No. 25-6714

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

EVA LIGHTHISER; et al.,
Plaintiffs-Appellants,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; et al.,
Defendants-Appellees,

STATE OF MONTANA; et al.,
Defendants/Intervenors-Appellees.

On Appeal From The United States District Court For the District of Montana – Butte Division (No. 2:25-cv-00054-DLC) Hon. Dana L. Christenson

---

BRIEF OF NON-PARTY PRIME MOVER INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF APPELLEES

RYAN J. WALSH
EIMER STAHL LLP
2 E. Mifflin St., Suite 703
Madison, WI 53703
(608) 620-8346
rwalsh@eimerstahl.com

Counsel for Prime Mover Institute

CORPORATE DISCLOSURE STATEMENT

Prime Mover Institute is a Texas Domestic nonprofit organization. Its Form 34 has been submitted simultaneously with this brief pursuant to FRAP 26.1-1(a)(2).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Other Authorities

INTEREST OF *AMICUS CURIAE*[1]

The Prime Mover Institute is a nonprofit public-interest organization dedicated to advancing energy dominance in America. It seeks to participate in administrative and judicial proceedings to provide technical information and legal arguments that call attention to the effects that regulation has on citizens, the grid, and the rule of law. Prime Mover Institute regularly evaluates claims about emissions, energy markets, and regulatory effects, with an emphasis on ensuring that conclusions follow from methods that are transparent, testable, and otherwise sound.

INTRODUCTION

Plaintiffs seek sweeping relief: orders blocking the federal government from "implementing or enforcing" several Executive Orders, including rescission of existing "agency-wide directives." 6-ER-1338. The district

[1] *Amicus* and the undersigned certify, pursuant to Federal Rule of Appellate Procedure 29(a)(2), that all parties consented to the filing of this brief and, pursuant to Rule 29(a)(4)(E), that no party's counsel has authored this brief in whole or in part, no party or a party's counsel contributed money that was intended to fund preparing or submitting the brief, and no person—other than the *amici curiae*, their members, or their counsel—contributed money that was intended to fund preparing or submitting the brief.

court, however, held that even if Plaintiffs could show injury and causation, their claims are not redressable by Article III powers, which are distinctly ill-suited to ongoing, close oversight of a vast array of Executive Branch actions. 1-ER-14–30. This Court should affirm, whether on that ground or one of many others. *See Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020).

Prime Mover Institute submits this brief to explain that Plaintiffs' standing theory depends on expert-driven causal claims that do not reliably connect (i) broad policy directives, to (ii) incremental emissions, to (iii) individualized injuries, to (iv) court-ordered relief that is likely to redress those injuries. The chain has multiple gaps. Both "climate change" and "climate variability" are defined by the Intergovernmental Panel on Climate Change ("IPCC") in statistical terms. Neither causes weather events but could be the result of them.[2] "Climate change" is defined not as the work of a moment but as "changes in the mean and/or the variability of its properties" "that persist[ ] for an extended period,

[2] The Intergovernmental Panel on Climate Change, Climate Change 2021: The Physical Science Basis 2222, 2224 (Valérie Masson-Delmotte et al. eds. 2021), *available at* https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_FullReport_small.pdf.

typically decades or longer."[3] And "climate variability" again looks at a "mean" and can result from both "intrinsic" (changes in the climate system) and "extrinsic" (changes in nature) sources.[4] Yet Plaintiffs' experts and *amici* supporting reversal repeatedly treat population-level climate statistics as if they resolve event-level and person-level causation.

Federal courts are not in the business of delivering symbolic victories. A judge-ordered remedy must be likely to provide a real-world benefit to the plaintiff—not merely affirm her beliefs. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). In climate litigation, this requirement is often dispositive, since climate change is "shared by humanity at large," and relief aimed at global atmospheric conditions is frequently "not focused any more on these [plaintiffs] than it is on the remainder of the world's population." *Ctr. for Biological Diversity v. U.S. Dep't of Interior*, 563 F.3d 466, 478 (D.C. Cir. 2009). That is why courts repeatedly reject standing theories that ask the judiciary to resolve "general policy disagreements"

---

[3] *Id.* at 2222.

[4] *Id.* at 2224.

better addressed by politically accountable branches. *Layla H. by Hussainzadah v. Commonwealth*, 902 S.E.2d 93, 103 (Va. Ct. App. 2024).

