



## **SUMMARY OF CONSTITUTIONAL CLIMATE CHANGE LAWSUIT AGAINST THE UNITED STATES GOVERNMENT**

On August 12, 2015, 21 young people from across the United States filed a landmark constitutional climate change lawsuit against the Federal Government, including the President and specific federal agencies, in the U.S. District Court for the District of Oregon. For over fifty years, the Federal Government has known that carbon dioxide (CO<sub>2</sub>) pollution from burning fossil fuels was causing global warming and dangerous climate change, and that continuing to burn fossil fuels would destabilize the climate system on which present and future generations of our nation depend for their wellbeing and survival. Despite this full knowledge, the Federal Government has allowed and promoted the development and use of fossil fuels, thus increasing the concentration of CO<sub>2</sub> emissions in the atmosphere to unsafe levels and creating the dangerous climate change and ocean acidification that we face today. This case will put indisputable science about climate change squarely in front of the federal judiciary. Our nation's top climate scientists say that safe levels of CO<sub>2</sub> atmospheric concentration are below 350 parts per million (ppm). Atmospheric CO<sub>2</sub> concentration is currently at about 400 ppm. The purpose of this case is to obtain a federal court order: (1) declaring that the Federal Government has violated and is continuing to violate the fundamental constitutional rights of youth and future generations to life, liberty, property, and public trust resources by causing dangerous CO<sub>2</sub> concentrations in the atmosphere and dangerous government interference with a stable climate system; and (2) ordering the Federal Government to protect these constitutional rights by significantly reducing our nation's CO<sub>2</sub> emissions through implementation of a science-based climate recovery plan.

### **Plaintiffs**

The individual Plaintiffs in the case are all youth, ages 8-19. The majority of Youth Plaintiffs are Oregonians. The other Youth Plaintiffs live in Colorado, Florida, Arizona, Washington, Hawai'i, Louisiana, Pennsylvania, New York, and Alaska. The nonprofit organization Earth Guardians is also a Plaintiff in the case, representing young citizen beneficiaries of the public trust. Future Generations are a named Plaintiff and are represented through a guardian, world-renowned climate scientist, Dr. James Hansen. The Complaint tells each Plaintiff's individual story and all of the ways they are being harmed by climate change and will be in the future if the Court does not order the Federal Government to stop the harm.

### **Federal Government Defendants**

Defendants in the case are the United States; the President; the Office of the President; the Departments of Energy, Interior, Transportation, Agriculture, Commerce, State, and Defense; and the Environmental Protection Agency. Each of these Defendants knowingly contributed to dangerous levels of CO<sub>2</sub> emissions in our country. Each Defendant also has an important role in solving our nation's climate change crisis.

### **The Facts in the Complaint**

The factual allegations in the Complaint explain how Defendants have known since at least 1965 that CO<sub>2</sub> emissions from the combustion of fossil fuels would create dangerous climate change with enormous and harmful impacts for future generations, and specifically Youth Plaintiffs' generation. In 1990 and 1991, the Federal Government prepared plans to stop climate

destabilization and reduce CO<sub>2</sub> emissions in order to stabilize the atmospheric concentration of CO<sub>2</sub> levels at 350 ppm. The 1990 and 1991 Plans proposed a rising price on carbon and many other policies, but the 1990 and 1991 Plans were never put in place. Despite the Federal Government's knowledge of the dangers of CO<sub>2</sub> emissions and the 1990 and 1991 Plans to reduce emissions, Defendants have continued to authorize and promote fossil fuel production, consumption, and emissions, which have grown, not shrunk.

The Complaint then explains how the Federal Government has authority and control over the U.S. air space (our atmosphere), fossil fuel resources, and the U.S. fossil fuel energy program. Instead of using its authority to protect our country's air and other vital natural resources, the Federal Government allowed for, and continues to allow, the extraction and combustion of massive quantities of fossil fuels, which has resulted in dangerous CO<sub>2</sub> emission levels and a destabilized climate system. The Complaint explains the various ways in which Defendants promote and authorize fossil fuel related activity that results in these destructive CO<sub>2</sub> emissions.

