



LITIGATION:

An Underused Tool in Transportation Advocacy



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Conducted during 2025, this scan reflects findings from interviews, focus groups and conversations with nonprofit leaders, advocates and funders. Participants were granted anonymity when requested in order to share candid thoughts on potentially sensitive issues. Persons quoted or named in this publication does not indicate their endorsement of opinions, findings or analyses contained herein.

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INTRODUCTION

While litigation has not been a primary tool of transportation advocacy, it holds potential to accelerate change towards a more sustainable and just transportation system. This scan provides a high-level overview of three main areas of opportunity: state constitutional challenges, fighting freeway expansions and addressing dangerous designs.

This project was initiated by the [Mobility and Access Collaborative](#), an initiative of The Funders Network that brings together leaders in philanthropy committed to shaping and guiding work that leads to more sustainable, equitable and healthy transportation systems.

This group of funders, which represent place-based, regional and national grantmaking institutions, were intrigued by the potential role litigation can play in accelerating this work—and hope this scan will spur more partnerships and investment.

"Together with community-led advocacy, strategic litigation is an important tool that can achieve durable results and set meaningful precedent for the future," said **Elizabeth Love**, CEO of the *Jacob and Terese Hershey Foundation* and co-chair of the *Mobility and Access Collaborative*.

Nonprofit leaders provided insight into the potential for litigation to help advance broader goals.

"I'm thinking differently about using litigation as a tool," said **Kate Slevin** of *Regional Plan Association*, after being deeply involved in advancing congestion pricing in New York City. "Up until a few years ago, I always saw it as an option of last resort, the thing to pursue only if all of the advocacy had failed. We would only sue if we have exhausted everything else and had no other place to go. Now it is happening in conjunction with an advocacy strategy."

Litigation efforts have also garnered a steady stream of news coverage, helping ensure transportation reform is viewed as a relevant and timely issue, notes **Carter Rubin** of *National Resource Defense Council (NRDC)*.

"In this way, litigation reinforces our advocacy agenda that runs through governors and legislatures," said Rubin. "It can also help nonprofits increase visibility and generate more members and supporters. Rather than litigation shutting doors, it has earned *NRDC* a seat at the table as serious stakeholders in some cases."

Most transportation reform efforts focus on organizing and building power to influence policy, budgets and projects, backed by research and communications. Broadly, the work focuses on making transit, walking and biking safe and convenient for more people in order to improve affordability, address inequities and reduce pollution.

Litigation has lagged as a strategy for several reasons, including cost, complexity, concerns about damaging relationships and the time it takes for cases to wend their way through the courts. Another challenge is the public nature of transportation. Roads, paths and sidewalks are in the public realm. Decisions about transportation are made by elected officials and agency staff. Funding comes from taxes and fees. This means that litigation aimed at impacting transportation issues primarily targets public agencies, which enjoy substantial immunity, deep pockets and abundant in-house legal expertise. The nonprofits pursuing litigation are almost always outmatched by agency resources.

As part of this project, *America Walks*, with support from *Transportation for America*, launched an online inventory called [**Transportation Litigation Database**](#).

It is designed to be a resource for those exploring litigation and to better understand the scope of efforts across the country.

Submissions are welcome.

Foundations can be leery of investing in litigation. This scan surfaced a number of reasons for this funder wariness: They shared concerns about the cost and time involved in pursuing court cases, or that doing so could damage relationships in leadership circles. There are those who have funded work in the legal arena but channeled it through partners to keep their foundation out of the headlines. Some funders work for foundations whose governing documents prohibit funding legal challenges. And there are others who incorrectly assume that litigation, like lobbying, is limited by the federal tax laws that govern charitable organizations.

In addition to the three focus areas explored in this scan, lawsuits have been used in other areas of transportation. Numerous suits have been filed against the federal government for rescinding programs or delaying payment of grants awarded under the Biden administration. A federal judge recently [ruled](#) that the U.S. Department of Transportation "blatantly overstepped" its authority in attempting to link funding used to maintain roads, bridges and highways to immigration demands.

