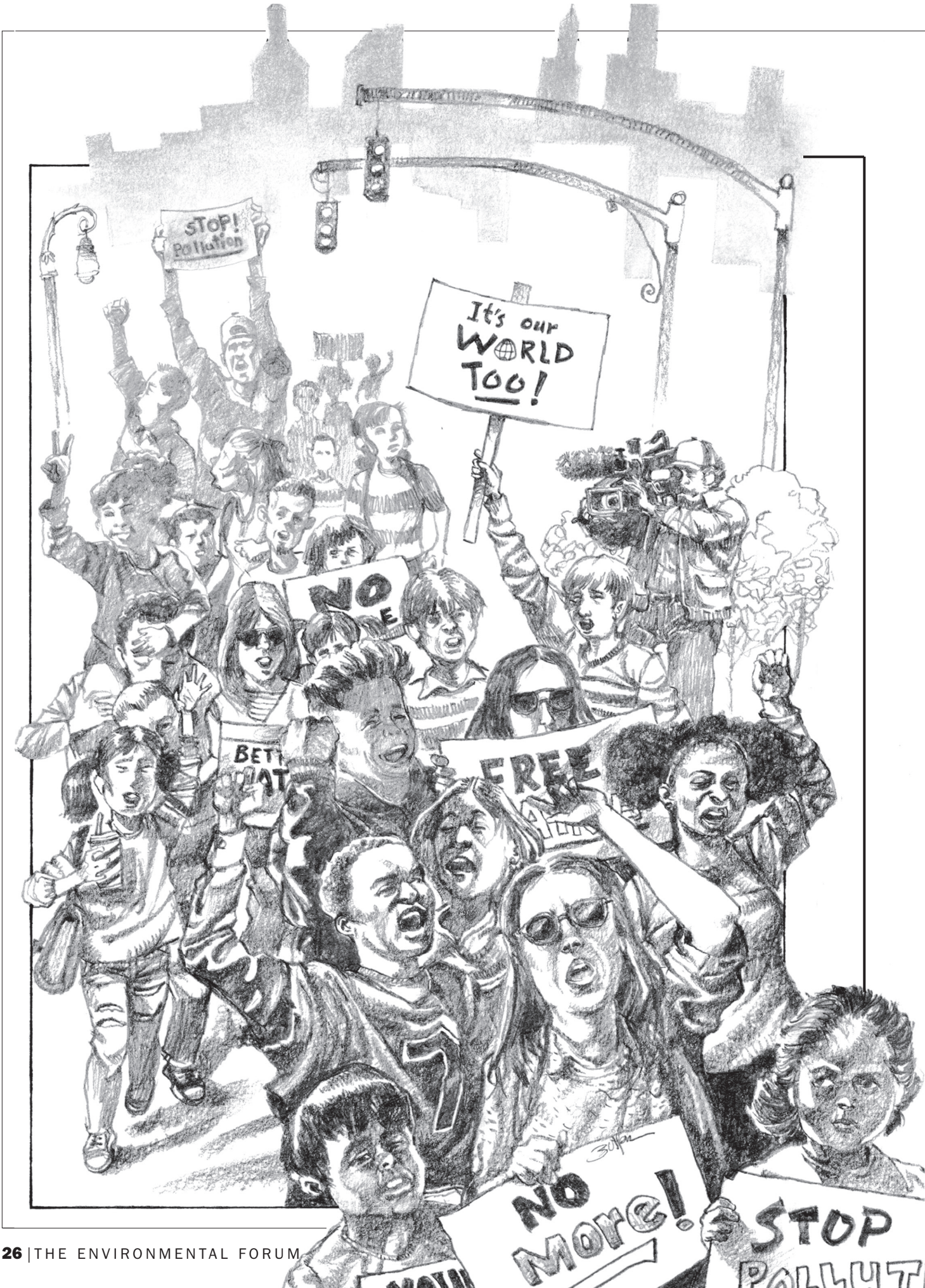
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"No Ordinary Lawsuit"

Youth plaintiffs in Oregon are suing the federal government for climate inaction — one of many similar suits around the country and the world. Litigation based on the public trust doctrine can be difficult to win, but Millennials are speaking out about an issue that profoundly affects them

ELI Visiting Scholar **Barry E. Hill** is a former EPA Environmental Justice Office chief, current adjunct professor at Vermont Law School, and the author of *Environmental Justice: Legal Theory and Practice, 4th Edition* (ELI Press).

