IN THE

Supreme Court of the United States

No. 2024-2025

SHREYA JOSHI,

Petitioner,

v.

MEYERS PETROLEUM CO.; CENZANO USA, INC.;
ALLARI ANTHRACITE CORP.

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Twelfth Circuit

ORDER OF THE COURT

The petition for a writ of certiorari is granted, limited to the following questions:

1. Does a private party have Article III standing to sue fossil fuel producers for asserted injuries caused by climate change?

2. Was Judge Moss required to disqualify himself under 28 U.S.C. § 455(a)?

Revised November 11, 2024

IN THE UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT

No. 2023-1008

SHREYA JOSHI, *Plaintiff—Appellant*

v.

MEYERS PETROLEUM CO.; CENZANO USA, INC.;
ALLARI ANTHRACITE CORP., *Defendants—Appellees*

Appeal from the United States District Court
for the District of New Storke

LEWIS, J., delivered the opinion of the Court, in which STEEVES, J., joined. BERGEVIN-STREIT, J., filed a dissenting opinion.

JUDGE LEWIS:

This case comes from wildfire country. There, in recent years, 5 million properties have seen the likelihood of wildfires increase significantly. Thanks to increased temperatures and decreased humidity in the atmosphere, the plant life that fuels wildfires is far more combustible today than it was twenty years ago. Among the affected properties is Shreya Joshi's home in Silliman County, New Storke.

Out of concern for that effect, Joshi has brought this case against America's three largest producers of fossil fuels. Those producers are Meyers Petroleum Company, Cenzano USA Incorporated, and Allari Anthracite Corporation; Joshi proceeds under the Weather Action, Resilience, and Mitigation Claims Act ("WARM Claims Act"). Today, we decide Joshi's appeal of two issues.

First, whether Joshi has standing to sue the fossil fuel producers under Article III of the United States Constitution. Joshi argues that the producers' contributions to climate change are responsible, in part, for the high risk that her home

will be destroyed by wildfire. She seeks prospective monetary damages to cover that risk and its consequences, including the loss of her home insurance policy and her need to remodel her home with fire-resistant materials. The United States District Court for the Southern District of New Storke has entered summary judgment against her.

Second, whether the Judge who entered that judgment should have disqualified himself for the appearance of partiality under 28 U.S.C. § 455. Over the last 20 years, that Judge has expressed both public and private opinions about the WARM Claims Act and the industry it regulates. When Joshi learned of these opinions, she moved to vacate the summary judgment; that motion was denied. For the reasons stated below, we affirm the judgment of the district court.[1]

I

A

Wildfire risk is an emergent national crisis. Since 1970, the annual acreage of wildfires has increased exponentially. From 1984 to 2000, an average of 1.69 million acres burned annually in the Western United States. By 2020, the figure was 8.8 million acres—growth by a factor of five. Yizhou Zhuang et al., *Quantifying Contributions of Natural Variability and Anthropogenic Forcings on Increased Fire Weather Risk Over the Western United States*, 118 Proc. Nat'l Acad. Scis. 45 (2021). This increase is attributable to climate change, above and beyond normal fluctuations in weather patterns. While 32% of the relevant change in atmospheric conditions is traceable to natural variability, the remaining 68% comes from human-caused climate change. *Id.* Under this warmer and drier atmosphere, human-caused warming is responsible for more than half the increase in fuel aridity since 1970, and correspondingly, 6 million acres of wildfire in 2020.

Climate change is caused in part by carbon dioxide released into the atmosphere from burning fossil fuels. The three companies in this case are the largest producers of those fuels in the United States, with annual output that translates to

[1] Both parties have stipulated to the facts set out in Part I of this opinion.

nearly 5% of total global emissions. While they sell some of their fossil fuels to consumers, they and their wholly owned subsidiaries burn most of what they produce for power generation.

To help understand wildfire risk, climate scientists have constructed predictive computer models. These models use weather conditions, landscape, building materials, and historic fire observations to calculate the likelihood and severity of wildfire at any location. The most detailed available model indicates that Joshi's home bears "extreme" risk of wildfire damage or destruction. It estimates a 1.6% chance that Joshi's property will be destroyed by wildfire in the next year and a 42.9% chance of the same in the next 30 years; the probabilities that a wildfire will *reach* her home in the same time frames are 2.9% and 64.7%, respectively. (Declaration of Darshan Vijaykumar, Professor of Atmospheric Science ¶11.) It also estimates that, by remodeling her home with non-combustible roofing and siding materials, Joshi could reduce the long-term likelihood of complete destruction by 74%.[2]

Regardless of the calculated risk, it is impossible to know when, if ever, Joshi's property will burn. While hot and dry conditions increase the likelihood of fire, the events that ignite real flames—lightning, power transmission line failures, and other human errors—are largely random.

B

Because of the increased risk of wildfires, four of the ten largest national home insurers have discontinued their coverage in New Storke. Of those that remain, three more have chosen not to renew any policies in Silliman County, leaving a highly restricted market. And New Storke is not an anomaly in this regard. As regions of the country face increasing risks of wildfires, flooding, and severe storms, major insurers have exited high-risk state markets across America. In states where insurers continue to offer policies, home insurance premiums have increased by 33% since 2020, outpacing inflation by 14 percentage points. This is a response to rapidly

[2] Expert analysis by climate scientist Darshan Vijaykumar showed that human-caused greenhouse gas emissions have more than tripled the risk of Joshi's property being destroyed by wildfire. (Decl. ¶24.) Given that the three defendants are responsible for 3% of historical emissions, Vijaykumar found, they alone have increased the risk to Joshi's property by 12%. (Decl. ¶27.)

increasing costs. Between 1980 and 1989, there were 33 weather and climate disasters that caused a billion or more dollars in damage. Adjusting for inflation, in 2023 alone, there were 28. Home insurers lost money in 18 states, the highest number on record.