The congestion pricing program in New York City has incited a flurry of litigation, including lawsuits against **New York Governor Kathy Hochul** when she paused the planned rollout and challenges to the program in general. Since its rollout in January of 2025, the program has decreased traffic and injuries, speeded deliveries, boosted transit ridership, and funded transit service improvements. In March 2025, the nonprofit *Riders Alliance and Sierra Club* joined the *Metropolitan Transportation Authority* in [challenging](#) the Trump administration's attempts to cancel the program. As with several other cases noted in this scan, it is still working its way through the courts.



Photo Credit: Martha Roskowski

This scan does not address personal injury lawsuits filed by people who are hit by drivers or legal action around vehicle design, including the proliferation of very large pickups and SUVs with significant blind spots that are [contributing](#) to the rise in pedestrian fatalities.

Useful resources for following court cases include a [Litigation Tracker](#), managed by *Just Security*, which documents legal challenges to Trump administration actions and the [Climate Litigation Database](#) assembled by the *Sabin Center for Climate Change Law at Columbia Law School*. Both include cases related to transportation.

FREEWAY FIGHTS

Photo Credit: Martha Roskowski



Communities Over Highways convening of Freeway Fighters

Across the country, state departments of transportation (DOTs) continue to spend billions to widen highways, despite research and history showing that adding lanes does not solve congestion or improve safety. Community leaders, transportation advocates and local government agencies raise concerns about impacts to adjacent neighborhoods, farmlands, and the environment. The prospect of businesses and homes destroyed and others impacted by increased air, noise and water pollution galvanizes local opposition. Most highways in urban areas originally plowed through Black and brown neighborhoods, so widenings often exacerbate the damage in frontline and low-wealth communities.

"In just the last five years in California, over 600 homes were forcibly displaced and demolished by highway widening projects," writes *Greenlining Institute* in the report [Homes Before Highways](#). "Despite a reputation as a state strong on climate, another 200 highway widening projects are in the pipeline in California. Every state has similar lists. A quarter of the funding in the most recent federal transportation bill, passed in 2021, was spent on highway widenings despite pressing needs for maintenance, safety and transit, according to *Transportation for America*.

Advocates seeking to delay or stop the widenings file lawsuits based on requirements for planning and analysis under several federal statutes, including the National Environmental Policy Act, Clean Air Act, Clean Water Act, or Civil Rights Act. State and local environmental laws and adopted plans can also serve as a basis for legal action. In some cases, litigants assert that agencies didn't adequately analyze impacts for pollution, greenhouse gases and to vulnerable communities. Some assert that the modeling that shows the need for the highway widening is flawed or that alternatives haven't been adequately explored.

Many of the lawsuits are filed by small local nonprofits like [No More Freeways](#) in Portland and [Rethink35](#) in Austin. A survey by *America Walks* found that many of the local freeway fighting efforts are all-volunteer and massively outmanned by state departments of transportation fueled by state and federal taxes with allies in construction, contracting and labor.

Rethink35 raised \$150,000 for a lawsuit trying to stop the expansion of I-35 through downtown Austin, including funding from the *Jacob and Terese Hershey Foundation* and the *Impact Fund*. The effort relied heavily on volunteers to do much of the heavy lifting, said organizer **Miriam Schoenfield** of *Rethink35*.

"There were just so many components that were all done by volunteers," she said. "Gathering the coalition of plaintiffs, dealing with paperwork, meeting with the lawyers, building a website, organizing fundraising events, applying for grants, outreach to donors, social media, and media engagement."

In contrast, the *Texas Department of Transportation* is spending \$4.5 billion on the widening. Doing that math, the nonprofit is trying to stop a damaging project with one three-millionth of *TxDOT*'s project budget.

The lawsuits sometimes succeed. Those that don't, still "throw sand in the gears" as one advocate put it. Courts can issue injunctions that delay funding and construction, while advocates build political pressure and organize to stop or mitigate a project. In 2024, *NRDC* and other partners filed a major lawsuit on the expansion of I-80 in Yolo County, Calif., arguing it dodged environmental rules by carving the project into several pieces.



Leaders of the Rethink35 efforts shared their work with TFN members during the 2024 Spring Convening in Austin, Texas

Even in states with governors who fashion themselves climate leaders, state transportation departments continue to advance highway expansions that are many decades in the works.

"Governors may be unwilling to kill projects that enjoy the backing of the construction, trucking and suburban sprawl industries," explains Rubin from *NRDC*. "Targeted litigation can force the question and create the constructive political pressure that gives state leaders the political window to cancel, downscale or rescope misguided highway projects."