Those principles apply with special force here. Plaintiffs attempt to establish standing primarily through technical, expert-driven causal assertions about emissions, climate impacts, and the effects of enjoining "implementation" across a wide range of agency activity. In this posture, the Court need not undertake a formal *Daubert* analysis to recognize a basic point: where a jurisdictional showing depends on expert-driven inference chains, courts should be skeptical of conclusory assertions, overstatement, and analytical gaps—concerns reflected in the reliability-and-"fit" principles embodied in Federal Rule of Evidence 702. *See* Fed. R. Evid. 702; *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 591 (1993); *Gen. Elec. Co. v. Joiner*, 522 U.S. 136 (1997).

At least three principles foreclose Plaintiffs' standing theory. First, injury-in-fact in climate cases cannot rest on abstract assertions that "every additional ton" of emissions causes a cognizable injury to each plaintiff. Rather, injury must be concrete and particularized. *See Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000). Plaintiffs' theory collapses the distinction between generalized atmospheric effects and individualized injury. Second, to satisfy traceability, it is not enough to fabricate a causal chain linking speculative assumptions about numerous independent actors and global market responses. *See Wash. Env't Council v. Bellon*, 732 F.3d 1131, 1144 (9th Cir. 2013). Rather, Plaintiffs must (but cannot) plausibly establish that the challenged Executive Orders—not an open-ended set of downstream agency choices and third-party actions—are a substantial factor in causing their particular injuries. Third, redressability fails for the reasons the district court identified: Plaintiffs seek an unadministrable injunction against "implementation" that would require perpetual judicial supervision and policy judgments. 1-ER-29–33. And even if a court could enjoin the Executive Orders, Plaintiffs have not shown—on any reliable, case-specific basis—that doing so would likely reduce emissions in a way that would likely remedy Plaintiffs' alleged harms.

ARGUMENT

I. PLAINTIFFS' "EXPERT"-DRIVEN STANDING CLAIMS DO NOT PASS MUSTER UNDER THE RELIABILITY PRINCIPLES USED TO EVALUATE SCIENTIFIC EVIDENCE UNDER RULE 702

Although this appeal does not turn on admissibility rulings, Plaintiffs' standing theory depends on expert-driven causal claims offered to carry their burden on injury, traceability, and redressability. These include claims about emissions deltas, climate impacts, and the real-world consequences of enjoining "implementation" of Executive Orders across the Executive Branch. Because their theory turns on technical assertions and expert-driven inference chains, this Court should have in mind the same concern that triggers trial-court scrutiny of expert opinions under Federal Rule of Evidence 702: preventing placement of decisive weight on conclusions that outrun reliable methods and reliable application. *See also Disney Enters., Inc. v. VidAngel, Inc.*, 224 F. Supp. 3d 957, 966 (C.D. Cal. 2016) (explaining evidentiary issues "go to weight rather than admissibility" at the preliminary injunction stage (citation omitted)).

Rule 702 requires that expert opinion (a) "help the trier of fact … determine a fact in issue" (fit/helpfulness), (b) be "based on sufficient facts or data," (c) be "the product of reliable principles and methods," and

(d) "reflect[] a reliable application of the principles and methods to the facts of the case." Fed. R. Evid. 702; *see Daubert*, 509 U.S. at 591. *Daubert* instructs courts to exclude opinions resting on "subjective belief or unsupported speculation" and to focus on "principles and methodology, not on the conclusions that they generate." 509 U.S. at 590, 595. *Joiner* confirms that courts may reject reasoning where "there is simply too great an analytical gap between the data and the opinion proffered." 522 U.S. at 146.

Applied here, Plaintiffs' expert-driven standing chain falls short in three concrete ways that map onto Rule 702's requirements.

A. Rule 702 "Fit": Generalized Climate Propositions Do Not Answer Plaintiff-Specific Standing Questions.

To "fit," "the testimony" provided by the expert must help elucidate "an issue in the case." *Daubert v. Merrell Dow Pharms., Inc. ("Daubert II")*, 43 F.3d 1311, 1320 (9th Cir. 1995). "[C]ircumstantial proof" is insufficient, and "vague assertions that there is a statistically significant relationship" are lacking where the expert cannot tie the cause to plaintiffs' injuries. *Id.* 1320–22.

The climate-scientists *amicus* brief asserts that "[t]he inescapable result of exploiting more fossil fuels will be an increase in GHG emissions in the United States," which "will inevitably increase global temperatures." Br. of *Amici Curiae* Climate Scientists at 16 (ECF No. 25.1) (hereinafter "Climate Scientists Br."). Even if that were accepted as a general proposition, it does not "fit" the questions that Article III requires the Court to answer: whether the challenged Executive Orders (not a large set of subsequent actions and market responses) are a substantial factor in causing incremental harm to these Plaintiffs and whether the requested injunction is likely to reduce those harms. *See Daubert II*, 43 F.3d at 1320–22.