When she purchased her home in 1984, Joshi enrolled in a home insurance policy that covered the total cost of rebuilding after catastrophic damage, most recently estimated at $560,000. She maintained that policy until February 2023, when Ignatuk Insurance refused to renew her coverage. By then, only two types of home insurance were available in Silliman County: boutique coverage for more than the market value of her property, which Joshi could not afford, and coverage for one-third the cost of rebuilding, at the same price Joshi had paid for full coverage. Joshi chose not to purchase either policy.[3]

Despite rising insurance costs, many high-fire-risk counties continue to see significant population growth. New home construction has accelerated in New Storke; an average of 600 single-family homes have been built in Silliman County every year since 2020. In studies commissioned by national realtors' associations, people moving to New Storke cited the state's low taxes, affordable cost of living, and warm climate as the primary factors in their decision.

In these market conditions, the residential price per square foot in Joshi′s area has nearly tripled since Joshi purchased her home, with the fastest increase between 2016 and 2023. The estimated sale price for Joshi's home mirrors this trend, rising from the $285,000 she paid to $900,000 when the District Court granted summary judgment.).

C

The WARM Claims Act is an unusual statutory scheme. Large parts of the law were derived from a 2021 piece of draft legislation requiring fossil fuel producers to reduce their emissions on a strict schedule or face severe civil penalties. The

[3] Insurers in Silliman County reduce premiums for homes retrofitted with flame-resistant materials. Even so, Joshi found that retrofitting her home would not reduce premiums to a level she could afford.

bill was the subject of several congressional hearings and significant news coverage, but was never advanced out of committee.

After climate-change skeptic Sydney Chen was elected in the 2022 presidential election, the lame-duck Congress again took up the bill. As President-elect Chen had promised not to enforce existing environmental regulations, the House of Representatives amended the bill to include a private right of action, allowing those injured or at risk of injury from climate change to sue greenhouse gas emitters who failed to reduce their emissions on the Act's schedule. *See* Appendix A, *infra*. The amended bill was passed by both houses of Congress and signed into law by the outgoing president on December 19, 2022.

D

Judge Quinn Moss was raised in Franklin, New Storke, a town of 7,000 people where the primary industry is oil drilling. His mother was a regional executive at Jacobus Natural Resources, the town's largest employer; she is now retired.[4] In 2004, soon after his appointment to the United States District Court for the District of New Storke, Judge Moss was invited to speak at his alma mater, New Storke Law School. When asked about his family's connections to oil companies and how it may bias his rulings, Judge Moss said:

> "Look, people are so ungrateful and looking for problems to complain about, but here's the truth: we all need oil. Those people whine and judge, but look at what powers their electricity and how they get to work. Could you imagine putting a windmill on your car to make it run? Honestly, they don't know what's good for them. I hope in 20 years this climate fad is all over."

When prompted for clarification, Judge Moss responded: "Well I'm not biased. Is it biased to be right? I've seen the good that oil does for communities, and that's not the same as being biased."

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[4] Neither Judge Moss nor any of his family members hold any financial interest that could be substantially affected by the outcome of this case.

In December 2022, Judge Moss attended a friend's wedding in Franklin. The private event included approximately 150 guests. At the event, Judge Moss was seated at a table with his spouse and four acquaintances, including Sean Pergola. During dinner, discussion turned to recent congressional debates about the bill that would become the WARM Claims Act. Judge Moss was unaware that Pergola was recording the conversation until it was published over a year later. The relevant portion of Judge Moss's comments is transcribed below:

> Judge Moss: Yeah, you know, I always thought Congress was dysfunctional, but they're doing crazy things. They're always trying to enable these crazy activists who blame other people for all their problems. They wanna cancel everybody, everybody.
>
> [...]
>
> Judge Moss: Like look, the options they had for us to eat here were steak and some vegetarian crap, of course I'm gonna order the steak! Now some long-haired California lunatic is gonna sue me for having some rubbery steak at a wedding? They'll say something about the farts from this particular cow causing the climate change which started a hurricane or something. [laughter from other guests]. Somehow they'll try to say that all of that can be traced back to this one steak and now all of us can't see our kids because we're stuck hearing frivolous lawsuits. It's one thing if there's a legit reason, but it's hard to imagine there being one. And if this crap passes that's gonna be my job for years, listening to these crazies whine about their made-up problems.

E

The WARM Claims Act went into effect on January 1, 2023. This case was filed shortly after the Act's first emissions deadline on July 1 and assigned to Judge Moss. During the initial inquiry into the case, Judge Moss repeatedly admonished Joshi's attorney, telling him to "stick to the facts," and that he had turned a legal issue into "a performance for an unwilling audience." Judge Moss interrupted Joshi's attorney on one occasion, stating that "this has devolved into a fanciful sob-

story. Perhaps I'd enjoy it on Broadway, but not in a courtroom." He also stated, "I've dealt with grifters like you before, and I'm growing tired of it."

Judge Moss granted the defendants' motion for summary judgment on January 26, 2024. Pergola, frustrated by the ruling, sent his recording from the wedding to the *New Storke Times*, the most widely circulated newspaper in New Storke. Judge Moss's remarks were published on February 10, 2024 in a *Times* article on the impact of the WARM Claims Act. The article summarized the progress of four different suits filed by private parties under the Act and included quotes from attorneys and legal scholars discussing the merits of the different cases and their opinions on the Act's policy implications. The article included a paragraph questioning whether, in light of these statements and his previous associations with the oil industry, Judge Moss was really impartial. The article also discussed his interactions with Joshi's counsel and his 2004 remarks on the oil industry.

The online version of the article received more than one million views. Significant public discourse followed about the question of Judge Moss's partiality. While some climate activists and elected officials called on Judge Moss to recuse himself because of his comments, the majority of public backlash was centered around the secret recording itself. Calls for the reporter to be fired for publishing a secret recording were posted outside the newspaper offices and across the internet. Farting cow images also featured on many signs at a Washington D.C. protest against the WARM Claims Act in February 2024.

Judge Moss responded to the newspaper with a statement appended to the article online. It read: "The statements quoted in this article were made about a piece of draft legislation at a private event. Everything I said from the bench was to maintain order in my courtroom. Attorney behavior must not hinder the proceeding of a case and sometimes needs to be reined in. These comments do not reflect any opinion on the WARM Claims Act and did not impact my judgment in *Joshi v. Meyers Petroleum*."

Based on Judge Moss's statements at New Storke Law School, at the wedding, and in court detailed above, Joshi moved to vacate the judgment under Federal Rule of Civil Procedure 60(b)(6) on the grounds that Judge Moss was disqualified

under 28 U.S.C. § 455(a). Judge Moss denied the motion; Joshi filed a timely appeal of that denial and the adverse summary judgment ruling.