The facts also go into detail about the best climate science and show how, if not addressed immediately, climate change threatens Plaintiffs' life, liberty, and property, the very rights our Founding Fathers set out to protect in our Constitution. Our nation's top climate scientists say that CO<sub>2</sub> levels above 350 ppm create dangerous climate change and ocean acidification. Climate change and ocean acidification are causing extreme weather events, floods, heat waves, wildfires, droughts, sea level rise, and other significant, long-term impacts. The current policies, plans, and practices of the Federal Government will not achieve the necessary fossil fuel emission reductions within this century. Without immediate action by Defendants to reduce CO<sub>2</sub> emissions, the harm from climate change and ocean acidification will get much worse. Dr. James Hansen and his colleagues have developed a pathway that would avoid the worst impacts of climate change and stabilize our climate system for Youth Plaintiffs and future generations. The Complaint requests that the court order the Federal Government to develop a national plan to swiftly phase-down CO<sub>2</sub> emissions in line with bringing atmospheric CO<sub>2</sub> concentration to below 350 ppm. An expert declaration by Dr. James Hansen was filed as an exhibit to the Complaint.

### **Actions Challenged in the Lawsuit**

Plaintiffs challenge the following actions:

#### ***1. Defendants' Affirmative Aggregate Actions that Cause Climate Destabilization***

These aggregate actions include everything Defendants have done to create a dangerous situation with regard to carbon pollution, including allowing and promoting the exploration, extraction, development, transportation, export, import, and burning of fossil fuels. These aggregate actions include government permits and subsidies to the fossil fuel industry to engage in these practices.

#### ***2. Energy Policy Act, Jordan Cove, & LNG Exports***

The Complaint also alleges that section 201 of the Energy Policy Act is unconstitutional because it requires the Department of Energy to approve permits for export and import of natural gas to any private entity, with no public or national interest analysis whatsoever, as long as the natural gas is coming from or going to a country with which the United States has a free trade agreement.

In 2011, under the Energy Policy Act, the Department of Energy issued an order approving liquefied natural gas (“LNG”) exports from the Jordan Cove LNG Terminal in Coos Bay, Oregon, further enhancing the danger to Plaintiffs that Defendants’ actions in the aggregate have created. While the Jordan Cove facility has not yet received all its required state and federal permits, if built, it would be the single largest polluter in Oregon (after Oregon’s only coal plant is shut down in 2020). Part of the natural gas Jordan Cove would be exporting is fracked gas from Colorado.

## **Plaintiffs’ Legal Claims**

### ***1. Violation of the Due Process Clause of the Fifth Amendment***

The Fifth Amendment of the U.S. Constitution protects present and future generations from government actions that harm life, liberty, and property without due process of law. Plaintiffs’ substantive due process rights have been infringed because Defendants caused atmospheric CO<sub>2</sub> levels to rise above 350 ppm, thus dangerously interfering with a stable climate system for our country and these Plaintiffs. The present dangerous CO<sub>2</sub> levels and emissions, resulting in significant part from the affirmative aggregate acts of Defendants’ in the areas of extraction, production, transportation, and consumption of fossil fuels, endanger Youth Plaintiffs’ and Future Generations’ lives, liberties, and property. The Department of Energy’s 2011 approval of LNG exports from the Jordan Cove facility enhances the danger to Plaintiffs that Defendants’ actions in the aggregate have created and is an unconstitutional violation of Plaintiffs’ fundamental constitutional rights.

### ***2. Violation of Equal Protection Principles Embedded into the Fifth Amendment***

The affirmative aggregate acts of Defendants in the areas of fossil fuel extraction, production, consumption, and combustion irreversibly discriminate against Plaintiffs’ exercise of their fundamental rights to life, liberty and property, and abridge central precepts of equality. The affirmative aggregate acts of Defendants in the areas of extraction, production, transportation, and consumption of fossil fuels have caused and are causing irreversible climate change. As a result, the harm caused by Defendants has denied Plaintiffs the same protection of fundamental rights afforded to prior and present generations of adult citizens. The imposition of this disability on Plaintiffs serves only to disrespect and subordinate them. The Fifth Amendment’s guarantee to equal protections of the laws prohibits the Federal Government’s unjustified infringement of Plaintiffs’ right to be free from Defendants’ aggregate acts that destabilize our nation’s climate system whose protection is fundamental to Plaintiffs’ fundamental rights to life, liberty and property.