The IPCC's definitions help explain why the mismatch persists even if one accepts background climate premises. Both detection and attribution are defined as statistical concepts that do not independently demonstrate causation.[5] Rather, these concepts look at multiple factors to ascertain

[5] "Detection" "is defined as the process of demonstrating that climate or a system affected by climate has changed in some defined statistical sense, without providing a reason for that change." The Intergovernmental Panel on Climate Change, *supra* n.2 at 2226. "Attribution" is "the process of evaluating the relative contributions of multiple causal factors to a change or event with an assessment of confidence." *Id.* at 2219.

whether a statistical change occurred. Climate change and variability describe distributions and trends over time; they do not, without additional event-specific attribution and individualization, establish that a particular plaintiff's harm was caused by a particular policy-induced marginal emissions change. This point is not offered to deny climate change—it is offered to show that generalized statistical propositions do not, without a further method of individualization, resolve plaintiff-specific standing questions. *See Daubert II*, 43 F.3d at 1321–22.

B. Rule 702 "Application": Plaintiffs' Chain Depends on Intervening Agency Actions and Independent Third Parties.

To move from broad policy directives to plaintiff-specific harm, Plaintiffs need a case-specific application that accounts for intervening agency decisions and third-party behavior. The district court's description of Plaintiffs' requested relief shows why that application is missing: the injunction that they seek would require the court "to scrutinize every climate-related agency action taken since January 20, 2025" to decide whether it was "implemented pursuant to the Challenged EOs," and "to monitor an untold number of federal agency actions." 1-ER-29. Hence the asserted causal chain turns on countless intervening decisions—precisely the sort of attenuation that makes traceability and redressability "substantially more difficult" where plaintiffs are not the direct objects of the challenged conduct. *Lujan*, 504 U.S. at 562 (citation omitted); *see also Tamraz v. Lincoln Elec. Co.*, 620 F.3d 665, 672 (6th Cir. 2010).

Put concretely, Plaintiffs' causation-and-redress story depends on a multi-link sequence: (1) the challenged Executive Orders prompt or permit a range of downstream agency implementation actions; (2) the agencies' actions alter permitting, procurement, or enforcement decisions; (3) those agency decisions influence private investment and consumption; (4) those private business and individual responses marginally increase net emissions (accounting for substitution and trade); (5) the resulting marginal change in global atmospheric concentrations produces a discernible change in climate conditions; and (6) that marginal change, rather than innumerable other contributors, produces incremental injury to these Plaintiffs. Chains of this kind—attenuated, contingent, and turning on decisions of independent actors—are exactly what courts describe as a "train [that] becomes too long to pull and the couplings too weak to hold the cars together": too speculative to support jurisdictional inferences. *Tamraz*, 620 F.3d at 672; *see Clean Air Council v. United States*, 362 F. Supp. 3d 237, 247 (E.D. Pa. 2019); *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013).

In addition, Rule 702(b) and (d) require more than a broad premise ("more fossil fuels") and a broad conclusion ("inevitable temperatures"). They require a reliable application to the facts and questions that matter here: whether these Executive Orders, as distinct from a wide range of future agency actions and market behavior, are a substantial factor in causing incremental harms to particular Plaintiffs; and whether a court order enjoining "implementation" is likely to reduce those harms. The climate-scientists *amicus* brief does not supply that application; its key causal assertions proceed at a level of generality that does not engage the case's intervening-decision structure. *See* Climate Scientists Br. at 16.

C. *Joiner* "Analytical Gap": Plaintiffs Overstate What Attribution and Emissions Methods Can Show for Standing.

An expert must "reason[ ] between steps in a theory" and base this reasoning "on objective, verifiable evidence and scientific methodology" "used by experts in the field" to link the event to the damage alleged. *Domingo ex rel. Domingo v. T.K.*, 289 F.3d 600, 607 (9th Cir. 2002).

Analytical gaps "between the data and opinion proffered," such as an expert's "*ipse dixit*" is not sufficient. *Id.* (quoting *Joiner*, 522 U.S. at 146).

