COVID, Climate Change, & Preparedness: Lessons Learned Workshop

Welcome!

Sponsored by

THE UNIVERSITY OF ARIZONA
Mel & Enid Zuckerman College of Public Health

THE UNIVERSITY OF ARIZONA HEALTH SCIENCES
Aegis Consortium

SOUTHWEST ENVIRONMENTAL HEALTH SCIENCES CENTER
COLLEGE OF PHARMACY

Center for Climate Adaptation Science & Solutions

THE UNIVERSITY OF ARIZONA
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Bridging Biodiversity & Conservation Science

Land Acknowledgement

We respectfully acknowledge the University of Arizona is on the land and territories of Indigenous peoples. Today, Arizona is home to 22 federally recognized tribes, with Tucson being home to the O'odham and the Yaqui. Committed to diversity and inclusion, the University strives to build sustainable relationships with sovereign Native Nations and Indigenous communities through education offerings, partnerships, and community service.

8:00am - 8:45am	Registration, Coffee & Pastries/Fruit, Informal Conversations
8:45am - 9:15am	Welcome, Introductions, & Overview of Workshop Goals
9:15am - 9:45am	**Keynote Speakers and Discussion: Intersecting Crises: Reflections & Synergies –** Aparna Bole, Office of Climate Change and Health Equity, US Department of Health and Human Services (virtual) Julie Trtanj, Climate and Heat Health Lead, NOAA Climate Program Office
9:45am - 10:40am	**Panel I: Policy Perspectives & Implications – Preparedness Lessons from the Public Health & Health Care Trenches** Panel Facilitator: Kacey Ernst Panelists: Brianna Rooney (Arizona Coalition for Healthcare Emergency Response), Brian Drummond (UA College of Medicine, Dept. of Emergency Medicine), Bob England (The Arizona Partnership for Immunization)
10:40am - 10:55am	**Break**
10:55am - 11:50am	**Breakout Session I**
11:50am - 12:35pm	**Working Lunch (provided)** Richard Carmona, University of Arizona Erica White, Network of Public Health Law

Aims

1

Identify research and program priorities needed to prepare for, manage, and address the health impacts of climate change.

2

Identify partnerships that need to be created or expanded to accomplish priorities identified in Aim 1.

3

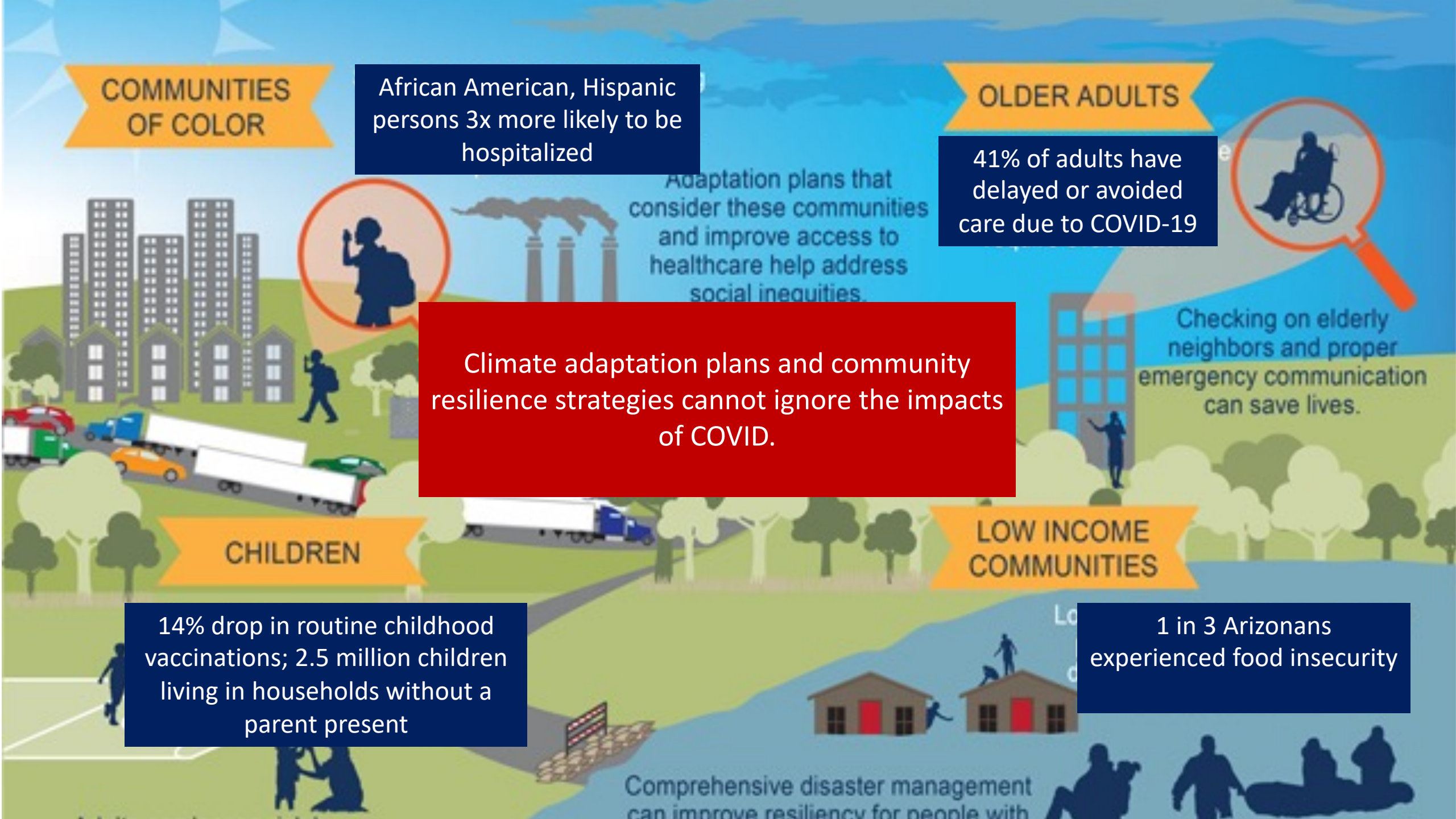
Facilitate cross-sectoral collaborations.

Why COVID & Climate Change?

The COVID pandemic has:

- Highlighted systemic inequities in policies, programs, and communities
- Driven the focus away from preparing from other issues influencing health and wellbeing
- Made it difficult to have honest, solutions focused conversations that are *not politically charged*

Source: Dr. Mark Nichter, School of Anthropology, UArizona


COMMUNITIES OF COLOR
African American, Hispanic persons 3x more likely to be hospitalized
OLDER ADULTS
41% of adults have delayed or avoided care due to COVID-19
Adaptation plans that consider these communities and improve access to healthcare help address social inequities.
Checking on elderly neighbors and proper emergency communication can save lives.
Climate adaptation plans and community resilience strategies cannot ignore the impacts of COVID.
CHILDREN
14% drop in routine childhood vaccinations; 2.5 million children living in households without a parent present
LOW INCOME COMMUNITIES
1 in 3 Arizonans experienced food insecurity
Comprehensive disaster management

Workshop Roadmap

Plenaries	Breakout groups	Network Building
• Review of underlying issues & impacts • Illustrating synergies, Co-harms, and Co-benefits of action	• Identifying effective strategies and solutions • Developing a research agenda	• Continuing discussions, actions moving forward

Underlying themes

Community Resilience | Systemic Inequities | Misinformation | Mental Health

Public Health & Healtchare Sector Capacity Building

Climate solutions as health equity solutions

COVID, Climate Change, & Preparedness: Lessons Learned

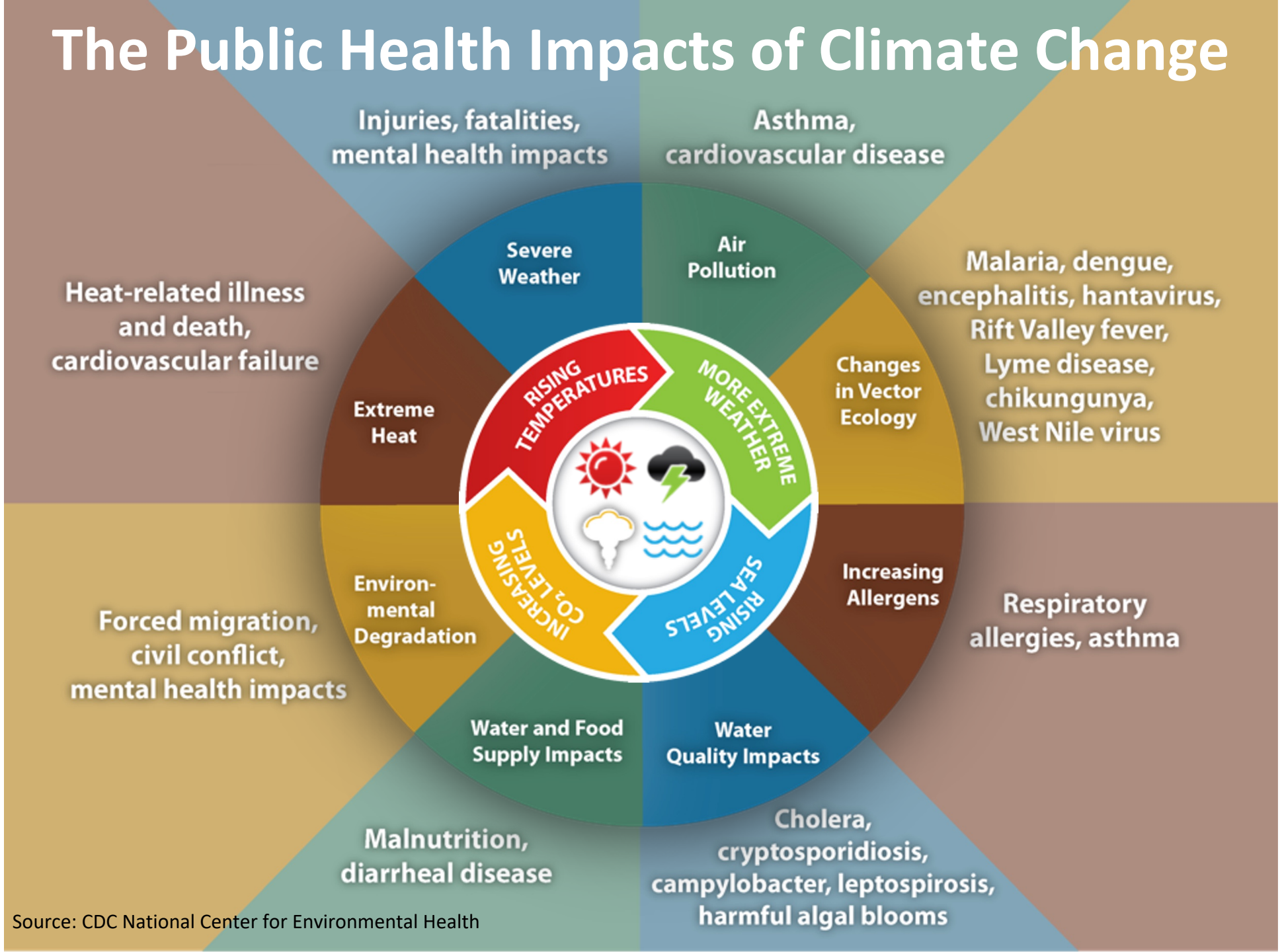
Aparna Bole, MD
Agency for Healthcare Research & Quality
Office of Climate Change and Health Equity
November 18, 2022