Before rap, before hip-hop, there was the music of Gil Scott-Heron, the poet, singer, songwriter, musician, and author of the 1971 spoken-word anthem "The Revolution Will Not Be Televised." Political consciousness was at the foundation of his work. According to Scott-Heron, "The revolution takes place in your mind. . . . When you want to make things better you're a revolutionary." Today, of course, the revolution is not only televised, it is Facebooked, Twittered, and Instagrammed. The kids who survived the horrible school shooting in Parkland, Florida, became successful young revolutionaries in the fight for stronger gun laws via social media and 24-hour news channels.

But in a quiet federal district courtroom in Oregon, another group of kids are becoming revolutionaries, too, but via legal briefs rather than tweets and mass rallies and talking heads on cable and YouTube. The Supreme Court itself, in denying the Trump administration's application for a stay, unanimously said last summer it will not interfere with the progress of the youngsters' lawsuit against the federal government for failing to protect them against a worsening environment caused by emissions of greenhouse gases. To be clear, this suit was not a reaction to the Trump administration; it was filed in August 2015, when Trump was still a long-shot candidate. But it has been injected with renewed fervor by the president's withdrawal from the Paris climate agreement and his anti-climate regulatory rollbacks.

Millennials — the grandchildren of Baby Boomers like Scott-Heron — are speaking out and demanding comprehensive reform of government policy regarding climate change. They have more at stake than their aged progenitors in ensuring that the habitability of the planet doesn't erode in their lifetimes. Their youthful energy and enthusiasm, and demand for change, is evident broadly in the environmental law and policy area, and specifically in litigation in federal and state courts.

These Generation Y activists believe in the pluralism of a diverse country and in environmental justice. They affirm the basic principle that all people, regardless of age, race, color, national origin, or socioeconomic status, are entitled to fair treatment and meaningful involvement with respect to the development, implementation, and enforcement of climate change policy. Finally, these revolutionary persons believe the federal government is required to protect the environment and the atmosphere in particular as part of its public trust responsibilities. Otherwise, in denying them life, liberty, and the pursuit of happiness, the federal government is violating these due process rights under the Constitution.

Sadly, EPA's new policy is to deny that greenhouse gas emissions are driving climate change. This abegnation, however, is entirely inconsistent with the law. Notably, the agency's current position is contrary to that established by then Administrator Lisa Jackson in response to *Massachusetts v. EPA*, in which the Supreme Court ruled in 2007 that the agency must regulate pollutants that cause climate change. Consequently, in the 2009 Final Endangerment Finding under Section 202(a) of the Clean Air Act, Jackson determined that

greenhouse gases released into the atmosphere threaten public health and the welfare of future generations. The Trump administration's change in policy and pullout from the Paris Agreement is contrary to the dictates of the *Massachusetts* decision and to the findings of the U.S. Global Change Research Program, the National Academy of Sciences, and the Intergovernmental Panel on Climate Change that the warming of the climate system in recent decades is unequivocal.

Fortunately, a diverse group of 21 young people, between the ages of 8 and 19, from across the country are challenging in federal district court in Oregon the Trump administration's strained views on climate change and climate science in a landmark lawsuit, *Juliana v. United States*. The youngsters complain that the federal government, in causing climate change, has violated the newest generation's constitutional rights to life, liberty, and property in violation of the Due Process Clause of the Fifth Amendment. The complaint alleges that the federal government promotes the development and use of heat-trapping fossil fuels. The climate youth plaintiffs argue that the government has known for decades that fossil-fuel emissions are destroying the climate system and not only failed to restrict those emissions but also continued to authorize fossil-fuel-development projects that amplify the danger and foreclose the opportunity to stabilize the atmosphere. The climate youth plaintiffs seek a court order requiring the president to implement immediately a national plan to decrease atmospheric concentrations of carbon dioxide to a safe level, 350 parts per million by the year 2100, which is based upon sound climate science.

In denying them their constitutional rights, the youths argue that the federal government has failed to protect and conserve the nation's public trust resources, including the atmosphere

In denying them their constitutional rights, the youths argue that the federal government has failed to protect and conserve the nation's public trust resources, including the atmosphere. This argument originates from the Atmospheric Trust Litigation Approach developed by Professor Mary Christina Wood of the University of Oregon's Environmental and Natural Resources Law Center. According to Wood, "It's kind of a straightforward exercise to apply the public trust to the atmosphere. The government is a trustee and has to protect it for the benefit of present and future generations."

