") has already incurred costs to improve resiliency to future disaster through planning and preparedness activities, trainings, and adaptation programs.*

Rhode Island v. Chevron (cont.)

218. The State has incurred significant expenses educating and engaging the public to better understand climate change, and promoting community involvement in actions to reduce climate change risks. *These efforts include by educating vulnerable populations about the public health impacts of extreme heat waves (such as heat stroke), drought (diminished water supply), and other climate -related impacts.* Implementation of these planning and public outreach processes represent substantial cost to the State.

Rhode Island v. Chevron (cont.)

89. Extreme weather events, such as hurricanes and inland flooding, have immediate health consequences, including danger to personal safety and long-term consequences, including social and economic disruption, **population displacement**, and mental trauma.

90. Extreme heat-induced public health impacts in the State will result in increased risk of heat-related illnesses such as heat exhaustion and dehydration, increased hospitalizations, and death.

Rhode Island v. Chevron

93. *Public health impacts of these climatological changes are likely to be disproportionately borne by communities made vulnerable by geographic, racial, or income disparities.*

Topic 3

Modern Expansion of Public Trust Laws

Modern Expansion of Public Trust Laws

- Groundwater is a public trust – Vt, NH, Conn, Hawaii, NJ, NM
- Air is *not* a public trust resource - Oregon Supreme Court (Chernaik v. Brown and Oregon) (10/23/20)

Observations

ADDITIONAL TOOLS NEEDED

- EJ LAWS
- CLIMATE CHANGE LEGISLATION
- ERAs
- PUBLIC TRUST LAWS NEED TO BE EXPANDED/UPDATED – AIR MUST BE A NATURAL RESOURCE

Word

“The only thing worse than being blind is having sight but no vision.”

Helen Keller
(1880 – 1968)

THANK YOU