II

Our doctrine of Article III standing requires "that an injury be [1] concrete, particularized, and actual or imminent; [2] fairly traceable to the challenged action; and [3] redressable by a favorable ruling." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010). To meet these requirements, Joshi presents three alternative theories. She argues (1) that the cost of hardening her home against wildfire is a redressable and traceable injury, (2) that the same is true of her loss of affordable insurance, and (3) that the same is true of the increased risk of wildfire, even without considering its consequences.

At the summary judgment stage, Joshi must "set forth by affidavit or other evidence specific facts"—which we must take to be true—to support a finding that she has standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (internal quotation marks omitted). As we explain below, she has not met this burden on any of the theories she advances.[5]

A

It is well established that certain kinds of risk can create concrete injuries for standing purposes. In *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139 (2010), and *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013), the Supreme Court held that a "'substantial risk' that harm will occur," is a concrete injury if plaintiffs must "reasonably incur costs to mitigate or avoid" it. *Clapper*, 568 U.S. at 414 n.5 (quoting *Monsanto*, 561 U.S. at 153). Joshi argues that this category includes the costs of purchasing and installing wildfire-resistant building materials.

Whether those costs are concrete enough for standing turns on the kind of risk to which they respond. In *Monsanto*, for example, organic seed buyers—concerned by the "substantial risk of gene flow" from GMO to organic crops, 561 U.S.

[5] No party has argued that Joshi's claims fall outside the zone of interests encompassed by the WARM Claims Act.

at 153—insisted that farmers test for cross-pollination with genetically modified crops, *id.* at 154–155. Cross-pollination could happen or not happen; buyers would reject untested crops either way. It was this threat of rejection, not the substantial risk of gene flow that created it, that made farmers' testing costs a concrete injury. *Id.* at 155 ("Such harms, which respondents will suffer *even if their crops are not actually infected with the Roundup ready gene*, are sufficiently concrete to satisfy the injury-in-fact prong of the constitutional standing analysis.") (emphasis added).

Put another way, a plaintiff's costs must respond to something "certainly impending." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 n.2 (1992) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)). This principle controlled in *Clapper*, where the Supreme Court rejected a theory of standing based on the abstract possibility that plaintiffs would be illegally wiretapped by the federal government. 568 U.S. at 410–414. Although the Americans who believed themselves to be at risk of wiretapping incurred costs to communicate securely, these costs were not an injury in fact, because the plaintiffs presented no evidence that the government would target their communications specifically. *Id.* at 415–418. Plaintiffs "cannot manufacture standing," the Court wrote, "merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Id.* at 416.

In any case, the threat of wildfires does not have the right kind of costs. Uncontested affidavits maintain that wildfires are much more likely to destroy Joshi's home today than they were when she bought it; they further make clear that remodeling her home with fire-resistant materials would decrease that likelihood significantly. But wildfire damage is only a "hypothetical future harm," *id.*, and Joshi needs to present more than that. In the evidence before us, nothing points to an injury like *Monsanto*'s buyer rejection; nothing indicates that wildfire-related harm is certainly impending and that Joshi is "reasonably incur[ring] costs to mitigate or avoid" it. *Clapper*, 568 U.S. at 414 n.5 (quoting *Monsanto*, 561 U.S. at 153). In sum: to have standing from mitigation costs, Joshi must show that some risk-related harm will befall her *regardless* of whether her property actually burns. She must then show

that avoiding that non-speculative harm costs her. She has produced no evidence for those conclusions today.[6]

Joshi's closest argument on costs is her loss of affordable insurance. Not in the sense that losing insurance itself confers standing, but rather in the sense that insurance loss affects Joshi regardless of whether her property actually burns. Yet while remodeling Joshi's home reduces the risk of destruction by wildfires, there is no evidence that it would mitigate or avoid her insurance problems. There is no insurance policy that Joshi could afford after remodeling that she cannot afford now.[7] Because it makes no difference, remodeling is not a "reasonable reaction" to loss of insurance. *Clapper,* 568 U.S. at 416.

In light of the evidence Joshi has produced, we can at most conclude that remodeling treats a future risk, not a certainly impending injury. Only the latter confers standing.

B

We next address Joshi's second theory, that loss of affordable insurance itself confers standing. To do so, the loss must affect Joshi in a "personal and individual way," *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 n.1 (1992) (describing particularized injury). Because variations in the national insurance market are neither personal and individual nor controlled by the defendants, we find that Joshi's second theory fails.

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[6] Taking an alternative reading of *Clapper*, JUDGE BERGEVIN-STREIT would find a certainly impending injury using Joshi's computer modeling evidence. *See post*, at 21–22. But even over 30 years, the model shows only a 64.7% chance that wildfire will reach Joshi's home. (Vijaykumar Decl. ¶11.) The argument that this is certainly impending is akin to rolling a die and saying it is certainly impending that it will come up showing 4 or less. We cannot agree. *See Lujan*, 504 U.S. 555, 564 (1992) ("Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose.") (cleaned up).

[7] *Monsanto's* seed farmers, unlike Joshi, bore mitigation costs related only to their certainly impending injuries—testing for genetic contamination would address buyers' (certainly impending) concerns, not reduce the risk of (hypothetical future) gene transfer.

"Vindicating the *public* interest," the Supreme Court has said, "is the function of Congress and the Chief Executive." *Lujan*, 504 U.S. at 576. A crucial purpose of our standing doctrine is to avoid usurping that function, and the doctrine achieves that purpose by admitting only injuries that affect plaintiffs "in a concrete and *personal* way." *Id.* at 581 (Kennedy, J., concurring) (emphasis added). Especially in cases where the political branches are absent, we must vigilantly police our own constitutional borders.