The climate-scientists *amicus* brief claims that attribution science has advanced such that "we can now conclude with confidence that many climate and weather extreme events are more severe because of climate change." Climate Scientists Br. at 22 (citation omitted). And the district court credited Plaintiffs' allegation, and evidence produced at the hearing, "that higher average temperatures and increasing heat waves will increasingly occur should more fossil fuels be 'unleashed.'" 1-ER-19. But the standing question here is not whether climate change can affect some classes of events in the aggregate; it is whether marginal emissions changes allegedly attributable to these Executive Orders can be connected—through intervening agency and market behavior—to incremental harms to these Plaintiffs, and whether an injunction of "implementation" is likely to redress those harms. Treating a general proposition about "many" events as if it fills that plaintiff- and policy-specific gap is the kind of overstatement *Joiner* warns against: it skips the work needed to connect data and method to the conclusion required for the legal issue. *Joiner*, 522 U.S. at 146; *Domingo*, 289 F.3d at 607.

This is the "analytical gap" problem in miniature. Even if one accepts that climate change can influence the severity of "many" events, that does not supply a method for translating a marginal emissions change allegedly attributable to these Executive Orders into incremental harm to particular plaintiffs, much less for estimating whether enjoining "implementation" would likely change those probabilities. This inference is further blunted by the U.S. Energy Information Administration's reporting that *every* state and the U.S. as a whole, decreased per capita energy-related CO_2 emissions from 2005 to 2023.[6] Plaintiffs' alleged injuries caused by increases in emissions in the last 15 years therefore must be taken with the reality that the United States has decreased its emissions in this timeframe. Without a credible accounting for substitution, trade, changes in energy, and the scale of the claimed emissions delta relative to global concentrations, Plaintiffs' expert chain cannot be reliably applied to the plaintiff-specific, remedy-specific questions Article III requires.

[6] *Per capita energy-related CO_2 emissions decreased in every state between 2005 and 2023*, U.S. Energy Information Administration (Sept. 15, 2025), https://www.eia.gov/todayinenergy/detail.php?id=66104.

In sum, even though this Court is not called upon to "apply *Daubert*" here, Rule 702's framework usefully highlights what is missing from Plaintiffs' standing proof, and the weight that should be granted to it: fit to the jurisdictional elements, reliable case-specific application through intervening decisions, and avoidance of analytical gaps between general climate propositions and plaintiff-specific standing conclusions. *See Disney Enters., Inc.*, 224 F. Supp. 3d at 966.

II. PLAINTIFFS' "EVERY TON" THEORY DOES NOT SATISFY THE PARTICULARIZED-INJURY TEST

Standing requires a concrete and particularized injury to the plaintiff, not a generalized injury to the environment. *Friends of the Earth, Inc.*, 528 U.S. at 180–81. In climate-standing disputes, courts routinely treat categorical propositions about emissions and temperatures as insufficient to establish an injury because climate change is "shared by humanity at large," and relief aimed at global atmospheric conditions is often "not focused any more on these [plaintiffs] than it is on the remainder of the world's population." *Ctr. for Biological Diversity*, 563 F.3d at 478.

Amici supporting reversal repeatedly press only such categorical propositions about emissions and temperatures (e.g., "inescapable" emissions increases leading to "inevitabl[e]" temperature increases). Climate Scientists Br. at 16. Those propositions may be relevant to generalized climate debates, but they do not themselves supply a method to distinguish individualized injury from generalized atmospheric effects. *See Ctr. for Biological Diversity*, 563 F.3d at 478; *Friends of the Earth, Inc.*, 528 U.S. at 180–81.

Indeed, Plaintiffs' "every ton" theory has no limiting principle. If a marginal emissions increase attributable to the challenged Executive Orders is itself an injury in fact, then the same logic would confer standing to challenge any governmental action—federal or state—that increases emissions by any amount, however small. And it would not be limited to these Plaintiffs: it would apply to virtually everyone, because the asserted harm is global and diffuse. *See* Climate Scientists Br. at 16 (characterizing increased emissions as producing "inescapable" and "inevitabl[e]" climate effects). Article III does not treat injury in fact as a universal entitlement to litigate generalized policy disagreements; it requires a plaintiff-specific, particularized injury that meaningfully distinguishes the plaintiff from the public at large. *See* Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 895 (1983) (arguing that "not *all* 'concrete injury' indirectly following from governmental action or inaction [should] be capable of supporting [standing]"); *see also TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021) (citing this article as authoritative).