In *Massachusetts v. EPA,* the Supreme Court recognized the federal government's public trust responsibility regarding the atmosphere. "When a state enters the union," the Court wrote, "it surrenders certain sovereign prerogatives. Massachusetts cannot invade Rhode Island to force reductions in greenhouse gas emissions, it cannot negotiate an emissions treaty with China or India, and in some circumstances the exercise of its police power to reduce in-state motor vehicle emissions might well be preempted. . . . These sovereign powers are now lodged in the federal government."

Understanding the climate youth plaintiffs' arguments in this case requires a brief primer on the ancient public trust doctrine, which has been in existence since the time of the Romans. In the Institutes of Justinian, the Emperor Justinian articulated the idea of the public trust when he stated, "By the law of nature these things are common to mankind — the air, running water, the sea, and consequently the shores of the sea." In its early form, the public trust doctrine sought to protect the public's right to access certain resources, particularly navigable bodies of water. The English later incorporated the doctrine into their legal system, and, in 1215, the public trust emerged as part of the Magna Carta, which, among other things, specifically condemned interference with citizens' access to navigable waters, and prevented the king from giving favored noblemen exclusive rights to hunt or fish in certain areas. Although the monarch was understood to own the land, he had an obligation to protect it for use by the public. Still later, the public trust doctrine became a part of American common law, particularly in state courts. And in 1983, in the seminal case *National Audubon Society v. Department of Water and Power of the City of Los Angeles,* the California Supreme Court ruled, "The public trust is an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands and tidelands." Other state courts have made similar findings.

The American Petroleum Institute, the National Association of Manufacturers, the American Fuel & Petrochemical Association, and other organizations immediately intervened in the *Juliana* case as defendants, joining the U.S. government in trying to have the case dismissed. (They later filed motions to withdraw, which were granted by the court last year.)

In April 2016, U.S. Magistrate Judge Thomas Coffin decided in favor of the 21 climate youth plaintiffs. Coffin characterized the case as an "unprecedented lawsuit" addressing "government action and inaction" resulting "in carbon pollution of the atmosphere, climate destabilization, and ocean acidification." In ruling that the case should proceed, Coffin wrote: "The debate

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Sidebar

A Safe Environment is a Constitutional Right

In *Juliana v. United States,* one of those cases brought as part of the Atmospheric Trust Litigation, a group of 21 young people sued the federal government for failing to act to protect plaintiffs against risks the defendants "have known for more than fifty years."

In the trial, which was set to begin in late October in the federal District Court for the District of Oregon, the plaintiffs will seek to show that government actions such as permitting of fossil fuel sources destabilize the global climate system and endanger lives, including the lives of the plaintiffs. Rather than suing for damages, plaintiffs seek a court order to require the federal government to use science-based regulation to combat climate change.

Arguing that the government has an affirmative duty to act, plaintiffs invoke the public trust doctrine and the constitutional rights to life, liberty, property, and a clean and healthful environment. They seek judicial redress in the face of legislative failure to protect these rights of people. They allege that "affirmative aggregate acts of defendants have been and are infringing on plaintiffs' right to live [with a] stable climate system."

Specifically, plaintiffs claim that government policies and actions undermine the capacity of people to "provide for their basic human needs" and to safely raise families, practice religious beliefs, maintain their bodily integrity, and "lead lives with access to clean air, water, shelter, and food." In finding the lawsuit may proceed, the court stated: "Exercising my 'reasoned judgment,' I have no doubt that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society." This statement by the district court mirrors the Supreme Court's test for fundamental, constitutional rights.

To obtain judicial relief, plaintiffs need to show that a fundamental constitutional right is at stake. Absent such a showing, conventional wisdom is that the political process would be plaintiffs' only recourse. In assessing the question of fundamental rights (and, thus, the possibility of judicial redress) the District Court will examine our history, legal traditions, and practices. Using this analysis, the Supreme Court has recognized a range of fundamental — that is, inalienable — rights, including privacy rights and rights of personal autonomy such as the right to marry and have a family.

In *Obergefell v. Hodges*, the Supreme Court recognized the fundamental right of same-sex couples to marry inherent in liberty and arising "from the most basic human needs." Courts apply this analysis to actual circumstances of present controversies. Indeed, because of the "case or controversy" requirement, constitutional rights are not stated except when a court finds the denial of the right. For example, no "right to marry" decision would have been recognized (or needed recognition) but for the state laws denying the right of same-sex couples to marry.