OASH | Office of Climate Change and Health Equity

Overview

- Health impacts of climate change are inequitably distributed
- Structural inequities -> inequitable impacts of COVID-19
- Climate solutions & applying lessons learned from COVID-19 = health equity solutions
- Introduction to OCCHE resources

The Public Health Impacts of Climate Change



Source: CDC National Center for Environmental Health

Unequal Climate Vulnerability

Root Causes[1]

Racism, historical and current disenfranchisement, unequal distribution of power and resources rooted in institutions and processes

Environmental justice factors that may increase climate vulnerability[2]

Proximity and exposure to environmental stressors

Unique exposure pathways

Physical infrastructure, such as poor housing

Multiple stressors, cumulative, and compounding impacts

Capacity to participate in decision making

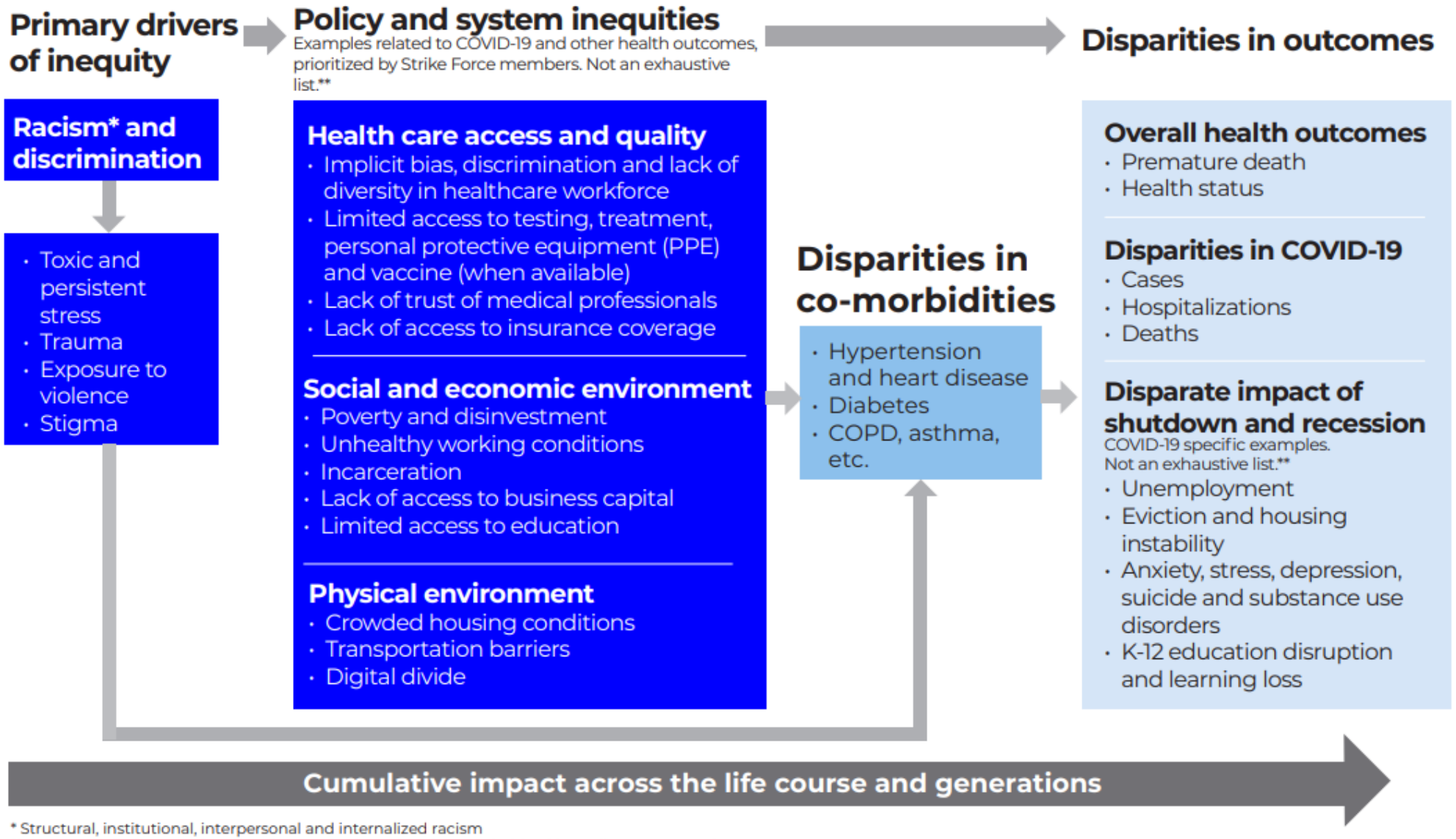
Unequal climate vulnerability

1) Adapted from Climate Change, Health and Equity: A Guide for Health Departments, Public Health Institute and American Public Health Association, 2018
2) Adapted from Guidance on Considering Environmental Justice During Development of Regulatory Actions, EPA, 2015

Slide Courtesy of CDC NCEH

Ever-Increasing Urgency…

Figure 1. **Factors driving COVID-19 and other disparities**



* Structural, institutional, interpersonal and internalized racism
** See appendix for complete list of examples in rank order as prioritized by Strike Force members.

Source: State of Ohio COVID-19 Minority Health Strike Force Blueprint

Health harms of air pollution

- Chronic lung disease
- Cardiovascular disease
- Neurodevelopment
- Birth outcomes

Climate solutions are health solutions

Origins of the Office of Climate Change and Health Equity (OCCHE)

E.O. 14008 - "Tackling the Climate Crisis"

- HHS mandates (Section 222(d))
  - Office of Climate Change and Health Equity
  - Interagency Working Group to Decrease Risk of Climate Change to Children, the Elderly, People with Disabilities, and the Vulnerable
  - Biennial Health Care System Readiness Advisory Council

White House/HHS Health Sector Climate Pledge

1. Reduce organizational emissions by 50% by 2030 and achieve net-zero by 2050, publicly accounting for progress on this goal.

2. Designate an executive-level lead for work on reducing emissions and conduct an inventory of Scope 3 (supply chain) emissions by the end of 2024.

3. Develop and release a climate resilience plan for continuous operations by the end of 2023, anticipating the needs of groups at disproportionate risk of climate-related harm.

June 30 White House Event

White House/HHS Health Sector Climate Pledge Signees At-a-Glance

Signees with AZ footprint:
HonorHealth
Northern Arizona Healthcare
Steward Health Care System

102	Total Pledge Organizations	837	Private-Sector Hospitals Represented
20+	Academic Medical Centers	>15%	Hospitals in US (Combined Gov and Private-Sector)*
7	Fortune 500 Organizations	6	Pharmaceutical Companies

**Including federal health systems, over 1,080 hospitals have made the Pledge commitments*

Resources for Decarbonization and Resilience

Federal Resources to Support Emissions Reduction and Climate Resilience for Healthcare Stakeholders

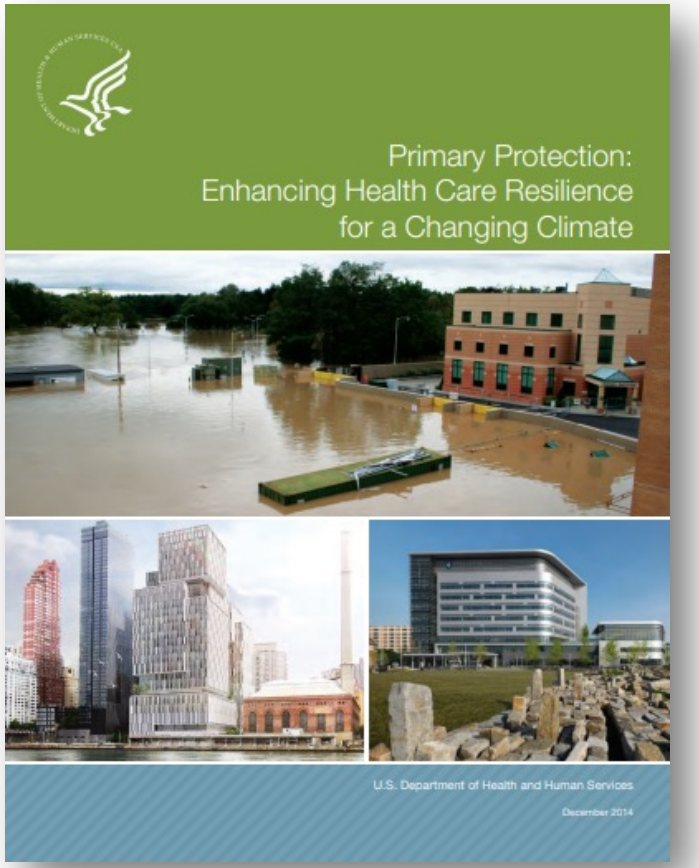
On Earth Day 2022, the White House and HHS launched the Healthcare Sector Climate Pledge initiative, creating an opportunity for healthcare stakeholders across the United States to make bold commitments to emissions reduction and resilience in response to the growing threats presented by climate change.

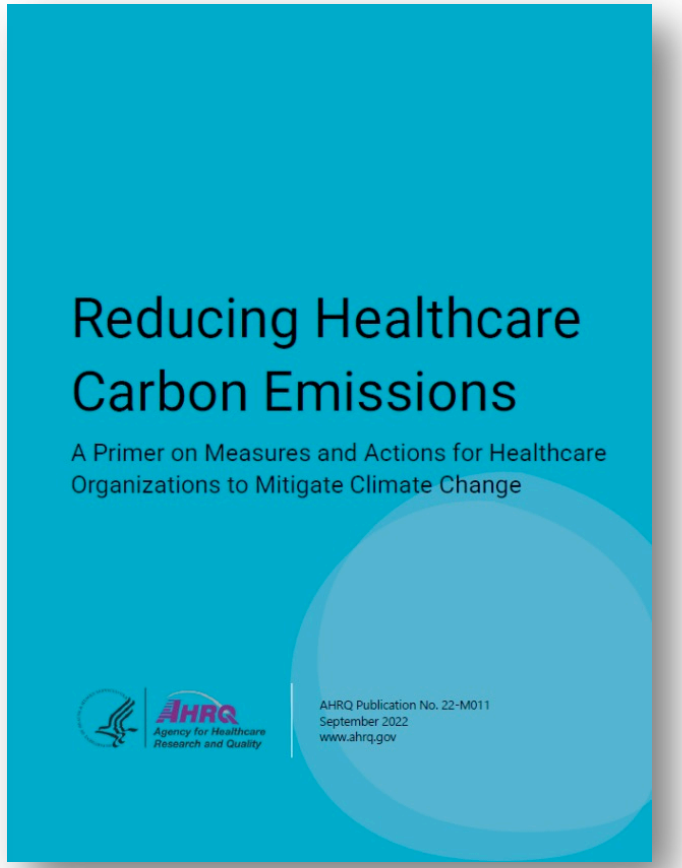
In conjunction with a June 2022 White House event to celebrate the organizations that made these commitments, the Office of Climate Change and Health Equity (OCCHE) produced this compendium of federal resources that may assist healthcare stakeholders in emissions reduction and climate change adaptation.