Joshi's loss of affordable insurance is strikingly *im*personal, and therefore beyond our power. In the national insurance market, Joshi hardly experiences price fluctuations in a "personal and individual way." 504 U.S. at 560 n.1. Rather, her experience is undifferentiated from anyone else's. The purpose of insurance is to distribute the cost of risks across the entire population; everyone's prices rise and fall together. Every resident of the State of New Storke feels the effects of insurers exiting the market, and every American feels the effects of the 33% increase in premiums nationwide. To attempt to solve these problems at the request of private parties would allow the political branches to abdicate the duty—and allow courts to assume the power—to represent the people.[8] Like many problems affecting the whole population, maintaining public markets against ordinary economic forces "falls within the discretion of the Executive Branch, not within the purview of private plaintiffs." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 429 (2021). *Cf. Massachusetts v. EPA*, 549 U.S. 497, 518–520 (allowing states to sue for redress of certain injuries that are unavailable to private parties).

C

With mitigation and insurance costs unavailing, Joshi's final theory depends on an intangible injury: increased risk of wildfire in the abstract. This is not the "concrete harm" to Joshi's interests that intangible injuries must be. *TransUnion*, 594 U.S. at 417. To be that kind of harm, wildfire risk must have a "'close relation-

[8] That Congress has created the cause of action at issue today is no justification. Like many separation-of-powers issues, we cannot defer to the other branches' consent to share powers; that consent may be unconstitutionally given.

ship' to a harm 'traditionally' recognized as providing a basis for a lawsuit in American courts." *Id.* at 424 (quoting *Spokeo, Inc. v. Robins*, 578 U. S. 330, 341 (2016)). The evidence Joshi has provided today does not establish any such relationship.

Pointing to the common law tort of private nuisance, Joshi argues that contributing to climate change and thereby increasing the risk of wildfire constitutes "a nontrespassory invasion of [her] interest in the private use and enjoyment of land." *Restatement (Second) of Torts* § 821D (1979). Our judgment of this argument turns on what uses and enjoyments of land were traditionally recognized at common law, and whether freedom from unactualized risk was one of them.

Admittedly, imposing risk on nearby properties has sometimes been recognized as a private nuisance. In *Cumberland Torpedo Co. v. Gaines*, the Supreme Court of Kentucky sustained a nuisance lawsuit by the neighbors of a newly-constructed torpedo factory because of the potential for explosive accidents. 255 S.W. 1046. In *Comminge v. Stevenson*, the Texas Supreme Court upheld a nuisance verdict against a neighbor who was storing thousands of pounds of gunpowder, for similar reasons. 13 S.W. 556 (1890). And in *Stotler v. Rochelle*, the Kansas Supreme Court held that the operators of a cancer hospital were liable for nuisance because of the fear of contagion they imposed on the people next door. 109 P. 788 (1910) (relying, in part, on the possibility that cancer was contagious).

But all of these cases relied on decreased property values to verify that plaintiffs had been injured. None of them recognized risk alone as sufficient. *Cumberland Torpedo Co.* addressed this proposition directly: "[D]amages are not allowed for mere fear, but for the depreciation in the value of the property." 255 S.W. at 1048; s*ee also Comminge*, 13 S.W. at 557 (relying on "the depreciation in value of the property and of its use because of the proximity of the magazine"). And historical treatises on nuisance were clear. Invisible risks must either affect property values, or "be actual, visible, and substantial, such as is apparent to an ordinary person and not merely perceptible by means of scientific or microscopic examination." Joseph A. Joyce & Howard C. Joyce, *Treatise on the Law Governing Nuisances*, 38–39 (1906).

Because Joshi's property has appreciated, not depreciated, and because there is no evidence of harm perceptible without computer modeling, increased risk

of wildfire does not have a close relationship to private nuisance. It is not a concrete injury; Joshi therefore lacks standing.

III

We next consider whether Judge Moss should have disqualified himself under 28 U.S.C. § 455(a) and, if so, whether his failure to do so constitutes harmless error. We find no grounds for disqualification. Even if such cause existed, a failure to disqualify would be harmless error.

A

Joshi argues that Judge Moss ought to have disqualified himself because this is a "proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Joshi points to statements made to friends at a private event, a speech made at an academic appearance nearly twenty years ago, and intrajudicial statements in this case. We reject this argument. None of these incidents alone, nor any combination of them, would cause a reasonable person to question Judge Moss's impartiality under § 455.

§ 455 requires judges to "avoid even the appearance of partiality," *Liljeberg v. Health Svcs. Acq. Corp.*, 486 U.S. 847, 870 (1988), and creates an objective test: A violation of § 455(a) occurs when "a reasonable person, knowing the relevant facts, would expect that a [judge] knew of circumstances creating an appearance of partiality" regardless of whether the judge was "actually conscious of those circumstances." *Id.* at 850.

But while the statute requires judges "to take the steps necessary to maintain public confidence in the impartiality of the judiciary" *id.* at 861, it does not allow litigants to request disqualification using any pretext of personal bias. As our colleagues in the 10th Circuit explain, the statute does not "give litigants a veto power over sitting judges." *United States v. Cooley*, 1 F.3d 985, 993 (10th Cir. 1993). Indeed, *Cooley* describes a myriad of circumstances in which judicial disqualification is not warranted. *See id.* at 993, 994 (describing rumor, legal opinions, prior rulings, and mere familiarity with the defendant as, among other factors, insufficient

grounds for disqualification). At minimum, disqualification must have "a factual basis." *In re Boston's Children First*, 244 F.3d 164, 167 (1st Cir. 2001).

We now apply the reasonable person standard to each of Joshi's factual claims against Judge Moss. Joshi first points to a decades-old interview where Judge Moss expressed generically that "we need oil" and that he has "seen the good that oil does for communities." A reasonable person knowing all the relevant facts would understand that a 20-year-old vaguely positive account of oil energy has no bearing on a present-day case that happens to involve an oil company. Indeed, the D.C. Circuit found no § 455(a) violation when a judge gave a speech in which he explicitly claimed "that he had never seen a stronger government case." *See In re Barry,* 946 F.2d 913, 914 (D.C. Cir. 1991). If our colleagues found no violation under those circumstances, we surely have no reason to see one in these dated, relatively mild statements.

Next, Joshi points to statements Judge Moss made to a group of friends at a private social event in December 2022. The judge commented on congressional dysfunction and criticized the bill that would become the WARM Claims Act for "trying to enable these crazy activists." He then provided a far-fetched analogy about a piece of steak that would clearly fall outside the terms of the statute. In these leaked statements, Judge Moss may have spoken in political terms, but his statements were limited to a draft of the Act and made long before the advent of this case. Here, two factors prevent an appearance of partiality that rises to the standard set out by § 455.