Irma S. Russell

The founders of our country promised protection of specific rights against government oppression and, in the Ninth and Tenth Amendments, rejected a reductive reading that would limit the rights of the people and states to those named. The Founders relied on the touchstone of the public good as a foundation for personal freedom and political stability, and they set in place a system of separated powers in three co-equal branches of government to sustain the public good for future generations.

The preamble to the Constitution states its purpose of serving the public good: "To establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." It echoes the maxim *Salus populi suprema lex esto*, "The good of the people is the supreme law."

Government action is often couched in terms of political choice rather than responsibility. Importantly, however, the legislature consistently recognizes the principle of serving the public good. In passing the Clean Air Act, for example, Congress pointed to "mounting dangers to the public health and welfare" as the basis for its action.

While people look first to the legislature to provide protection against threats to the general welfare, taking the science of climate change seriously means that the legislature is not the last place to look. All three branches of government are responsible for securing the fundamental rights of the people and serving the public good. The *Juliana* case requests regulation of greenhouse gases. Plaintiffs seek judicial imposition of positive requirements to protect the plaintiffs and others against the urgent threat of climate change. In so doing, they raise the question whether a right to a healthful environment — like the right to marry and other personal rights — is central to personal autonomy.

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about climate change and its impact has been before various political bodies for some time now. Plaintiffs give this debate justiciability by asserting harms that befall or will befall them personally and to a greater extent than older segments of society. It may be that eventually the alleged harms, assuming the correctness of plaintiffs' analysis of the impacts of global climate change, will befall all of us. But the intractability of the debates before Congress and state legislatures and the alleged valuing of short term economic interest despite the cost to human life, necessitates a need for the courts to evaluate the constitutional parameters of the action or inaction taken by the government. This is especially true when such harms have an alleged disparate impact on a discrete class of society."

In November 2016, U.S. District Court Judge Ann Aiken upheld Coffin's recommendation with the issuance of a historic opinion and order denying the motions to dismiss. "This is no ordinary lawsuit," Aiken wrote. "This lawsuit is not about proving that climate change is happening or that human activity is driving it. For the purposes of this motion, those facts are undisputed. The questions before the court are whether defendants are responsible for some of the harm caused by climate change, whether plaintiffs may challenge defendants' climate change policy in court, and whether this court can direct defendants to change their policy without running afoul of the separation of powers doctrine."

Judge Aiken determined that the atmosphere is in fact a public trust asset, that the federal government has a public trust obligation, and that the obligation is not displaced by federal environmental statutes

With respect to the climate youth plaintiffs' public trust argument, Aiken determined that the atmosphere is in fact a public trust asset, that the federal government has a public trust obligation, that the federal government's public trust obligation is not displaced by federal environmental statutes, and that the youth plaintiffs have a private right-of-action to enforce the federal government's pubic trust obligation.

In February 2017, President Trump was named a defendant and the new administration immediately took aggressive action in the litigation. The administration filed a motion seeking expedited appeal of Aiken's opinion and order to the Ninth Circuit. And in June 2017, the administration filed a writ of mandamus petition with the Ninth Circuit seeking an extraordinarily rare review of Aiken's opinion and order.

Ten months later, a unanimous three-judge panel of the Ninth Circuit rejected the Trump administration's "drastic and extraordinary" petition for a writ of mandamus. The appellate court ruled that the case could proceed toward trial, and that the administration had not satisfied the factors necessary for an extraordinary writ of mandamus. Chief Judge Sidney R. Thomas wrote that the federal government's request to halt the litigation was "entirely premature," and that "the government's concerns would be better addressed through the ordinary course of litigation."

The Trump administration, surprisingly, filed a second petition for a writ of mandamus to dismiss the case altogether, or, in the alternative, to stay all discovery and trial. Last year, in a per curiam decision, Thomas wrote: "No new circumstances justify the second petition to grant mandamus relief," and that "the merits of the case can be resolved by the district court or in a future appeal." The request for a dismissal was denied, and that action was affirmed by the Supreme Court last summer.

In short, the administration cannot evade a constitutional climate change trial, which is scheduled to be underway at the time you read this. In order to prevail, the youth plaintiffs will need to show that the federal government's actions created the danger to the plaintiffs; that the federal government knew its actions caused the danger; and that the federal government, with deliberate indifference, failed to act to prevent the alleged harm.