Financial Resources, Funding Opportunities, and In-Kind Supports

Broad Applicability

Better Buildings Financing Navigator, Healthcare Energy Financing Primer
Department of Energy
An online tool that helps public and private sector organizations find financing solutions for energy efficiency and renewable energy projects. Learn more at https://betterbuildingssolutioncenter.energy.gov/financing-navigator/primer/healthcare-energy-financing-primer.





Southwest: Drought is favored to persist in California, Nevada, Utah, and parts of Arizona, New Mexico, and Colorado. However, drought improvement is favored in the northwestern corner of California. Above normal wildland fire* potential is forecast for parts of southern California into November, before returning to normal potential in December.

OASH | Office of Climate Change and Health Equity

Climate and Health Outlook

ISSUED OCTOBER 2022

The first page of this Climate and Health Outlook includes **prospective forecasts** for November 2022 – January 2023. In the coming months, most of the contiguous U.S. will experience temperatures 0.9 – 3.6 °F (0.5 – 2 °C) warmer than normal. Warming winters can cause earlier and longer allergy seasons, aggravating respiratory and allergy conditions. Increasing winter temperatures can also contribute to to earlier onset of vector-borne diseases like Lyme disease. Additional regional and hazard-specific information is available on this Outlook's associated website.

The following pages detail **retrospective information** on how heat and drought affected the U.S. in the summer of 2022.

Northern Great Plains Drought is favored to persist or develop in Nebraska. Drought is also favored to persist in parts of Montana, North Dakota, South Dakota, and Wyoming. However, drought improvement and removal is favored in western Montana.

Northwest: Drought is favored to persist in parts of southern Idaho and Oregon. However, drought improvement and removal is favored in much of the region.

Southwest: Drought is favored to persist in California, Nevada, Utah, and parts of Arizona, New Mexico, and Colorado. However, drought improvement is favored in the northwestern corner of California. Above normal wildland fire* potential is forecast for parts of southern California into November, before returning to normal potential in December.

Southern Great Plains: Drought is favored to persist or develop in Kansas, Oklahoma, and Texas. Above normal wildland fire* potential is forecast for much of Oklahoma and Texas into December, before returning to normal potential in January.

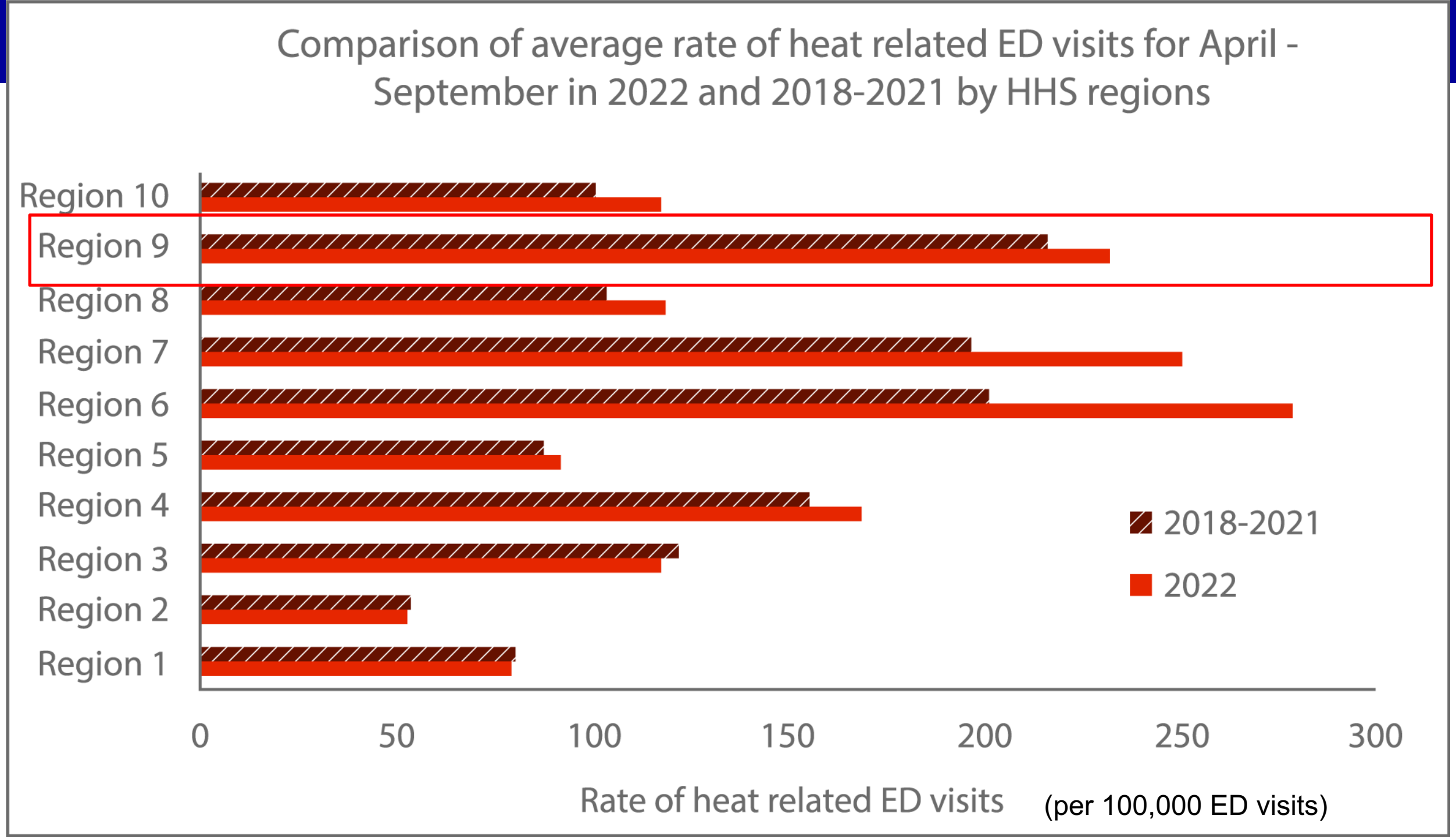
Midwest: Drought is favored to persist or develop in Missouri; persist or improve in Minnesota, Illinois, and Kentucky; improve in Michigan, Wisconsin, Indiana, and Ohio; and develop, persist, or improve in Iowa. Above normal wildland fire* potential is likely to continue for southern Missouri through November, before returning to normal in December.

Southeast: The Atlantic basin is forecasted to have an above-average hurricane season with 14 – 20 named storms with winds of 39 mph or higher, with 6 –10 of those possibly becoming hurricanes with winds of 74 mph or higher, and 3 – 5 possibly becoming major hurricanes with winds of 111 mph or higher. Drought is favored to persist or develop in Alabama, Arkansas, Georgia, Louisiana, and Mississippi, and parts of Florida, South Carolina, and Tennessee. Above normal wildland fire* potential is forecast for much of Arkansas, Louisiana, Mississippi, Alabama, and western Tennessee through November, with above normal potential continuing in much of Louisiana and Mississippi into December. Above normal potential is also forecast in western Kentucky during November. The region is forecast to have near normal significant wildland fire* potential during January.

Drought Hurricane Wildfire

*Smoke from wildfires can impact health hundreds of miles from site of the fire.

We want to hear from you! Please send your feedback on ways to improve the Climate and Health Outlook to ocche@hhs.gov.


Comparison of average rate of heat related ED visits for April - September in 2022 and 2018-2021 by HHS regions
Region 10
Region 9
Region 8
Region 7
Region 6
Region 5
Region 4
Region 3
Region 2
Region 1
2018-2021
2022
0
50
100
150
200
250
300
Rate of heat related ED visits
(per 100,000 ED visits)

OASH | Office of Climate Change and Health Equity

Thank you!

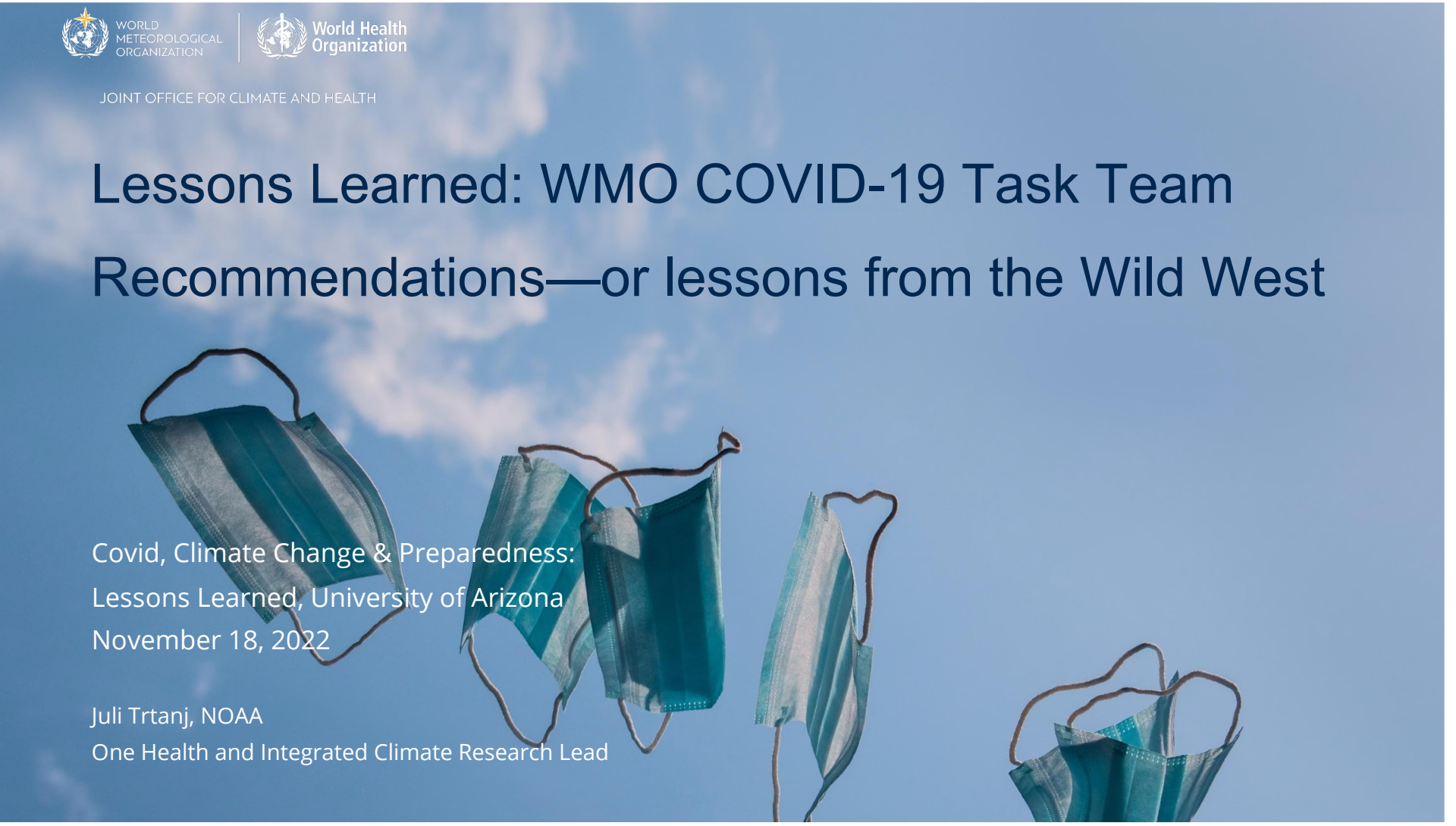
OCCHE@hhs.gov

Visit us online at www.hhs.gov/ocche

WORLD METEOROLOGICAL ORGANIZATION | World Health Organization

JOINT OFFICE FOR CLIMATE AND HEALTH

Lessons Learned: WMO COVID-19 Task Team Recommendations—or lessons from the Wild West