At the *Communities Over Highways* gathering in April 2025, convened by *America Walks*, local freeway fighters brainstormed how best to support their litigation efforts, beyond direct funding:

DEVELOP A STRONG COMMUNICATIONS STRATEGY

- Help groups control the narrative.
- Identify and build networks of reporters that are good at covering the issues.
- Strengthen national communications on "how DOTs lie" and "top highway boondoggles."

BUILD NETWORKS OF PEOPLE

- Environmental lawyers to identify counsel, law students or clinics that can help.
- Subject matter experts and people who can serve as expert witnesses.
- Consultants to help with technical analysis and write comments for public processes.
- Volunteer teams that can review records of analysis, plans and process.

DEVELOP A ONE-STOP SHOP OF RESOURCES

- Database of relevant laws, cases, references, and research.
- Legal frameworks that allow better challenges.
- Litigation playbook to help advocates build a strong and detailed case.

A related area of interest is developing and funding experts to demonstrate the shortcomings of the traffic modeling used to justify highway widenings. Historically, these models have overestimated the benefits of the projects. A few lawsuits have attempted to force agencies to justify the validity of their models before judges. This approach could result in more transparent and accurate analysis of costs and benefits, or demonstrate that the project does not meet other legal or regulatory standards applied to highway construction.

Many experts are now reluctant to testify, as many rely on contracts with state transportation departments. The freeway fighting sector would be stronger if the current piecemeal local efforts could be woven into a broader comprehensive strategy and campaign. Replicable examples may be found in the significant and successful efforts to stop pipeline construction and close coal plants, which combined litigation with organizing and communications campaigns.



Photo Credit: ReThink35

STATE CONSTITUTIONAL CHALLENGES

In June of 2024, **Gov. Josh Green** of Hawai'i and the director of the state's department of transportation [announced](#) significant steps to reduce climate pollution as the result of a settlement in the lawsuit *Navahine v. Hawai'i Department of Transportation*. Thirteen youth, including several Native Hawaiians, brought the case in June of 2022 asserting violations of their constitutional rights to a life-sustaining climate. It was the world's first youth-led constitutional climate case focused on reducing emissions from the transportation sector. After two years of litigation, community engagement, and mounting public pressure, the state agreed to a settlement which offers a replicable model for decarbonizing transportation systems elsewhere.

Our Children's Trust and *Earthjustice* represented the youth champions, backed by methodology developed by *RMI* and *NRDC*, strategy prepared with partners such as *Transportation for America*, and testimony from 10 expert witnesses, including internationally recognized expert and advisor in the field of sustainable transportation **Michael Replogle**, other transportation specialists, climate scientists, health experts, clean energy specialists, and indigenous knowledge-holders.

"This structural change is a game-changer," said **Joanna Zeigler**, a staff attorney with *Our Children's Trust*. "The changes need to be implemented at every DOT. We need to get the courts involved because none of the agencies are willing or able to change enough on their own."

The lawsuit focused on transportation because the sector is Hawai'i's largest contributor of greenhouse gases, and is arguably the farthest behind on making change in reaching the state's climate goals. There were lengthy depositions, expert reports and aggressive questioning of the youth complainants. When it was clear the youth were likely to prevail, the state's transportation director stepped in to negotiate a set of agreements, including a court-approved 20-year plan to decarbonize the state's entire transportation system across air, land and sea. The transportation department's implementation plan acknowledges that a variety of methods are necessary to decarbonize transportation. As part of the settlement, the department said it would prioritize a major build-out of biking, walking and transit networks, and expand public electric-vehicle charging stations. State officials also created a tool that measures the greenhouse gas impacts of ground transportation projects, which enables them to prioritize projects that reduce climate impacts. The settlement also created a youth advisory council that provides input on planning within the agency.

Despite the historic win, advocates still must be vigilant to ensure the state makes good on its promises, cautioned Replogle. "We are waiting to see what Hawai'i does with their state capital program budget. If it doesn't show significant shifts in funding away from road expansion, to completing the bike and ped plan and stepping up on electrification and transit, this settlement will have to go back to court," said Replogle. "Advancing the implementation will take continued investment."