First, Judge Moss was talking to a small group of friends at a private wedding. The setting and his use of an absurd hypothetical make clear that his remarks were more banter than serious legal commentary. He was playing for laughs, and he got them. Given the nature of the event and the audience, a reasonable person would see Judge Moss's statements not as an expression of some latent bias but as the jokes they were. His hyperbolic analogy only serves to emphasize the private, social nature of comments that were never intended for public consumption.

Second, Judge Moss's final statement—in which he worries about "crazies" and their "made up problems"—would also not raise reasonable questions about his impartiality. It does not apply directly to Joshi; it was merely an expression of

his genuine concern about squandering judicial resources. And again, at the time his statements were made, the WARM Claims Act was nothing more than draft legislation. If judges could be disqualified based on private thoughts about hypothetical laws, few would remain to hear cases.

B

Joshi also cites Judge Moss's courtroom statements as evidence of his alleged partiality. But those statements are not grounds for recusal under the extrajudicial source doctrine as outlined in *Liteky v. United States*, 510 U.S. 540 (1994). There, the Court held that intrajudicial statements (that is, those made in court), even if they are "hostile," disqualify a judge only if they "reveal an opinion that derives from an extrajudicial source" or "reveal such a high degree of favoritism or antagonism as to make fair judgment impossible" *Id.* at 555.

Judge Moss's statements in this case do not meet either exception. They do not derive from an extrajudicial source: the judge merely criticized what he saw as irrelevant and performative arguments *within* the courtroom. These are opinions "properly and necessarily acquired in the course of proceedings" are thus not grounds for disqualification. *Id.* at 551. And they cannot, as the dissent argues, be a mere echo of his statements at the wedding. *See post*, at 23. A year ago, Judge Moss had no inkling of what or how Joshi would argue. By warning the attorney that his argument "has devolved into a fanciful sob story" and that he must "stick to the facts," Judge Moss merely exercised the prerogative of all judges: maintaining order in his courtroom.

Absent an extrajudicial source, these admonitions do not reach the "high degree" of antagonism necessary to support any claim of partiality. Indeed, Judge Moss's statements are remarkably similar to the judge's admonition in *Liteky* to avoid creating a "political forum." *Id.* at 542. The standard for a partiality challenge arising from these intrajudicial statements is much higher than the reasonable person standard outlined in *Liljeberg*. They must "make a fair judgment impossible," not merely create an "appearance of partiality." Judge Moss may have expressed frustration, but his remarks do not meet that high bar.

The dissent also argues that all of these factors—which do not individually merit recusal—together create a totality of circumstances that would cause a reasonable person to question Judge Moss's impartiality. *See post*, at 25. We reject that claim. The reasonable person of the *Liljeberg* test knows "all of the relevant facts" and thus can identify the mitigating circumstances in each incident which remove any appearance of bias. Judges are allowed to have childhoods, decades-old speeches, and can even complain about their job to friends. They are allowed to keep order in their courtroom, have private political opinions on pending legislation, and worry about the state of the judiciary.

Judge Moss did no more than that. We therefore hold that he need not disqualify himself under 28 U.S.C. § 455(a).

C

Even if Judge Moss had improperly failed to disqualify himself under § 455(a), that failure would nonetheless be harmless error. In determining whether a judgment should be vacated for a violation of § 455 (a), courts consider (1) "the risk of injustice to the parties in the particular case," (2) "the risk that the denial of relief will produce injustice in other cases," and (3) "the risk of undermining the public's confidence in the judicial process" *Liljeberg*, 486 U.S. at 864. We will examine each of those factors in turn.

Because we review summary judgment rulings *de novo* using identical criteria to the Court below, "the risk of injustice to the parties in allowing a summary judgment ruling to stand is usually slight." *In re Continental Airlines Corp.,* 901 F.2d 1259, 1263 (5th Cir. 1990). Although we agree with our colleagues on the Federal Circuit that a "judge's failure to disqualify does not automatically constitute harmless error whenever there is *de novo* review on appeal," *Shell Oil Co. v. United States*, 672 F.3d 1283, 1294 (Fed. Cir. 2012), in this case we agree that summary judgment was proper. We have no reason to remand and assign this case to another judge to repeat the same work.

There is also no risk of producing injustice in other cases because of a failure to vacate the ruling below. Judge Moss's conduct in this case had no discernable

impact on other WARM Claims Act cases, and his decision has now been reviewed and affirmed by a neutral panel.

Finally, we consider whether holding that Judge Moss's failure to disqualify is harmless error would undermine the public's confidence in the judicial process. We find that it would not. The review and affirmation of Judge Moss's decision by a neutral panel should be enough to restore public confidence, as it was in *Continental Airlines*. Indeed, vacating a decision that was determined to be proper by a neutral panel could very well enhance public distrust of the judicial system.

We acknowledge, however, that public confidence in the judiciary has eroded since *Continental Airlines* was decided in 1990 and that this is a high-profile case at the center of fierce partisan divide. Such circumstances could, in some instances, justify a more stringent review of this third prong. But here, despite significant media coverage of this case and Judge Moss's past comments, there has been no widespread outcry indicating a lack of public faith. A finding of harmless error would be appropriate here even if recusal were warranted.

* * *

Joshi has not shown that she has standing to pursue her WARM Claims Act suit, or that her Rule 60(b) motion should be granted. The judgment of the United States District Court for the District of New Storke is affirmed.

It is so ordered.

JUDGE BERGEVIN-STREIT, dissenting:

Today, the majority gifts fossil fuel companies impunity that Congress denied them. Its decision is a failure of accountability: for the millions of Americans who have suffered the devastating consequences of climate change, and for all those who rely on an impartial judiciary to uphold the rule of law. Because the majority misapplies our Article III and disqualification precedents, I respectfully dissent.

I

Plaintiffs must demonstrate that their injury is "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010). Joshi's monetary injuries from wildfire risk, loss of affordable insurance, and cost of mitigating wildfire risk have satisfied this standard.