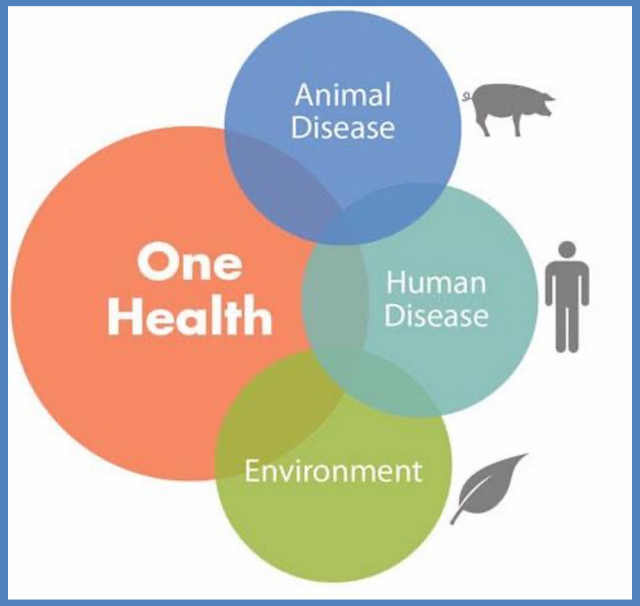


Covid, Climate Change & Preparedness:
Lessons Learned, University of Arizona
November 18, 2022

Juli Trtanj, NOAA
One Health and Integrated Climate Research Lead

Why are we still surprised by outbreaks?

How do we actually REALLY make long lasting changes? Who is at the table?

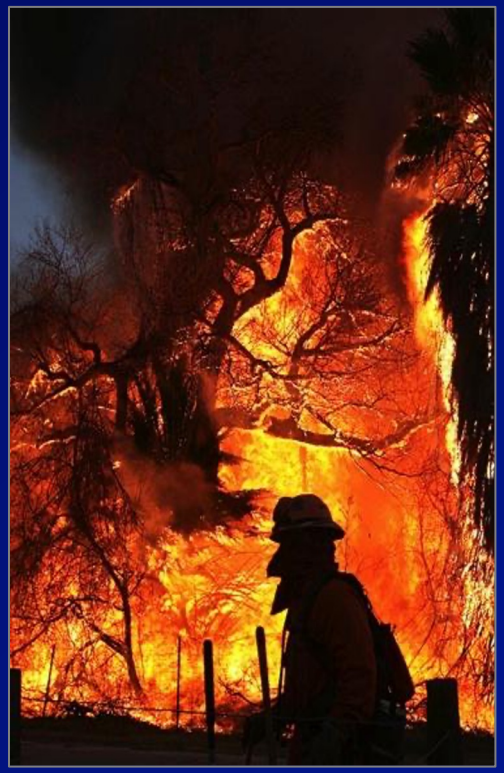


- Changes in Biological Diversity
- Land Use
- Human Behavior
- Migration
- Commerce/Markets
- Transportation
- Population Density and Structure
- Traditional Knowledge
- Institutional Design
- Politics

Many human, animal and ecological systems are already beyond limits

Department of Defense, 2014

© Scott Olson/Getty Images



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WMO COVID-19 Research Board Task Team

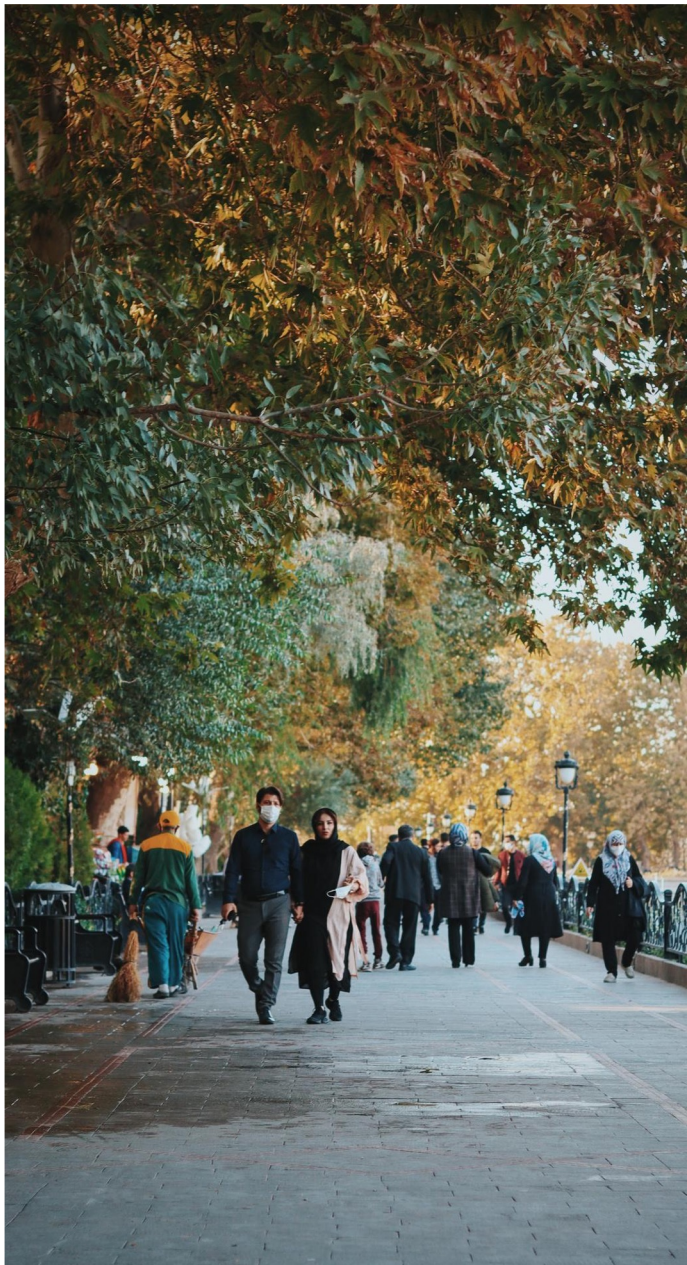
- Interdisciplinary expert group established in June 2020 to support the global response to COVID-19

Aim

- Provide COVID-19 decision relevant knowledge about climate, weather, solar radiation and air pollution
- Provide a platform to discuss science-based insights and form functional partnerships

Specific tasks

- Issue periodic authoritative WMO statements based on rapidly synthesized evidence
- Help operationalize MAQ-informed risk assessment and predictive modelling
- Foster good practice in interdisciplinary research
- Identify knowledge gaps to orient research investments
- Open doors for future research support to the WHO and health community



WMO COVID-19 Research Board Task Team Members

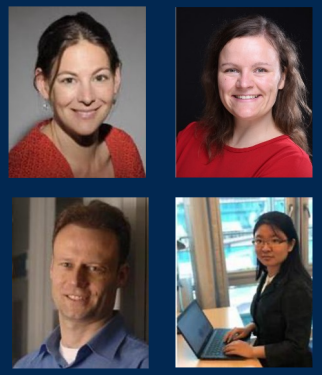
Ben Zaitchik – JHU (Co-Chair)
Judy Omumbo – SFA Foundation (Co-Chair)
David Farrell – CIMH
Ken Takahashi Guevara – SENAMHI

Juli Trtanj – NOAA
Rosa Barciela – UK Met Office
Yun Gao – CAMS
Emily YY Chan – CUHK

Sophie Gumy – WHO
Masahiro Hashizume – UTokyo
Rachel Lowe – BSC
Nick H. Ogden – PHAC

Henri-Vincent Peuch – ECMWF
Paulo Saldiva – FMUSP
Xavier Rodo – ISGlobal
Tong Zhu – PKU

WMO Support



Joy Shumake-Guillemot
Rosa von Borries
Lu Ren
Jürg Luterbacher

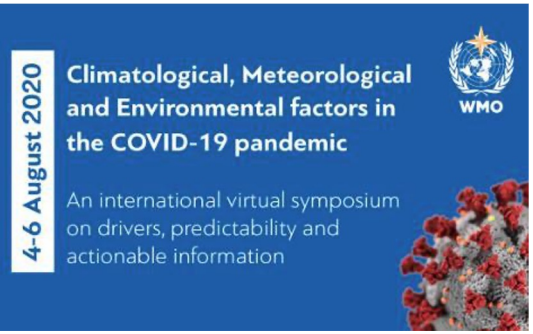
COVID-19 TT: KEY ACHIEVEMENTS

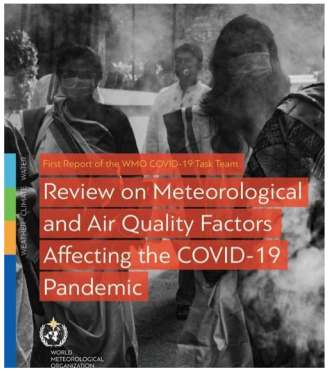
COMMENT

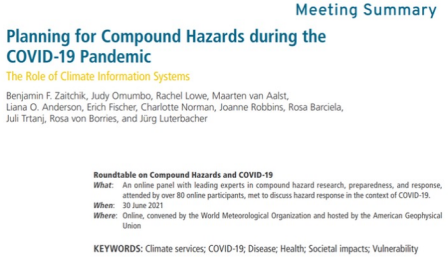
https://doi.org/10.1038/s41467-020-19546-7 OPEN

A framework for research linking weather, climate and COVID-19

Benjamin F. Zaitchik[1✉], Neville Sweijd[2], Joy Shumake-Guillemot[3], Andy Morse[4], Chris Gordon[5], Aileen Marty[6], Juli Trtanj[7], Juerg Luterbacher[8], Joel Botai[9], Swadhin Behera[10], Yonglong Lu[11], Jane Olwoch[12], Ken Takahashi[13], Jennifer D. Stowell[14] & Xavier Rodó[15]







RECOMMENDATIONS FOR NMHS

During the COVID-19 pandemic, many National Meteorological and Hydrological Services (NMHS) sought to provide useful and actionable information to help understand and manage the pandemic and related decision-support. Little was known about the influence of environmental factors, and many NMHS were trying to help.

This document is an overview of knowledge, reflections and lessons learned, and is designed to provide recommendations to NMHS regarding the provision of services for COVID-19. Furthermore, the insights herein may improve global responses to potential future public health emergencies, including future pandemics.