In the course of this litigation, the following questions arise: Do the actions of President Trump in withdrawing the United States from the Paris climate agreement, and in related policy actions such as reversing Obama's regulations addressing carbon pollution from automobiles and power plants, make the plaintiffs' case stronger? Are President Trump's past statements that climate change is a "Chinese hoax" a boost to the plaintiffs? Will this case determine whether there is an enforceable human right to a clean and healthy environment for young people based upon the adverse effects of climate change? Will this case determine whether the Constitution guarantees a livable planet for young people? A jury of ordinary Oregon citizens will decide, among other things, the purpose of the public trust; the scope of the doctrine, particularly as it applies to the atmosphere; and the powers and duties of the federal government as trustee of the environment.

The climate youth plaintiffs are represented by the non-profit organization Our Children's Trust, whose "mission is to protect the Earth's atmosphere and natural systems for present and future generations."

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Sidebar

An Unlimited Expansion of the Public Trust

This case represents a contentious means of trying to address a contentious issue. Plaintiffs maintain that, by virtue of the Due Process Clause or the common law doctrine of the public trust, they have the right to prevent government activity that threatens a life-sustaining climate, and to demand government activity to maintain such a climate. The claims have somewhat tenuous roots in precedent. But their acceptance would represent a substantial step beyond case law. The result would be the creation of vast, unlimited duties for the federal government.

Consider the precedent-setting, and radical, nature of what the *Juliana* case asks of the federal judiciary. A handful of plaintiffs request that a district court judge make a climatological determination, and then use that finding to decide controversial issues of national policy and foreign relations. Although the court may try to temper plaintiffs' prayer, the nature of their claims may result in a remedy entailing judicial direction to Congress and the Executive Branch to legislate and to negotiate treaties. The threat to the separation of powers posed by such a remedy should give any reviewing court pause.

Although proponents of those claims paint them as logical outgrowths of existing doctrine, such a "domesticating" characterization is implausible. To be sure, incorporation of explicit textual protections in the Bill of Rights has progressed relatively continuously (if not rapidly) under the Due Process Clause. But federal courts have historically been reluctant to identify new unenumerated fundamental rights, like the climate right advanced in *Juliana*. And those unmentioned rights that have been recognized are alleged to be rooted in the protection of individual liberty and personal choices: the right to parent one's children, the right to marry a person of a different race or the same gender, and the right to privacy. A purported right to a life-sustaining climate does not track readily to this pattern. Instead, it takes the due process analysis one step broadly back to encompass interests that are necessary for life itself, regardless of political and social concerns.

Although a right to a life-sustaining climate might seem attractive as necessary to the exercise of all other rights, it unmoors substantive due process from the protection of the individual, and constitutionalizes almost every aspect of human survival — as for instance a governmental obligation to eradicate preventable diseases.

Jeremy Talcott

While some will argue that global warming is a unique threat, it's not difficult to imagine a lawsuit challenging the government's failure to prepare for imminent comet or asteroid bombardment, which "will cause human deaths, shorten human lifespans, result in widespread damage to property, threaten human food sources, and dramatically alter the planet's ecosystem."

The public trust argument advanced in the *Juliana* case fares no better. Historically, the doctrine in America was limited to the preservation of certain public uses of navigable waters: commerce, navigation, fishing, and bathing. The doctrine required governments to consider impacts to those uses before making public — or approving private — land-use decisions that might harm those uses.

In the early 1980s, environmental litigators successfully obtained the doctrine's expansion in many jurisdictions to cover new trust uses, such as recreation and environmental protection. The expansion of the public trust doctrine to the atmosphere — apparently what the *Juliana* plaintiffs want — would de facto establish judicial review of almost every government decision.

So far, the district court has okayed the public trust theory only because of global warming's impacts to coastal waters, tidelands, and navigable waters. But this is not much of a limitation. There are relatively few land-use activities that have purely localized impacts. Development, landscaping, grading, agriculture; all have complicated effects that can eventually impact complex environmental systems that are hydrologically connected to navigable waterways. Courts are ill-placed to make the tough policy trade-offs required to balance economic development and property rights with environmental protection.