A

1

For wildfire risk to be a concrete injury, it must be "real" and "not abstract." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 424 (2021) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016)). These conditions are fulfilled if (1) there is a "'substantial risk' that harm will occur" and (2) plaintiffs must "reasonably incur costs to mitigate or avoid" that harm. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013) (quoting *Monsanto*, 561 U.S. at 153). In *Clapper*, the Court noted that the risk plaintiffs would be wiretapped by the government was not substantial because of the highly speculative chain of events needed to establish concrete harm. *See id.* All together, an injury has substantial risk if it is non-speculative and incurs costs.

In *Monsanto*, plaintiffs' substantial risk was a "reasonable probability" that their crops would be genetically contaminated by pollen from neighboring plots. *Monsanto*, 561 U.S. at 153. Because the farmers would have to incur costs to prevent contamination, that risk was therefore sufficient as a concrete injury. *Id.* at 155.

In the same sense, clear evidence substantiates the risk of wildfire affecting Joshi's property. Changing weather conditions, topography, and her locale's prior

wildfire history determine the probability of wildfire reaching her home: 2.9% in the next year and 64.7% in the next 30 years. The probability of destruction is also high, at 1.6% in the next year and 42.9% in the next 30. *Ante*, at 3. If this is not a substantial risk, then what is?

Of course, a threatened injury cannot be purely speculative. The *Clapper* Court held that a highly tenuous chain of events needed to occur for the plaintiffs to establish substantial-risk standing. 568 U.S. at 410. First, the government had to target specific individuals in connection with plaintiffs, then obtain the necessary approval to use the act in question, and then, among the huge volume of targeted communications, catch the few involving the plaintiffs. *Id.* Because the chain was so long, and each link relied on speculation about what the government would do, there was no standing.

Here, the chain affecting Joshi is not nearly so attenuated. Burning the defendants' fossil fuels leads directly to increased wildfire risk in her area; the science on that question is clear. And the law "do[es] not uniformly require plaintiffs to demonstrate that it is literally certain that the harms they identify will come about." *Clapper*, 568 U.S. at 414 n.5. By any reasonable standard, Joshi has shown enough to establish a concrete injury from mitigation costs.

2

Joshi's injury is also fairly traceable to the conduct of the defendants. The plaintiffs in *Clapper* failed this standard because they did not provide evidence at any measure that their communications would be intercepted by the government. *See Clapper*, 568 U.S. at 411. Joshi, on the other hand, has set forth the "specific facts" required to demonstrate traceability. *Id*. at 412. First, the defendants extract fossil fuels. Second, they and their customers burn those fuels. Third, burning fuel releases carbon dioxide into the atmosphere, which absorbs heat radiation and raises Earth's temperature above what can naturally be accounted for. *Massachusetts v. EPA*, 549 U.S. 497, 509 (2007). Fourth, a warmer planet dries plant life into fuel for wildfires. The outcome of the chain is clear and scientifically uncontroversial: the past twenty years have seen a fivefold increase in acres burned annually. These facts are specific, and the causal link between defendant's conduct and Joshi's injury requires no speculative leaps.

Admittedly, the harm concerned here—exposure to wildfire risk—is an intangible one. But as the Supreme Court has recognized, intangible harms can provide standing when the harm in question is closely related to "a harm traditionally recognized as providing a basis for a lawsuit in American courts." *TransUnion*, 594 U.S. at 424 (cleaned up). Joshi's injury is closely related to the common-law tort of private nuisance.

As the majority notes, *see ante*, at 12, at common law, "[nuisance] damages are not allowed for mere fear, but for the depreciation in the value of the property due to the unwillingness of anyone to occupy it because of the physical discomfort growing out of the well-grounded fear." *Cumberland Torpedo Co. v. Gaines*, 255 S.W. 1046, 1048 (1923). The majority sweeps away nuisance by noting that Joshi's property has increased in value over the past decade. *Ante*, at 12. But the majority's simplistic analysis leaves a great deal out.

Before wildfire risk grew exponentially, Joshi had an insurable property. Today, she doesn't. Strictly speaking, the property has lost something valuable just by virtue of this fact. Even if countervailing factors (such as local economic conditions) increase the property's value more than defendants' conduct decreases it, Joshi is still harmed. By insisting that property values must decrease, the majority holds that there is no nuisance when, thanks to your neighbor, your property value goes up by one dollar instead of a million.

Lastly, Joshi's injury is redressable by the relief she seeks—monetary damages for the defendants' prominent role in exacerbating wildfire risk. Those damages might not remove the risk of wildfires entirely. But standing does not require a plaintiff to "show that a favorable decision will relieve his every injury." *Massachusetts v. EPA*, 549 U.S. 497, 525 (quoting *Larson v. Valente*, 456 U.S. 228, 244 n.15 (1982)).

B

The threat of wildfire has also caused a second injury for Joshi, sufficient in itself: the loss of affordable insurance. This injury, contrary to the majority's view, is fairly traceable and particularized.

1

In order to show fair traceability on this harm, Joshi must prove that the actions of independent third parties—here, Ignatuk Insurance—are not the actual root cause of her injury. *See Lujan*, 504 U.S. at 562 (explaining that plaintiffs bear the burden of showing a chain of causation is not interrupted by "the unfettered choices made by independent actors not before the courts").

Joshi has met her burden by presenting the following facts. The three producers' sale and use of fossil fuels have aggravated climate change. This, in turn, has increased fuel aridity, and heightened risk of wildfire. Because of that risk, only two home insurance policies are available for Joshi's property, and they are not good ones. As wildfires increase, insurers receive more claims for property damage. Staying in an area with high-risk is unprofitable, so insurers either leave or compensate through raised premiums. Where policies remain, premiums are skyrocketing. Even this sometimes falls short of covering insurers' costs—they lost money in more than a third of states after costly climate disasters. Much of the problem traces back to climate change. When intervening third parties are simply reacting to the market incentives created by defendants' conduct, traceability is not disrupted.

2

The majority is also wrong to hold that insurance loss is not a particularized injury. Its conclusion rests on a misreading of the Supreme Court's distinction between generalized grievances and "personal and individual" injuries. *Lujan*, 504 U.S. at 560 n.1. Yes, Joshi's premiums are subject to national market forces. But she still experiences them in a "personal and individual way," 504 U.S. at 560 n.1, because she pays for them from her personal and individual wallet. By contrast, generalized injuries are typically asserted by "*unharmed* plaintiffs," *TransUnion*, 594 U.S. at 429. There is a difference between a defendant who injures the public interest in the abstract, and a defendant who injures the private interests of every person in the world individually. This case's defendants are closer to the second category.