LONG-TERM COLLABORATION

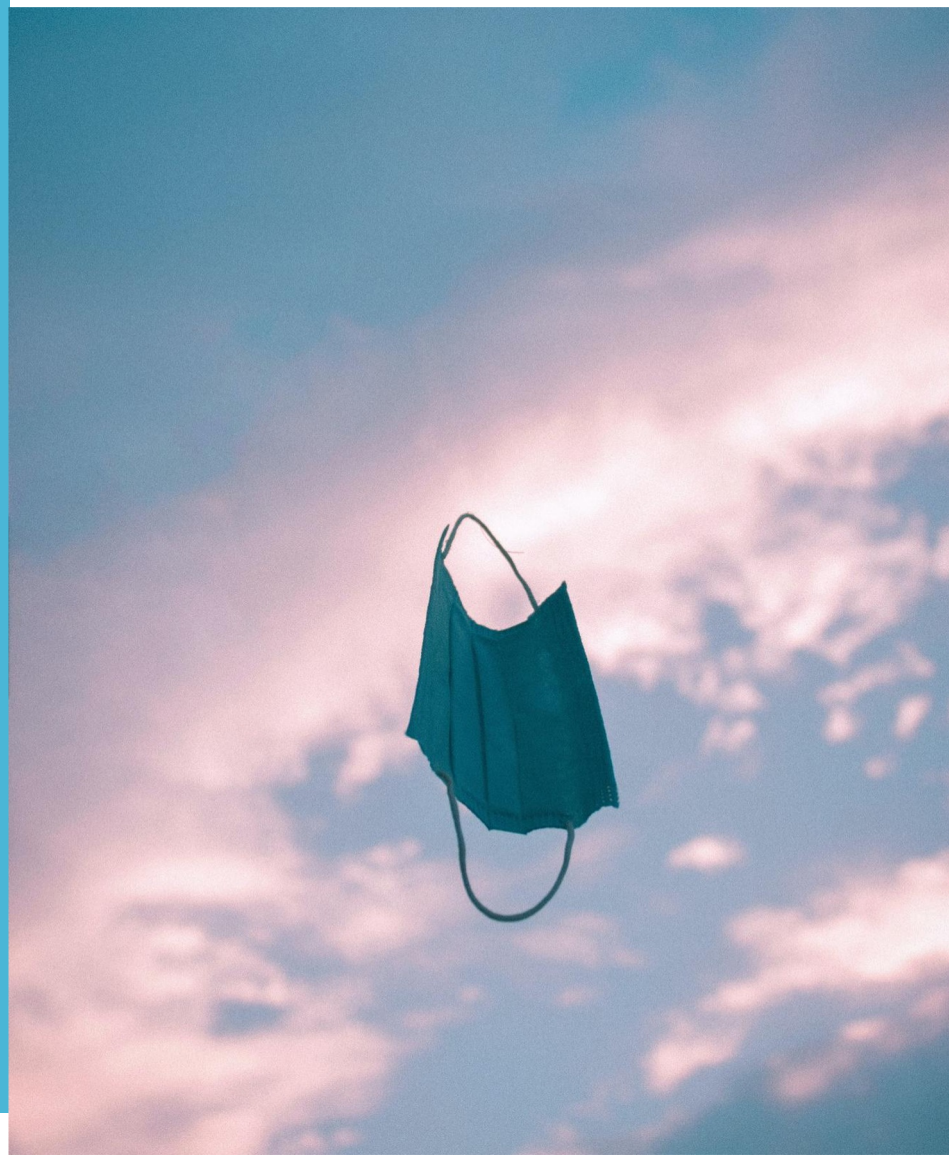
The scramble for data and information exchange at the outset of the pandemic emphasizes the need to establish long-term collaboration between the climate services and public health communities, including academics, practitioners, policymakers and funders, within the principles of co-design and co-production.

CLEAR ROLES AND OWNERSHIP

Effective and rapid collaboration in the face of an emerging pandemic also depends on clear institutional arrangements and governance. These ensure that the corresponding roles and ownership are clear when it comes to the collection and curation of data, generation of authorized information products, and communication with decision-makers and the public.

MANAGING EXPECTATIONS

Managing expectations and responsibly applying emerging understanding to decision-relevant risk assessment and forecast is a fundamental challenge for the climate services community, and the experience of COVID-19 highlights the need to build on past experience and to address this challenge in appropriate context as new threats emerge.



COMMUNICATION

Experimental forecast products and prototypes have been developed and sometimes disseminated. Extreme caution is recommended in the presentation of these products. An experimental and uncertain forecast may be worth sharing with expert partners, but wider distribution of unverified forecasts risks misinforming the public and undermining confidence in scientific approaches to COVID-19 risk assessment.

TIMELINESS VS CERTAINTY

MAQ-informed evaluation of COVID-19 or other emerging infectious diseases represents a balance of timeliness versus certainty. The fact that caution is essential when communicating research findings with the public **should not paralyse climate service providers from working with public health experts to generate the best possible information even as understanding of risk factors evolves.**

ACCURATE, TIMELY, OPEN DATA

The global response to the pandemic has been underpinned by an unprecedented and unrestricted access to data sets previously unavailable on a routine basis. Such access must continue to ensure that current and future interventions and cross-cutting services can depend on these vital data to help address challenges.

CO-DEVELOPING INTEGRATED SYSTEMS

Clear documentation and regular updating of datasets, methods, and frameworks for risk assessment and communication are critical to pandemic readiness. The co-development of integrated climate and disease surveillance systems or observatories can preposition NMHSs to support public health research and responses in times

SCIENCE BASED

New services and products that incorporate MAQ considerations for COVID-19 risk management should be based on well-established science. It is important to verify that specific studies being considered comply with relevant guidelines of data quality, analysis scale, consideration of confounders, and interpretability (e.g. those described in the First COVID-19 TT Report) in order to establish their trustworthiness.

RESEARCH

Research on the influence of MAQ drivers on SARS-CoV-2 transmission and COVID-19 severity remains an active endeavour and should be promoted and pursued. Collaboration between MAQ experts, including NMHS and health experts is necessary for this purpose.

Seasonality is not well

Updated 27 May 2020

GLOBAL HEAT HEALTH INFORMATION NETWORK

TECHNICAL BRIEF

PROTECTING HEALTH FROM HOT WEATHER DURING THE COVID-19 PANDEMIC

PLANNING CHECKLIST

MANAGING HEAT RISK DURING THE COVID-19 PANDEMIC

This checklist is for local and national authorities coordinating heatwave preparedness and response measures.

It provides a list of measures to consider when adapting heatwave plans and interventions in the context of the COVID-19 outbreak.

VULNERABLE GROUPS AND SOCIAL SERVICES

The people who are most vulnerable to hot weather and COVID-19 include older people (over age 65); those with pre-existing medical conditions such as heart disease, respiratory illness or diabetes; those taking certain medications; those who are overweight and obese; those who are marginalized and isolated, including those experiencing homelessness; pregnant women and people wearing personal protective equipment (PPE) in places that are not temperature controlled.

People infected with, or recovering from, COVID-19 are presumed more vulnerable to heat stress, including outdoor workers returning to the workplace.

Vulnerable populations may be in more precarious social and economic conditions due to COVID-19, including from lost wages, increased isolation, and strains or gaps in social networks. This can increase vulnerability to heat risk by limiting healthcare access, transport options,

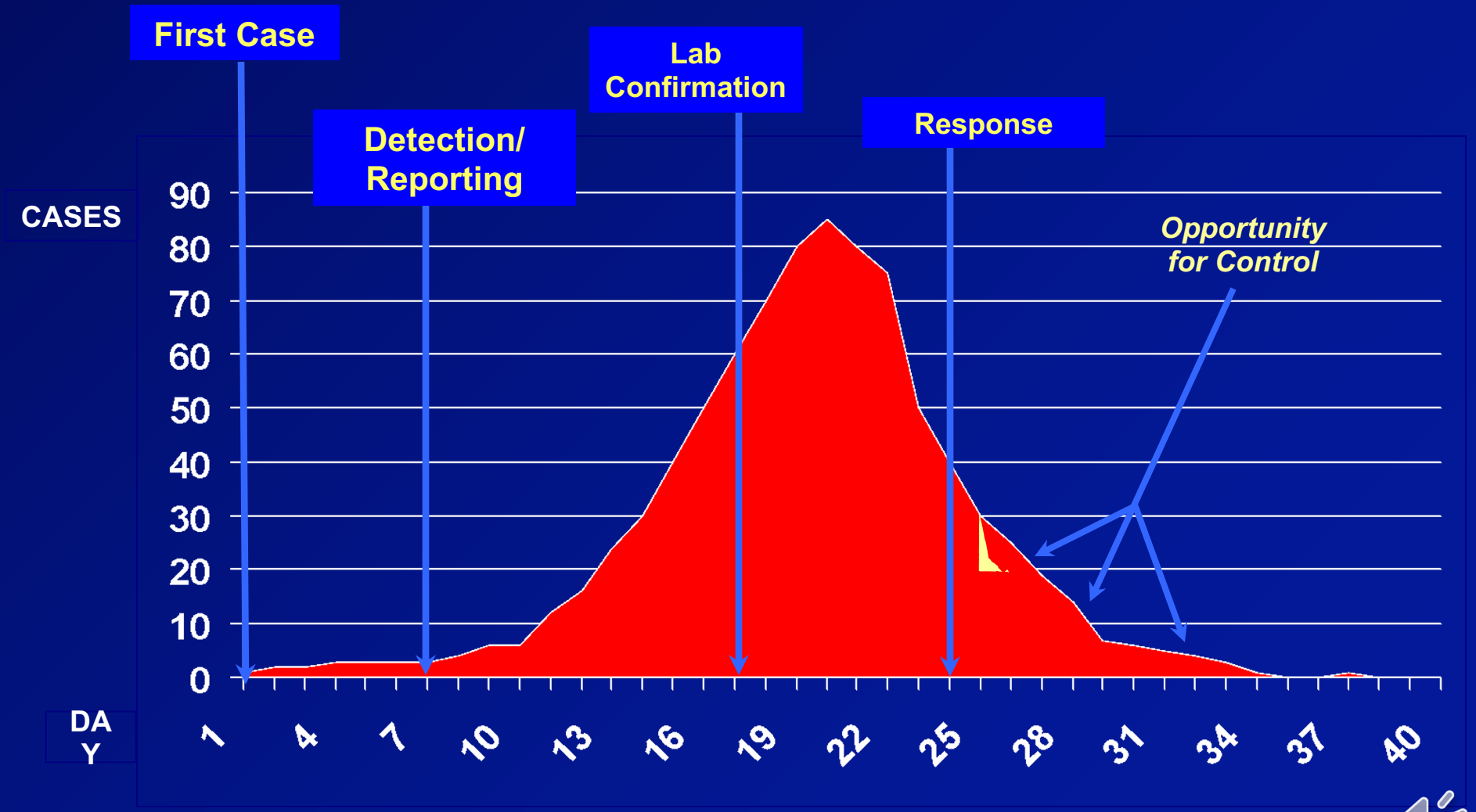
COVID-19 AMPLIFIES THE RISKS OF HOT WEATHER

To reduce heat-related illness and loss of life authorities and communities should prepare for hot weather and heatwaves – in addition to managing COVID-19 – before extreme heat strikes.

This information series aims to highlight issues and options to consider when managing the health risks of extreme heat during the COVID-19 pandemic.