### ***3. The Unenumerated Rights Preserved for the People by the Ninth Amendment***

The Ninth Amendment of the U.S. Constitution protects rights retained by the people that are not specifically “enumerated” (or listed) in the Constitution but can be implied to exist by a court. Among our implicit liberties protected from government intrusion by the Ninth Amendment is the right to be sustained by our country’s vital natural systems, including our climate system. This claim alleges that the affirmative aggregate acts of Defendants have unconstitutionally caused, and continue to materially contribute to, dangerous levels of atmospheric and oceanic CO<sub>2</sub> and a destabilized climate system. Therefore, the affirmative aggregate acts of Defendants have infringed, and continue to infringe, on Plaintiffs’ fundamental constitutional rights.

#### **4. Violation of the Public Trust Doctrine**

Plaintiffs are beneficiaries of rights under the public trust doctrine. Rights under the public trust doctrine are secured by the Ninth Amendment and embodied in the reserved powers doctrines of the Tenth Amendment and the Vesting, Nobility, and Posterity Clauses of the Constitution. The public trust doctrine protects the rights of present and future generations to those essential natural resources that are of public concern to the citizens of our nation. These vital natural resources include at least the air (atmosphere), water, seas, the shores of the sea, and wildlife. The overarching public trust resource is our country's life-sustaining climate system, which encompasses our atmosphere, waters, oceans, and biosphere. As sovereign trustees, Defendants have a duty to refrain from "substantial impairment" of these essential natural resources. The affirmative aggregate acts of Defendants in the areas of fossil fuel extraction, production, transportation, and consumption, have unconstitutionally caused, and continue to cause, substantial impairment to the essential public trust resources. Defendants have failed in their duty of care to safeguard the interests of Plaintiffs as the present and future beneficiaries of the public trust. Such abdication of duty abrogates the ability of succeeding members of the Executive Branch and Congress to provide for the survival and welfare of our citizens and to promote the endurance of our nation.

#### **Remedy Sought**

This case presents the opportunity for a landmark decision like *Brown v. Board of Education* (on racial equality) or *Obergefell v. Hodges* (marriage equality). In *Obergefell v. Hodges*, the Supreme Court stated: "The identification and protection of fundamental rights is an enduring part of the judicial duty to interpret the Constitution."<sup>1</sup> Plaintiffs seek exactly that and are asking the court to declare the fundamental rights of children and these Plaintiffs and whether the Federal Government has an obligation to protect Plaintiffs' constitutional rights to life, liberty, and property from government actions that knowingly create dangerous climate change. The Complaint seeks an order that the Federal Government must protect those constitutional rights and prepare a national science-based climate recovery plan to significantly reduce our nation's CO<sub>2</sub> emissions. The Complaint also seeks a declaration that section 201 of the Energy Policy Act and the Department of Energy's 2011 order approving exports from the proposed Jordan Cove LNG export facility are unconstitutional.

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***Our Children's Trust*** is a nonprofit organization advocating for urgent emission reductions on behalf of youth and future generations, who have the most to lose. OCT is coordinating a federal, state, local and global human rights and environmental justice campaign to secure the legal right to a healthy atmosphere and stable climate. We use law, film, and media to elevate the compelling youth voice seeking science-based Climate Recovery Plans. [www.ourchildrenstrust.org](http://www.ourchildrenstrust.org). To learn more about this case, visit: [www.ourchildrenstrust.org/US/Federal-Lawsuit](http://www.ourchildrenstrust.org/US/Federal-Lawsuit).

***Earth Guardians*** is a Colorado-based nonprofit organization with youth chapters on five continents, and multiple groups in the United States with thousands of members working together to protect the Earth, the water, the air, and the atmosphere, creating healthy sustainable communities globally. We inspire and empower young leaders, families, schools, organizations, cities, and government officials to make positive change locally, nationally, and globally to address the critical state of the Earth. [www.earthguardians.org](http://www.earthguardians.org)

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<sup>1</sup> *Obergefell v. Hodges*, 576 U.S. \_\_\_\_\_, slip op. at 10 (2015).