Photo Credit: Our Children's Trust

Young people were the plaintiffs in the landmark *Navahine v. Hawai'i Department of Transportation* case.

In another state constitutional challenge, *Our Children's Trust* helped youth advance a case that could change transportation outcomes in Montana. In *Held v. Montana*, youth plaintiffs filed – and won – the first climate lawsuit in the United States to go to trial. The 2020 case focused on a state statute that excluded greenhouse gas emissions from environmental reviews. The Montana Supreme Court affirmed their victory in 2024, saying the challenged statute violated the youth's constitutional right to a clean and healthful environment. The case, which named Montana's department of transportation among the defendants, may result in more climate-friendly transportation investments.

The end-game for these court cases is policy change, not financial compensation: These constitutional challenges don't allow plaintiffs to seek damages against agencies.

Our Children's Trust is actively pursuing funding to replicate their use of youth-led constitutional litigation on climate protections to mandate structural policy changes in other states. Research needs include identifying the states where constitutional language is the most supportive, identifying the appropriate sectors, building strategic coalitions with transportation and climate organizations, and conducting extensive case preparation. When successful, cases like Navahine have lasting impacts that can withstand political cycles to create systematic changes.



Photo Credit: Our Children's Trust

Youth plaintiffs pose with Hawai'i Governor **Josh Green** (center with orange lei), state leaders and their legal team on the day the settlement in Navahine was announced.

DANGEROUS DESIGNS

In 2024, more than 39,000 people died on U.S. roads, according to the *National Highway Traffic Safety Administration*. In 2022, the U.S. had the highest rate of pedestrian fatalities among the 27 highest income countries in the world, according to the *Centers for Disease Control and Prevention*.

While many factors are at play, the design of our roadways is a key contributor. For decades, moving as many cars as quickly as possible has been the goal. The emphasis on speed has created dangerous conditions, especially for people walking and biking. (The report [Dangerous by Design](#) by Smart Growth America provides a deep dive on the topic.)

For this scan, a focus group of legal experts, designers and advocates discussed the challenges and opportunities to use litigation to support safer designs. The group helped to inform this section and could be the foundation for building a broader web of design professionals, legal experts and institutions to advance this work.

Litigation around design is tricky because dangerous designs are baked into our system. Most streets where people die in transportation crashes were built following government-approved standards and guidance. When someone is killed in a traffic crash, their family can certainly hire a trial lawyer to sue the agency that designed the roadway. But the agency usually prevails. Why? A government agency typically enjoys qualified immunity, which shields it from liability as long as engineers can show that the road was built to accepted standards.

If a case can show that a design was egregiously dangerous, had no rational basis, or was plainly inadequate, then it may overcome qualified immunity. In *Turturro v. City of New York and Pascarella*, the court found New York City partially responsible for the injury of a young cyclist on a road notorious for speeding vehicles, saying, "the City's failure to conduct a traffic calming study and to implement traffic calming measures was a substantial factor in causing the accident."



Photo Credit: Martha Roskowski

Cases of this type are usually dismissed or settled. **Chuck Marohn** of Strong Towns noted that he was called as an expert witness on three cases charging negligent design, but all were settled before they went to trial.

An important caveat to any effort to hold agencies accountable for dangerous designs: Many of the emerging street design approaches that are proven to increase safety for people walking and biking, such as road diets, traffic calming and complete streets, are not explicitly laid out in the standards. The manuals instead call on engineers to use their judgment, training and experience to piece together design elements to meet the context of the neighborhood. While some designers embrace this, for many the threat of litigation and fear of losing their license makes it far easier to just follow standard car-focused designs.

Any push for litigation needs to be carefully calibrated to not target or discourage the innovative designers using non-standard designs. Further training of engineers, agency legal teams and elected officials in properly documenting the justifications could raise the comfort level in advancing design exceptions.

Opportunities may exist to hold agencies accountable for blindly following standards. In *Ives v. HMB Pro. Eng'r*, a case focused on inadequate drainage on a highway, the Kentucky Court of Appeals found that engineers "were required to do much more than mechanically adhere to predetermined design standards; they were required to use their skill and expertise to assess whether a design exception was necessary, and, if so, to recommend a suitable and safe alternative."