GLOBAL HEAT HEALTH INFORMATION NETWORK

Current Epidemic Detection and Response Curve



Adapted from J. Davis, Climate Adaptation Workshop, Nov. 2003

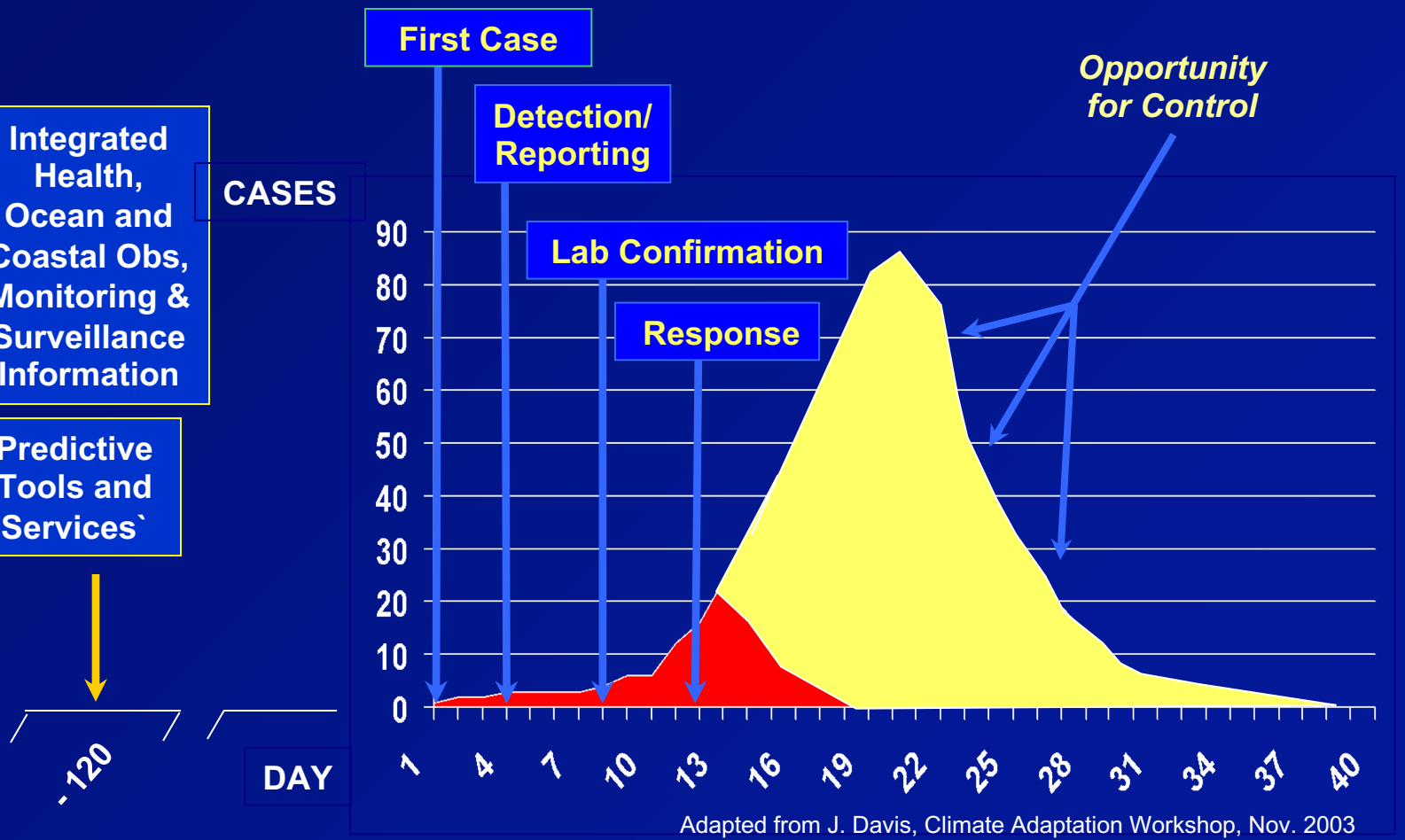
Moving from Surveillance and Response to: Prediction and Prevention

Engage Public Health Decision Makers

Integrated Health, Ocean and Coastal Obs, Monitoring & Surveillance Information

Sensor, Tool and Methods

Predictive Tools and Services`



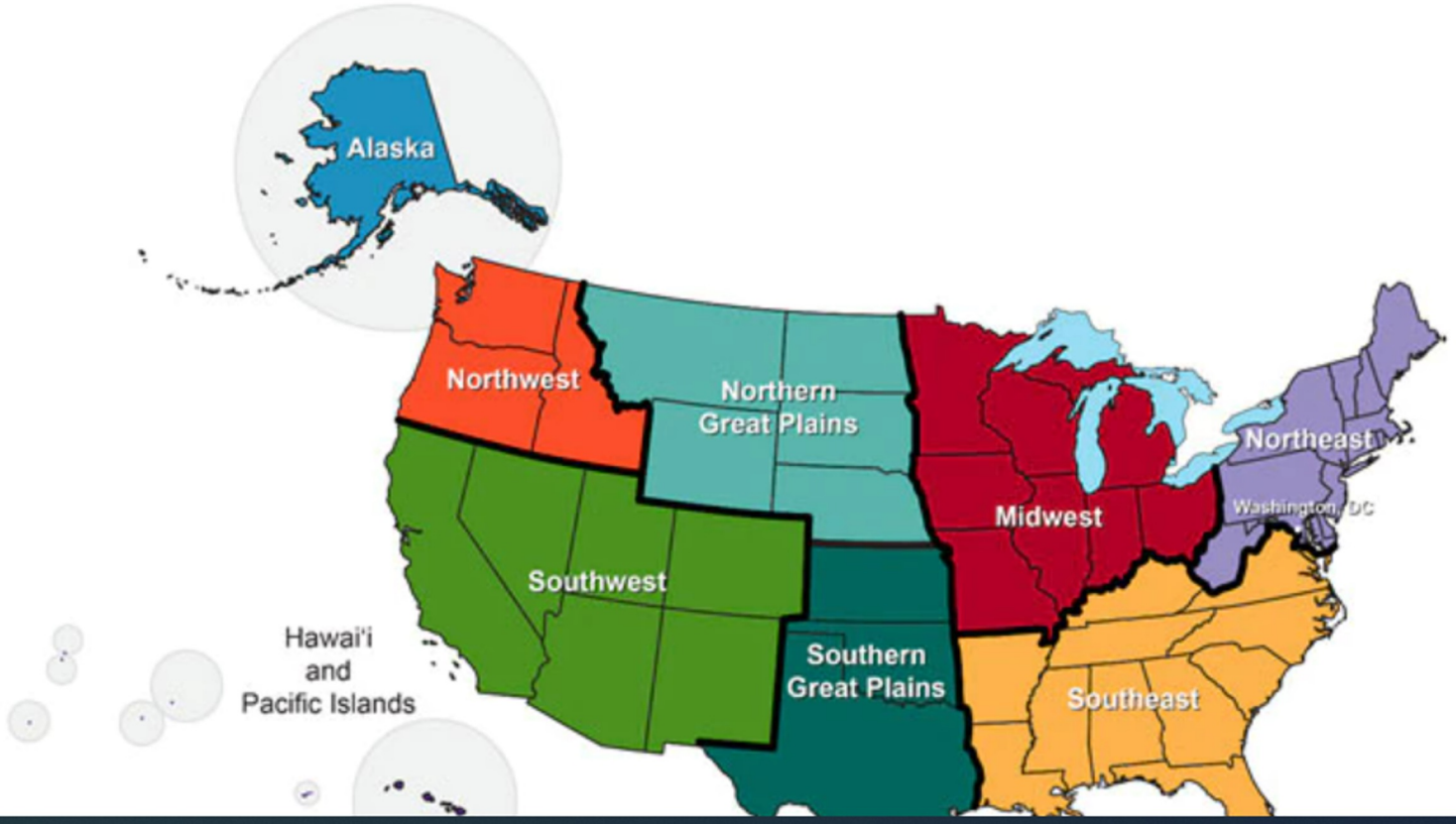
Adapted from J. Davis, Climate Adaptation Workshop, Nov. 2003

Enhancing Public Health Engagement, Outreach, and Feedback throughout

Climate and Health Outlook

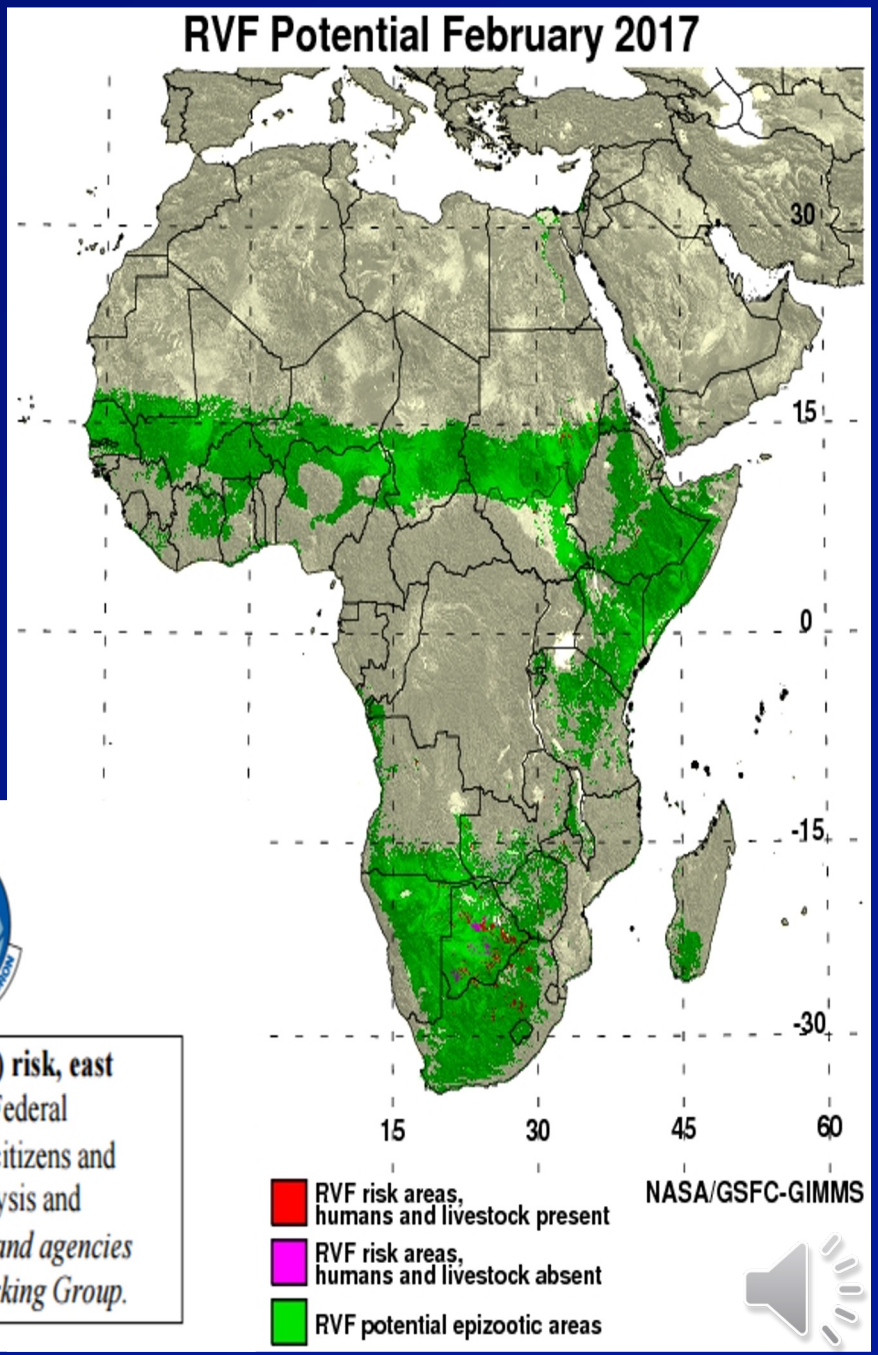
Welcome to the sixth edition of the Climate and Health Outlook from the Department of Health and Human Services (HHS) Office of Climate Change and Health Equity (OCCHE). This Climate and Health Outlook provides a retrospective look at how heat and drought affected the U.S. in the summer of 2022. This webpage includes additional resources and information excluded from the PDF summary, including regional prospective forecasts.