C

Finally, the cost of hardening Joshi's home against wildfire is a concrete injury. As the majority notes, *see supra,* at 8, and I have repeated, a "substantial risk"

of harm confers standing when plaintiffs "reasonably incur costs to mitigate or avoid that harm." *Clapper*, 568 U.S. at 414 n.5 (quoting *Monsanto*, 561 U.S. at 153). The majority fails to note, however, that the proper inquiry in a substantial-risk analysis has nothing to do with whether harm is "certainly impending." Instead of following the Supreme Court's own interpretation of *Monsanto*—that "[t]he standing analysis in that case hinged on evidence" of contamination risk rather than the near certainty of it, 568 U.S. at 420—the majority crafts a more stringent rule and uses it to deny Joshi's ostensibly valid claims.

To determine whether Joshi is reasonably responding to a substantial risk of harm, the proper question is whether she has "concrete evidence to substantiate [her] fears." *Clapper*, 568 U.S. at 420. And she does. Take any of several facts about Joshi's property: that there is a 42.9% chance it will be completely destroyed by fire; that there is a 64.7% chance it will be reached by fire; that major insurers think it is uninsurable; or that it is positioned in a region where the annual acreage of wildfires has quintupled in the last 40 years. Any element of the preceding list, considered as *Monsanto* and *Clapper* require, would substantiate Joshi's concerns and make her mitigation costs a concrete injury.

For that injury to be "fairly . . . trace[able] to the challenged action of the defendant[s]," *Lujan*, 504 U.S. at 560 (quoting *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41-42 (1976)), Joshi needs only to show that the defendants "make a meaningful contribution to" the risk of wildfires at her home, *Massachusetts v. EPA*, 549 U.S. 497, 525. The defendants, through their emissions, have increased the risk to Joshi's home by 12%. (Vijaykumar Decl. ¶27.) Surely this contribution is meaningful enough.

After injury and traceability, we must determine whether Joshi's mitigation costs will be "redressed by a favorable decision." *Lujan*, 504 U.S. at 561 (quoting *Eastern Ky. Welfare Rights Organization*, 426 U.S. at 38). And they will. Her mitigation costs, more than any other injury, are a problem that money damages can solve. Yet again, Joshi has presented a theory of standing that should be successful, and the majority has failed to accept it.

II

Next, I address Joshi's call for disqualification under 28 U.S.C.§ 455(a). The threshold for disqualification is met "when a reasonable person, knowing the relevant facts, would expect that a [judge] knew of circumstances creating an appearance of partiality." *Liljeberg v. Health Services Acquisition Corp*, 486 U.S. 847, 848 (1988). In the present case, this reasonable person standard demands disqualification.

A

Beginning with the reasonable person standard: Judge Moss's statements, considered with all the relevant facts, create an appearance of partiality. *See id.*

In defense of Judge Moss's comments at his alma mater, the majority points to a decision where a speech at a law school did not warrant disqualification. *See supra,* at 14. Their analysis is incomplete. Alone, Judge Moss's 20-year-old comments would not be enough to validate disqualification. But we must take a more holistic approach. The majority contends that the 2004 interview is too old to be relevant. But it mirrors Judge Moss' sentiments at the wedding and in court. His beliefs have persisted over decades, with no evidence of change. When viewed in totality, a reasonable person would see the interview as evidence of a longstanding bias towards oil and a general disregard for the impact of climate change. Individually, Judge Moss's wedding or interview comments could appear innocuous enough, but together they imply a deeper conviction. A reasonable person would have no reason to believe that Judge Moss has grown past his desire to end the "climate fad."

In *In re Boston's Children First*, our colleagues on the First Circuit held that "regardless of [a judge's] actual impartiality, a reasonable person might perceive bias to exist, and this cannot be permitted." *In re Boston's Children First*, 244 F.3d 164, 171 (1st Cir. 2001). Under this framework, we need only find that a judge's statements could reasonably be interpreted as prejudiced, not that the judge felt actual prejudice. Judge Moss' statements at the wedding, regardless of his intent, degraded future plaintiffs and questioned their motives. He called them "crazy ac-

tivists" who "wanna cancel everybody," then lamented that he will have to "[listen] to these crazies whine about their made up problems." Judge Moss's comments can be understood to suggest that future plaintiffs would have no standing, and that their arguments would be made in bad faith. Judge Moss decided exactly such a standing issue in this case; a reasonable observer would doubt his impartiality on that question given his comments. In *Boston's Children First*, a judge's comment about a case being "more complex" than another was enough to warrant disqualification. *Id.* at 166. Judge Moss's statements far exceed that standard.

This majority argues that the context of the statements—jokes at a wedding—shows that Judge Moss's comments were not intended to be taken literally. *Ante,* at 13. But this context does not make the comments unprejudiced. First, Judge Moss's comments were made in a room with 150 other people—not counting the chefs, waiters, photographers, and other staff present. It was not an intimate and restrained forum. Moreover, Judge Moss's hyperbolic, humorous tone does not render his comments meaningless. A reasonable person understands that calling someone "crazy" or a "lunatic" with "made-up problems" reflects some underlying hostility, even if the speaker is not entirely serious.

The majority then asserts that Judge Moss's comments do not apply to this case and therefore cannot suggest bias against Joshi. But Judge Moss asserted that he "cannot imagine there being" a legitimate claim under the WARM Claims Act (or at least a closely related draft bill). The case before us falls within his declaration that *all* cases are frivolous; he cannot judge any WARM Claims cases fairly if he believes the act was created to empower "lunatics." While Judge Moss did not address Joshi by name, his explicit criticism of the Act, its applications, and any plaintiffs suing under it means that he may as well have.

B

Judge Moss's harsh treatment of Joshi's counsel within court provides yet more evidence of his partiality. This court's majority cites *Liteky* as justification for Judge Moss's behavior. But in doing so, they ignore the factors that distinguish this case.