In *Tansavatdi v. City of Rancho Palos Verdes*, the California Supreme Court found the city partially responsible for the death of a cyclist on a road where the bike lane disappeared for a section in order to accommodate parking. While the court found reasonable the city's argument that parking was more important, it faulted the city for not providing warning of the dangerous condition.



Photo Credit: Martha Roskowski



Photo Credit: Martha Roskowski

Infrastructure designed to improve safety for people walking, biking **and** taking transit often require that engineers use their judgement to combine various elements. Many engineers are concerned that using their judgement may put their licenses at risk.

This bike lane in Austin, Texas required thoughtful design to safely transition from being on the street to sidewalk level.

The scan development process identified areas where further exploration of legal strategies might be valuable, especially in partnership with nonprofits, law schools and others. Since immunity protections are enshrined in state law and they vary by state, legal challenges to designs will be more feasible in some states than others.

- Commission a paralegal or law student to develop a memo of cases where qualified immunity of street design was challenged, to inform an effort to advance cases that set precedent. The memo could form the basis for a handbook to help local advocates effectively call out dangerous designs with standard language and approaches to put agencies on notice of dangerous designs, whether already on the ground or proposed.
- Assess immunity provisions by state. Versions in some states are better at motivating cities and counties to embrace safer design for all users. Model language could be developed for state legislation that modernizes immunity by continuing to provide appropriate protection for agencies, while no longer shielding dangerous design decisions from meaningful review.
- Explore whether courts would find it reasonable to design roads that only serve people driving. When a road is widened or an intersection rebuilt, and it does not include walk signals when pedestrians are reasonably expected, it might be possible to show that the agency acted inappropriately. A next step would be to identify a set of crashes involving vulnerable road users on newly rebuilt roads or intersections where pedestrian accommodations were not included. Given that Black and brown people are disproportionately impacted by traffic crashes and are more likely to be non-drivers, there may be a civil rights basis to challenging dangerous designs and investment in car-only infrastructure.



Photo Credit: Martha Roskowski

- When an agency develops a thoughtful plan for a safer roadway, supported by extensive outreach and analysis, but then backs off due to political pressure, is there a role for litigation if someone is injured? In general, an agency only has to show that it had a reason for changing the design, with courts generally not opining on the strength of the argument, but it might be worth exploring particularly egregious examples.
- A more systematic approach would tackle the standards themselves. In recent years, progress has been made to update them to be more supportive of the safety of all users. While standards for new designs must be rigorously researched to show that they are safe, many of the existing design standards are an accumulation of practice and habit over seven plus decades. Some of the experts interviewed for this scan suggested an exploration into the origin of some of the most egregious standards, with a demand that they be proven to improve safety, especially for vulnerable road users. The discovery process could be enlightening.

A few carefully selected cases that successfully hold agencies accountable for dangerous designs could send ripples through the engineering world, resulting in more widespread change. As only a small percentage of streets are retrofitted in any given year, it is important that designs truly improve safety for all users.



Photo Credit: Martha Roskowski

CONCLUSION

The interviews, focus groups, conversations and research that informed this scan showed a high level of interest in increasing the sector's comfort and sophistication in using litigation as a tool. The state constitutional challenges offer real opportunity for change at a system level. The momentum behind the state DOT juggernauts of highway widenings could be disrupted with a more systematic approach to pursuing cases that could set precedent. A stronger approach to holding agencies accountable for designing roadways that are objectively endangering people could speed the transition to designing with all road users in mind.

The three focus areas in this report are distinct bodies of work that require different legal and technical expertise, with needs and ideas identified in each section. Opportunities to build on this work more broadly include deeper discussion with those already involved and additional outreach to expand the net of people

and organizations, including exploring collaborations with law schools, clinics, and those with deep legal expertise. Funders involved in or interested in litigation across various sectors could work together to share stories, learn together and explore partnership opportunities. They could help to educate their fellow funders about litigation to reduce resistance, build synergy and help advocates leverage this strategy.

"There is a long history in social change movements of using the truth-finding tool of the courtroom to draw out the injustice and wrong-headedness of existing policies. Not just by itself, but as a complement to public demand for policy change," said **Mike McGinn**, executive director of *America Walks*, a former litigator who served as Mayor of Seattle. "It is time for transportation reformers to fully embrace this tool as well."



Photo Credit: Martha Roskowski