Download the Climate and Health Outlook for November 2022 - January 2023 - PDF



Rift Valley Fever

- Mosquito, Livestock, Human transmission cycle
- Well established links to El Nino-related rainfall
- Economic and health impacts
- Rift Valley Fever Monitor



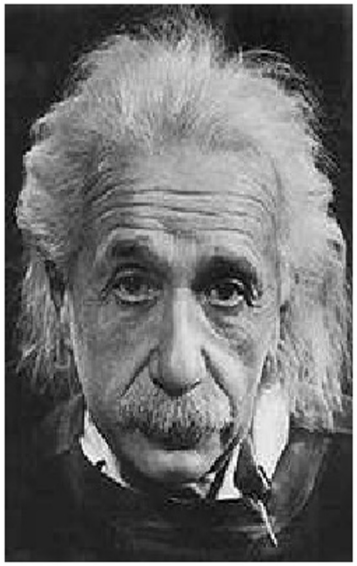
Emerging Health Risk Notification, 20 Dec 2015. El Niño and Rift Valley fever (RVF) risk, east Africa. This Notification is a pilot effort of an interagency working group that integrates Federal expertise to synthesize risk information and response options for biological threats to US citizens and interests. The Notification is provided to USG operational biosurveillance centers for analysis and dissemination. *The views expressed do not necessarily represent those of all departments and agencies that participate in the Pandemic Prediction and Forecasting Science and Technology Working Group.*

It is Doable!

- Long-term collaboration—start now
- Multi-sector engagement—way outside the box
- Trusted sources and clear responsibilities
- Communication-clarity, certainty and timeliness
- Multiple ways to use climate information
  - Overall risk, longer lead times
  - Affecting human behavior and interaction with the environment
  - Influencing disease transmission
  - Forecasting disease risk or disease transmission

Thank You

Thinking in Systems

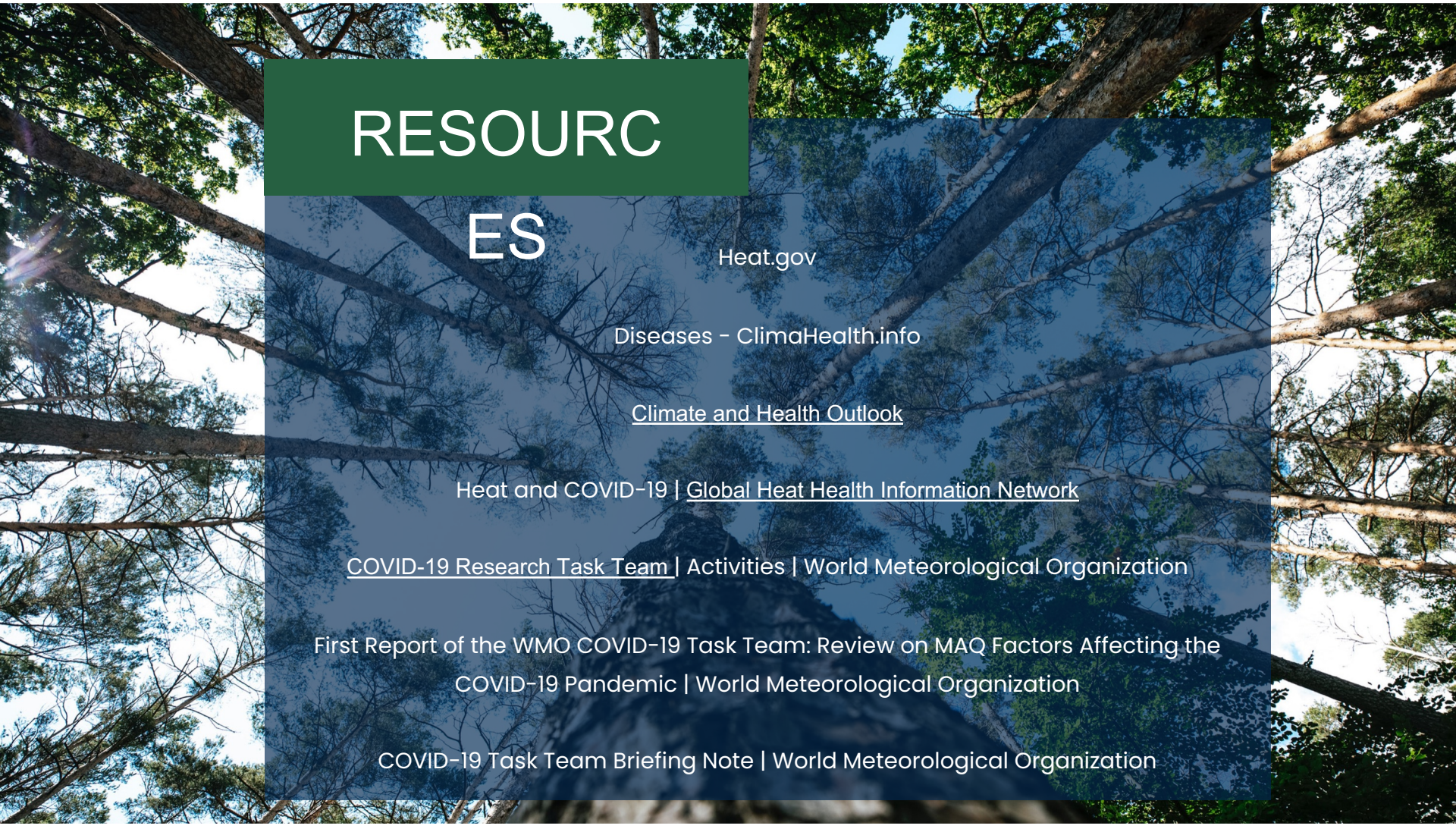


"The problems we have created in the world today will not be solved by the level of thinking that created them."

--Albert Einstein

Image Source: Flickr Creative Commons, by mansionwb

Juli.Trtanj@noaa.gov



RESOURCES

Heat.gov

Diseases - ClimaHealth.info

Climate and Health Outlook

Heat and COVID-19 | Global Heat Health Information Network

COVID-19 Research Task Team | Activities | World Meteorological Organization

First Report of the WMO COVID-19 Task Team: Review on MAQ Factors Affecting the COVID-19 Pandemic | World Meteorological Organization

COVID-19 Task Team Briefing Note | World Meteorological Organization

Climate Change and Public Health Repercussions Post-*West Virginia v. EPA*

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Game Plan

- Clean Air Act
- *West Virginia v. EPA*
- Major Questions Doctrine
- What's Next?

Clean Air Act

- The **Clean Air Act** (CAA) (42 U.S.C. ch. 85) (1963) authorizes EPA to regulate **air pollutants.**
- CAA section 11(a) grants EPA the power to regulate power plants as stationary sources under the **"best system of emission reduction" standard (BSER)**.
- EPA applies a system of reduction, determined "**best**" by the Administrator, to emissions from new and existing power plants.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Clean Air Act

- "Greenhouse gases fit well within the CAA's capacious definition of air pollutant." *Massachusetts v. EPA* (549 U.S. 497 (2007)).
- "Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from powerplants." *American Electric Power Co. v. Connecticut* (564 U.S. 410) (2011)).

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Public Health Impacts of Carbon Emissions

- **Human-generated greenhouse gas emissions** have **changed weather patterns worldwide**, including…
  - More frequent ***heat waves***, ***higher average temperatures***, more forest and urban ***fires***, more air ***pollution***, longer and intensified ***allergy seasons***, more potent and frequent ***storms*** and ***flooding***, and expansion of disease-carrying ***insects***. Consequent impacts include…
    - Heat-related ***illnesses***, air pollution-related respiratory and cardiovascular ***illnesses***, ***injuries*** and ***deaths*** caused by severe fires and storms, spread of vector-borne ***disease***, and increases in ***asthma attack***-triggering pollens and molds.

- **Harms are not equally distributed**, disproportionately impacting children and infants, pregnant women, people over 65, and communities of color &low income.

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Source: Brief of Amici Curiae American Thoracic Society, American Medical Association, American Academy of Pediatrics, American College of Physicians, and Leaders of Public Health Schools, et al. in Support of Respondents

Clean Power Plan

- The **Clean Power Plan** (CPP) was proposed by the Obama Administration's EPA in 2015.
- CPP included regulation of **existing power plants** to implement **"outside the fence line" generation shifting** to alternative clean energy sources (e.g., solar, wind power).
- These aspects were challenged by several states and coal industry companies and *never came into enforcement*.

Image Source: https://www.theregreview.org/2016/05/17/revesz-lienke-tragic-flaw-clean-air-act/

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Clean Power Plan

- Each state was assigned an individual goal for reducing carbon emissions. If all states met their goals, carbon emissions from electricity generation would be **reduced by 32% by 2030**.
- Although the plan did not go into effect, the goals were **met 11 years early, in 2019,** due to energy market factors and increased production of clean energy.

Image Source:
https://en.wikipedia.org/wiki/Clean_Power_Plan

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Clean Power Plan

- The Trump administration's EPA put forth a less aggressive Affordable Clean Power Rule (ACPR) in 2019 (staying within the fence line) that repealed the CPP.
- ACPR was stayed following a legal challenge.
- The stay was challenged by states and coal companies questioning EPA's ability to regulate existing power plants as proposed in the original CPP.

Image Source: https://www.scientificamerican.com/article/the-clean-air-act-is-a-model-for-protections-we-need-more-than-ever/

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And then SCOTUS took the case.

West Virginia v. EPA

Did Congress grant EPA in CAA Section 111(d) the authority to devise emissions caps based on the generation shifting approach the agency took in the CPP?

Image Source: https://bcgavel.com/2022/03/27/west-virginia-v-epa-what-is-at-stake/

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West Virginia v. EPA

Holding: Congress did not grant EPA the authority to regulate emissions from existing power plants based on generation-shifting mechanisms. Regulation of existing power plants falls under the **major questions doctrine.**

Image Source: https://bcgavel.com/2022/03/27/west-virginia-v-epa-what-is-at-stake/

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Immediate Repercussions

Supreme Court restricts the EPA's authority to mandate carbon emissions reductions

npr

Updated June 30, 2022 · 10:30 AM ET

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Immediate Repercussions

Democrats Designed the Climate Law to Be a Game Changer. Here's How.

By Lisa Friedman

The New York Times

Aug. 22, 2022

Does amending the Clean Air Act to specifically authorize EPA to regulate carbon emissions solve the problem?