Such questions — which are especially thorny in the context of global warming — make the efforts of the *Juliana* plaintiffs all the more worrisome. The explosion of wealth and progress over the last 150 years represents a triumph of humanity. The increase of greenhouse gases during that period was the trade-off. We now have a complex and difficult question before us: what will we trade for a world-wide reduction in carbon dioxide levels? The question is far from an easy one, and may become the defining question of the next generation. The *Juliana* lawsuit seeks to craft an answer through negotiations with a handful of plaintiffs and attorneys, and a single judge. That should frighten us all.

Jeremy Talcott is an attorney with Pacific Legal Foundation.

This Oregon-based nonprofit has brought similar climate youth litigation in state court in Colorado, Maine, Massachusetts, New Mexico, North Carolina, Washington, Florida, and Alaska.

Our Children's Trust spearheaded the climate youth litigation *Reynolds v. Florida* earlier this year. In that lawsuit, a diverse group of eight Floridians, ages 19 and younger, filed suit against the state and Governor Rick Scott for the "Defendants' deliberate indifference to the fundamental rights to a stable climate system" in violation of Florida common law and Article I, Sections 1, 2 and 9; Article II, Sections 5, 7(a), and 8; and Article X, Sections 11 and 16, of the Florida Constitution. The youths argued: "All of Florida's public trust resources, including without limitation, the atmosphere (air), submerged state sovereignty lands, lakes, rivers, beaches, water (both surface and subsurface), forests, and wild flora and fauna (individually, a "Public Trust Resource," and collectively, "Public Trust Resources"), are essential for life, liberty, pursuit of happiness, and property, including human habitation and personal and economic health, safety, and wellbeing."

Scott, who is now running for the U.S. Senate, is a noted climate denier. For example, in a 2010 interview aboard his campaign bus, when asked if he believes in climate change, he said, "I have not been convinced." When asked what he needs to convince him, he stated, "Something more convincing than what I've read." A few years later, he dodged the same question, saying only that he is "not a scientist."

In Alaska, last October some 16 plaintiffs, many of whom were minors, filed a lawsuit in state court against the state, its governor, and its agencies alleging that the defendants had violated "their inalienable and fundamental rights to life, liberty, property, equal protection, public trust resources, and a stable climate system that sustains human life and liberty." In *Sinnok v. State of Alaska*, the youth plaintiffs, represented by Our Children's Trust, argue that in implementing its "Climate and Energy Policy," which authorizes and facilitates activities producing greenhouse gas emissions and which does not implement needed climate mitigation standards, the defendants failed "to enforce Sections 1, 7, and 21 of Article I of the Alaska Constitution and Article VIII of the Alaska Constitution."

Moreover, the youth plaintiffs argue, "All of Alaska's Public Trust resources, including, without limitation, waters (surface, subsurface, and atmospheric), fish, and wildlife, air (atmospheric), the climate system, the sea and the shores of the sea, submerged and submersible lands, beaches, forests, and tundra (each individually a "Public Trust Resource," and collectively "Public Trust Resources"), and correlative public uses to such resources, including, without limitation, public access, fishing, and navigation, are essential for Youth Plaintiffs' rights to life, liberty, and property."

This lawsuit is interesting in that oil and gas have represented the lifeblood of Alaska's economy. Beginning in 1982, a family of four would have received a total dividend payment of $133,461 from oil and gas accounts. So this suit is hitting where it hurts in terms of the state's traditional economy, which the plaintiffs view as neglectful of their public trust rights.

In Alaska, 16 plaintiffs filed a lawsuit in state court alleging that the state had violated "their inalienable and fundamental rights," including "public trust resources, and a stable climate system"

These revolutionary persons' lawsuits in Florida and Alaska (and other states) mirror, in many respects, the legal arguments in the Oregon federal district court climate youth case. In the three suits, the climate youth plaintiffs argue that a government, whether federal or state, elected by and for the people has a duty to protect the public trust, which includes the atmosphere, for present and future generations. And if the executive and legislative branches of government fail to exercise that public trust duty, the judicial branch must intervene to reduce and mitigate any adverse effects.

Our Children's Trust is part of a coordinated effort "to support youth and attorneys around the world who are developing and advancing legal actions to compel science-based government action on climate change in their own countries." Our Children's Trust's U.S. and global lawsuits seek "climate justice," which is the term used for framing global warming as an ethical and political issue, rather than one that is purely environmental in nature. This is done by relating the effects of climate change to modern concepts of justice, particularly environmental justice and social justice. The fundamental principle of climate justice is that those who are least responsible for climate change suffer the gravest consequences. Citizens, therefore, around the world are suing their own governments for failing to protect them. According to a May 2017 report issued by UN Environment and Columbia University's Sabin Center for Climate Change Law, there were more than 900 such cases in 24 countries seeking climate justice, with more than 654 in the United States alone.