The first of these factors is the content of Judge Moss's comments. In *Liteky*, the court determined that "ordinary efforts at courtroom administration," even when even "stern and short tempered," do not warrant disqualification. *Liteky v. United States*, 510 U.S. 540, 556 (1994). But the *Liteky* Court also noted that disqualification can be appropriate when statements "reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." *Id.* at 552. The judge in *Liteky* did not meet this standard. While harsh, his comments served to exclude improper evidence and irrelevant political behavior. They were not a criticism of the merits of the case or the parties.

The present case is different. Judge Moss said that the case Joshi presented, and the hardship it described, were nothing more than a "fanciful sob-story." These are claims about the merits. There is a difference between admonishing an attorney for hyperbole and stating that their grievance itself is founded on untruth. These comments were not necessary to maintain order.

Of course, *Liteky* determined that even unnecessary opinions are widely protected when they derive from intrajudicial sources. *See id.* at 555 ("[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible."). But in this case, Judge Moss's opinions did not derive from evidence and testimony in court. His intrajudicial statements mirror the comments made during his interview and the wedding, like Joshi's "fanciful" claim. Judge Moss's beliefs about the case originated long before the case, before any intrajudicial sources existed. They must have originated from an extrajudicial source. The judge's statement that he had "dealt with grifters like you before" reinforces that conclusion. Judge Moss thereby admitted that his attitudes towards Joshi and her beliefs were motivated by preexisting, extrajudicial sources.

Reviewing the totality of the circumstances, from Judge Moss's background to his comments and behavior, would cause a reasonable person to doubt his partiality. His beliefs are unyielding and motivated by deep personal conviction. The majority contends that Judge Moss is "allowed" to behave in this way, *see ante*, at

16, but § 455 demands more rigorous scrutiny than asking what a judge is "allowed" to do at any given time. Excusing individual actions only goes so far; the totality of a judge's conduct must also appear impartial. The record before us contains repeated instances of disrespect and disregard for the plaintiff, as well as decades of evidence of prejudice on this issue. I would hold that Judge Moss is disqualified under § 455(a).

C

Of course, even if this court found that Judge Moss violated §455(a), that alone would not be enough to reverse the court below. We must also determine whether or not the violation constitutes harmless error. It does not.

As outlined in *Liljeberg*, whether an error is harmless turns on three factors: (1) "the risk of injustice to the parties in the particular case," (2) "the risk that the denial of relief will produce injustice in other cases," and (3) "the risk of undermining the public's confidence in the judicial process" *Liljeberg*, 486 U.S. at 864.

On the first prong, our *de novo* review is not sufficient to address potential injustices. Judge Moss was wrong to grant the defendants' motion for summary judgment. Letting that ruling stand would be injustice to Joshi. And even if he were right to enter judgment, we would still be wrong not to vacate that decision. While previous courts have deemed *de novo* review sufficient to safeguard the parties' interests, *see In re Continental Airlines Corp*., 901 F.2d 1259 (5th Cir. 1990), the Federal Circuit noted in S*hell Oil Co. v. United States* that *de novo* review can only be sufficient where the remaining harmless error factors are inapplicable. 672 F.3d 1283 (Fed. Cir. 2012). Not so here.

Turning to the second prong, failure to correct the disqualification error here would pose substantial risks in future cases. Under the majority's blanket application of harmless error, "any conflicted court could enter summary judgment and the error would be harmless." *Id*. at 1292. Judges may be more inclined to grant summary judgment knowing they are effectively immune from remand. And even when an appellate court reviews legal questions anew, it relies on facts established by a potentially biased judge. If a party's right to appeal is always sufficient to cure a failure to disqualify, then § 455(a) serves no purpose whatsoever.

The final prong of harmless error considers "the risk of undermining the public's confidence in the judicial process." *Liljeberg*, 486 U.S. at 864. Although previous cases have been content to issue "a caution" to future judges, *Continental Airlines*, 901 F.2d at 1263, public attitudes toward the judiciary have become increasingly skeptical in recent years. Courts have experienced more backlash for instances of perceived bias and controversial rulings; this case will be no different. Many people may see this case as the public's grassroots efforts to advocate for itself against the nation's most powerful entities. The public may not worry about a ruling in a dispute between two corporations on what constitutes protected intellectual property, for example, but they will worry about a ruling that denies their right to be heard and represented. When we consider issues pertinent to every American, the consequences of apparent partiality are severe.

III

Today, the majority decides that it knows better than the 435 members of Congress who enacted the WARM Claims Act, the thousands of climate scientists who agree that greenhouse gas emissions are warming the planet, and the millions of Americans suffering the effects of climate change. A plaintiff who has lost her insurance and faces steep costs to fortify her home against ever-worsening wildfires is not *really* injured, says the majority. And even if she is, the companies that profited handsomely from creating those very conditions, who did everything except light the match, cannot be held responsible. The majority wields standing doctrine as "a tool of judicial aggrandizement"—a way to place its own judgment about the urgency of climate change above those of the elected branches of government. *TransUnion*, 594 U.S. at 461 (Kagan, J., dissenting).

And just as it reshuffles our constitutional structure, the majority hollows out another foundational principle of our system of government: that all are entitled to a fair hearing before an impartial judge. These errors, if left uncorrected, will undermine the limited, independent role of the judiciary. I respectfully dissent.

Appendix A

Excerpts of the Weather Action, Resilience, and Mitigation Claims Act ("WARM Claims Act")

§ 501

For the purposes of this chapter—

(1) The term "qualified emitter" means any legal person responsible for more than 5% of the annual greenhouse gas emissions originating in the United States.
(2) The term "affected person" means any legal person who is a citizen of the United States and has experienced or is substantially likely to experience a significant injury, to themselves or to their property, caused by any weather event or other natural disaster whose severity is increased by climate change.

…

§ 517

(a) Authority to bring civil action
Any affected person may commence a civil action on his own behalf—
(1) against any qualified emitter who is alleged to have exceeded the emissions cap established under this chapter.

…

(g) Remedies
(1) In an action commenced under subsection (a)(1), the affected person may recover
(A) prospective damages equal to the cost of mitigating any risk of harm, to them or their property, for harms caused by any weather event or other natural disaster whose severity is increased by climate change; or
(B) retrospective damages sufficient to compensate any harm, to them or their property, for harms caused by any weather event or other natural disaster whose severity is increased by climate change; or
(C) both (A) and (B).

Appendix B

28 U.S.C. § 455. Disqualification of justice, judge, or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

Table of Authorities

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