Image Source: https://www.nytimes.com/2022/08/22/climate/epa-supreme-court-pollution.html

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Major Questions Doctrine (MQD)

- For agencies to regulate issues the Court considers to be of vast importance, Congress must ***clearly authorize*** them to do so.
- *WV v. EPA* was a "major questions case" because it involved an agency **"asserting highly consequential power beyond what Congress could reasonably be understood to have granted."**

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MQD

There are **"extraordinary cases"** where courts must depart from ordinary methods of statutory construction when reviewing administrative action…

where the **"history and the breadth of the authority"** the agency asserts and the **"economic and political significance"** of the assertion provide a "reason to hesitate before concluding that Congress" meant to confer such authority.

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Ambiguity is not enough.

Congress must speak clearly!

WV v. EPA MQD Factors

- How has the agency used the statutory provision in the past?
- Has the agency regulated in this particular manner before?
- Is the agency an expert in regulating this area?
- Can the regulation feasibly be complied with?
- Is the regulation a policy judgment?
- Has Congress considered specific legislation?

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WV v. EPA MQD Factors—Concurrence

- Is the language in the legislative provision "oblique" or obscure?
- Does the "age and focus of the statute the agency invokes" align with the "problem the agency seeks to address"?
- Does the desired interpretation match the agency's "past interpretations of the relevant statute"?
- Is there a "mismatch" between the "agency's challenged action and its congressionally assigned mission and expertise"?

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MQD

- The majority's use of MQD rejects past administrative decisions, notably ***Massachusetts v. EPA*** (2007), where the Court rejected EPA's argument that it lacked authority to regulate greenhouse gases using similar logic as MQD.
- ***What ever happened to Chevron deference?***

Image Source: https://www.theguardian.com/environment/2020/apr/12/global-carbon-emisions-could-fall-by-record-25bn-tonnes-in-2020

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We've Seen This Before…

- *Alabama Assn. of Realtors v. HHS* (594 U.S. __ (2021)) found that **CDC's eviction moratorium** asserted agency powers of "vast 'economic and political significance'" and a "breathtaking amount of authority."
- *NFIB v. Dep't of Labor* (595 U.S. __ (2022)) found **OSHA's vaccine mandate** was no "everyday exercise of federal power" but a "broad public health measure" where the agency could only regulate occupational safety.

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CDC
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We've Seen This Before…

"It would be one thing if Congress had specifically authorized the action that the CDC has taken. **But that has not happened.** Instead, the CDC has imposed a nationwide moratorium on evictions in reliance on a **decades-old statute** that authorizes it to implement measures like fumigation and pest extermination. ***It strains credulity to believe that this statute grants the CDC the sweeping authority that it asserts."*** *Alabama Assn. of Realtors v. HHS* (594 U.S. __ (2021)).

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We've Seen This Before…

"OSHA has **never before** imposed such a mandate. Nor has Congress. Indeed, although Congress has enacted significant legislation addressing the COVID-19 pandemic, it has **declined** to enact any measure similar to what OSHA has promulgated here." *NFIB v. Dep't of Labor* (595 U.S. __ (2022)).

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MQD—Dissent

- **"[T]his Court could not wait**—even to see what the new rule says—to constrain EPA's efforts to address climate change."
- Unlike the COVID cases, EPA was not "operating far outside its traditional lane". EPA's actions would not have "conflicted with, or even wreaked havoc on, Congress' broader design." **"The Clean Power Plan falls within EPA's wheelhouse, and it fits perfectly … with all the Clean Air Act's provisions."**

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What's Next?

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What's Next? Clean Water Act

The "breadth given to the term 'waters of the United States' by [EPA and the Army Corps]…***has all the hallmarks of a major question of 'vast economic and political significance.'"*** Therefore, the logic goes, that before an agency can decide this type of major question, the Clean Water Act must "plainly authoriz[e][] the agency's action."

Source: Congressional Brief, *Sackett v. EPA*

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What's Next? Vehicle Emissions

"EPA is once again straining statutory text to force a **seismic shift in the nation's energy policy**, only this time for automobiles rather than power plants"

"The question of whether and how internal-combustion vehicles should be phased out in favor of electric vehicles is **hugely consequential**," the brief said. "Congress has **never delegated those policy judgments to EPA**."

Image Source: https://www.reuters.com/business/environment/us-epa-finalizes-tougher-new-vehicle-emissions-requirements-2021-12-20/

Source: Petitioners' Brief, *State of Texas et al. v. Environmental Protection Agency et al.*

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What's Next? National Security

"[The statute] is a broad enabling legislation that allows the Secretary to modify "such other standards as the Secretary finds to be appropriate." **"There is nothing in [the statute] which would allow Agency Defendants to make medical decisions for employees and volunteers…"** *Louisiana v. Becerra* (W.D. La. Sept. 21, 2022)

Image Source: https://www.reuters.com/legal/government/biden-vaccine-mandate-will-test-us-workplace-regulator-2021-09-13/

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What's Next?

AFFORDABLE CARE ACT

CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES

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FDA
U.S Food and Drug Administration

DEPARTMENT OF EDUCATION
UNITED STATES OF AMERICA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

How Far is Too Far?

- Will Congress be forced to write more specific legislation?
- Will there be a "chilling effect" on agency action?
- Are "established," routine uses of statutes "safe" (vs. "innovative" uses)?
- What about state agencies?

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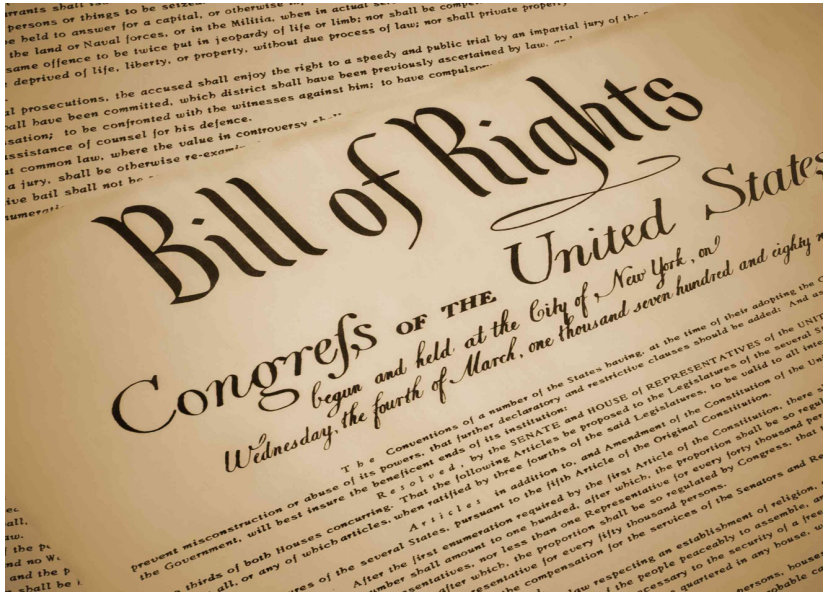
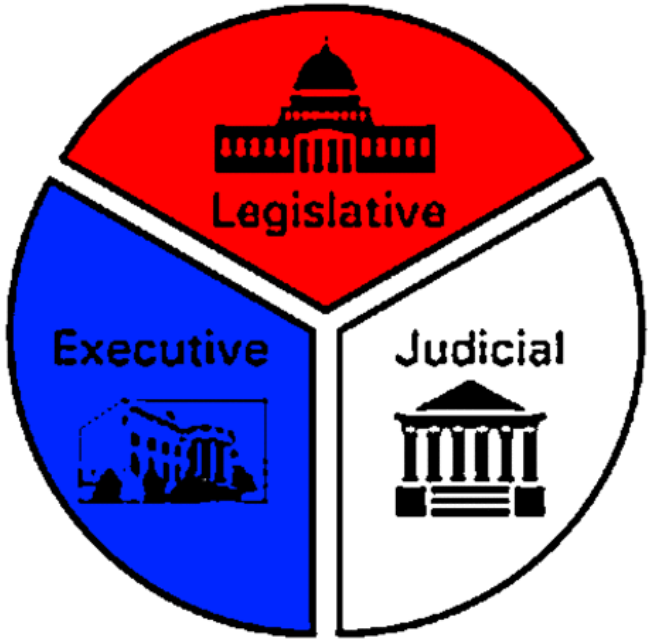
How Far is Too Far?

Broad congressional delegations to administrative agencies are necessary for executive authority as provided in the Constitution.





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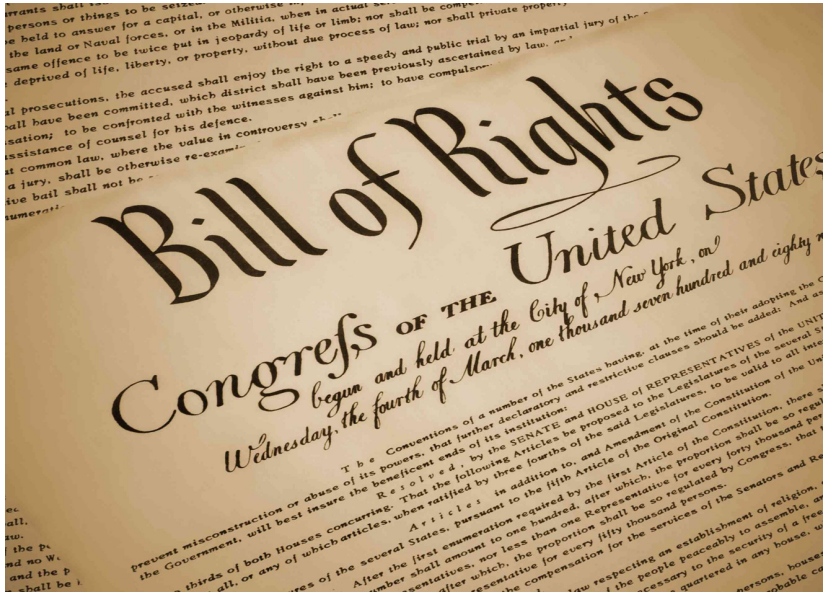
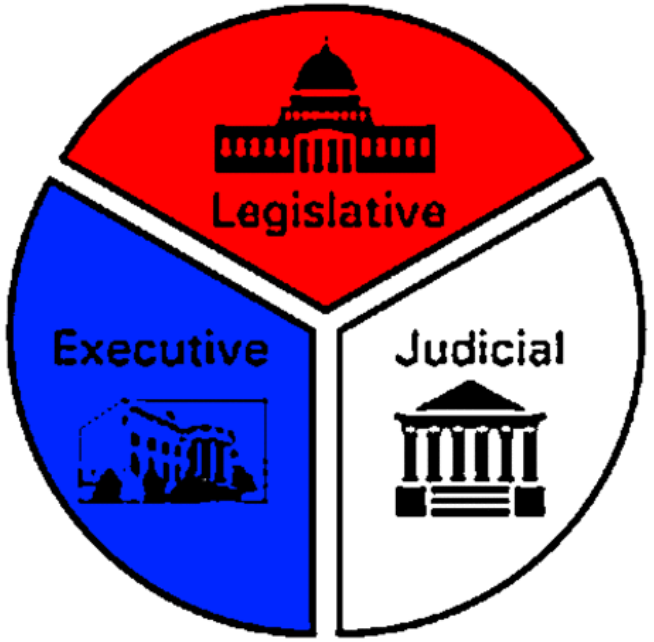
How Far is Too Far?

Policy decision-making is an unconstitutional use of judicial authority, best left to the politically-accountable branches of government.





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