Climate justice litigation has shown a considerable amount of success, beginning with the precedent-setting 2015 lawsuit *Urgenda Foundation v. Kingdom of the Netherlands*, brought by 900 citizens against the government. The plaintiffs were represented by the Dutch environmental group Urgenda Foundation. The citizens won, which resulted in the court ordering the government to cut greenhouse gas emissions nationwide by at least 25 percent by the year 2020 (compared to 1990s levels). The case was upheld on appeal on October 9.

This case laid the foundation for similar lawsuits around the world, all relating to the governments' obligations to mitigate climate change and grounded in part on rights-based theories rather than through reference to environmental statutory requirements. The Hague District Court in *Urgenda* said, "The state must do more to avert the imminent danger caused by climate change, also in view of its duty of care to protect and improve the living environment." Our Children's Trust continues to improve upon this rights-based litigation strategy with its climate youth lawsuits.

The fundamental principle of climate justice is that those who are least responsible for climate change suffer the gravest consequences. Citizens, therefore, are suing their own governments for failing to protect them

The Trump administration and the administrations of several state governments should heed the warning of one of the world's most noted social justice icons. The Reverend Dr. Martin Luther King Jr. once said that it is imperative before it's too late for humanity to "join with the Earth and each other, to bring new life to the land, to restore the waters, to refresh the air, to renew the forests, to care for the plants, to protect the creatures, to celebrate the seas, to rejoice in the sunlight, to sing the song of the stars, to recall our destiny, to renew our spirts, to reinvigorate our bodies, to recreate the human community, to promote justice and peace, to love our children and love one another, to join together as many and diverse expressions of one loving mystery, for the healing of the Earth and the renewal of all life."

Consistent with the thrust of Dr. King's words, young people in Utah, for example, were recently successful in getting the state legislature and the governor to issue the "Concurrent Resolution on Environmental and Economic Stewardship." In March, Governor Gary Herbert signed H.C.R.7, the concurrent resolution, that, among other things, acknowledges the state's tradition of stewardship of the natural resources and the environment; recognizes the need for responsible stewardship to mitigate the risks of, prepare for, and address the changing climate and its effects; encourages the use and analysis of sound science to understand the causes and impacts of local and regional climates; and expresses a commitment to create and support economically viable and broadly supported solutions, including solutions in rural communities.

Still further, a tight-knit group of technologically savvy youngsters created a nationwide coalition called Zero Hour, an environmentally focused movement led by climate justice advocates. This youth movement is committed to pressuring governments to move faster on climate change policy and action. Last July — a day after the appellate court's decision in the *Juliana* case – Zero Hour members marched in Washington, D.C., Los Angeles, Seattle, and London, and met with various legislators to share their concerns about the lack of action on climate change by their governments. These kids will not stay silent on this issue. They are revolutionary persons.

In issuing a five-year strategic plan, EPA stated in 2010: "Environmental justice and children's health protection will be achieved when all Americans, regardless of age, race, economic status, or ethnicity, have access to clean water, clean air, and healthy communities." Or as Judge Aiken recognized more broadly in the suit before her in federal district court in Oregon, as described in the *American University Law Review,* "the right to a stable climate system, implicit in due process, is a constitutionally protected right, a consequence of the government's dominion over trust resources like submerged lands and oceans." Convincing a jury in her federal courtroom that that right has been abrogated by the government as trustee in ignoring greenhouse gas emissions and changing atmospheric conditions while supporting the fossil-fuel industry will be the job of the plaintiffs.

Watch the coverage of the lawsuit, which starts October 29. Outside the courtroom itself, this time the revolution is being televised, 24/7, and its precepts disseminated via Google, Facebook, and Twitter. The songwriter-poet Gil Scott-Heron would be proud of the grandchildren of the Baby Boomers who fought for the first racial justice and environmental laws. The kids support developing climate policy based on sound science, consistent with the principles of environmental justice and the federal and state constitutions. And as the 1950s chant regarding international coverage of civil rights events reminds us today, "The whole world is watching." **TEF**