The IPCC's characterization of climate change as a statistic clarifies why such generalized atmospheric effects do not create a distinct individualized injury. A standing theory that relies on the rhetorical move "more emissions → more temperature → more harm" risks collapsing that individualization step, and thus risks the same defect Rule 702 would label a "fit" problem: it answers a different question (aggregate climate effects) than the one Article III asks (plaintiff-specific injury linked to challenged conduct). And where that collapse is paired with structural relief (an injunction against "implementation"), the lack of a plaintiff-specific method becomes especially salient: courts are not empowered to issue broad orders whose claimed benefit cannot be shown to accrue to plaintiffs in any plaintiff-specific way.

III. THE EXECUTIVE ORDERS ARE FAR TOO REMOTE FROM THE ALLEGED HARMS TO BE "TRACEABLE" TO THEM GIVEN THE ROLE OF DOWNSTREAM AGENCY ACTIONS AND THIRD-PARTY RESPONSES

Traceability requires a plausible causal connection between the challenged action and the plaintiff's injury, not a chain that depends on speculative decisions of independent actors. *Lujan*, 504 U.S. at 560–62. In climate-related cases, traceability often fails because "a multitude of independent third parties" contribute to the alleged harms. *Bellon*, 732 F.3d at 1144.

The district court's own description of Plaintiffs' requested injunction underscores that their theory depends on innumerable downstream actions: the court would have to decide whether each "climate-related agency action" was "implemented pursuant to the Challenged EOs or to some other Government policy," and then police compliance across "an untold number" of actions. 1-ER-29–31. That description confirms the intervening-decision structure that makes traceability difficult: the alleged harms turn on future agency decisions and third-party behavior.

The U.S. Energy Information Administration's reporting on emissions underscores why Plaintiffs' categorical assertions that the result of the policies set forth in the Challenged EOs are inevitable are insufficient for traceability. Emissions outcomes rely on a host of policy and market factors, such as changes in energy usage.[7] Against that backdrop, Plaintiffs cannot plausibly show that these Executive Orders—rather than a host of downstream decisions and market responses—are a substantial factor causing their alleged harms.

IV. *JULIANA* CONFIRMS THAT THE PLAINTIFFS' CLAIMS ARE NOT REDRESSABLE

Redressability requires Plaintiffs to show that the requested relief is likely to redress their injuries and is within the court's power to award. *Juliana*, 947 F.3d at 1170–75. The district court held this case is "on all fours" with *Juliana* and dismissed for lack of standing because the relief sought is beyond Article III power. 1-ER-23–33.

That conclusion follows from the concrete administrability problems the district court identified. Plaintiffs seek an injunction against "implementation" and "agency-wide directives." The district court explained that such relief would require perpetual monitoring of executive actions and unworkable line-drawing about what counts as "implementation." 1-ER-29–30. That is the kind of continuing

[7] *See* U.S. Energy Information Administration, *supra* n.6.

supervision and policy judgment *Juliana* held Article III courts cannot undertake. 947 F.3d at 1172–75.

If Plaintiffs' proof does not reliably connect marginal emissions changes attributed to these Executive Orders to incremental harm to particular Plaintiffs, then enjoining implementation cannot be shown—on a case-specific basis—to likely ameliorate those harms. That is not a conclusory point; it follows from the same requirement Plaintiffs must satisfy for standing: a plausible, non-speculative link between requested relief and injury. And that is why courts caution against "symbolic victories" in this setting—Article III demands a real-world likelihood of redress, not merely a declaration that a global phenomenon is serious.

CONCLUSION

This Court should affirm the district court's dismissal for lack of standing.

Dated: March 5, 2026

Respectfully Submitted,

s/ Ryan J. Walsh

RYAN J. WALSH,
EIMER STAHL LLP
2 E. Mifflin St., Suite 703
Madison, WI 53703
(608) 620-8346
rwalsh@eimerstahl.com

Counsel for Prime Mover Institute

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: http://www.ca9.uscourts.gov/forms/form08instructions.pdf

9th Cir. Case Number(s): 25-6714

I am the attorney or self-represented party.

This brief contains 4,345 words, including **0** words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief *(select only one)*:

[ ] complies with the word limit of Cir. R. 32-1.

[ ] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

[X] is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

[ ] is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

[ ] complies with the longer length limit permitted by Cir. R. 32-2(b) because *(select only one)*:
  [ ] it is a joint brief submitted by separately represented parties.
  [ ] a party or parties are filing a single brief in response to multiple briefs.
  [ ] a party or parties are filing a single brief in response to a longer joint brief.

[ ] complies with the length limit designated by court order dated ______________.

[ ] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature *s/ Ryan J. Walsh* **Date:** March 5, 2026

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Ryan J. Walsh
Ryan J. Walsh

Dated: March 5, 2026