

Case No. 17-71692

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA, *et al.*,

Petitioners,

v.

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF OREGON,

Respondent,

and,

KELSEY CASCADIA ROSE JULIANA, *et al.*,

Plaintiffs-Appellants

INTERLOCUTORY APPEAL

In Case No. 6:15-cv-01517-TC-AA (D. Or.)

**BRIEF OF AMICUS CURIAE CHILDREN AND YOUNG PEOPLE
IN SUPPORT OF PLAINTIFFS–APPELLANTS’ OPPOSITION TO
DEFENDANTS’ MOTION FOR
REVERSAL, REMAND, AND DISMISSAL**

Identity, Interests, and Authority of the *Amici Curiae*

Amicus curiae is Power Shift Network, which through its youth-led “Zero Hour” program, has received wide-spread support from children, youth and young adults who support this amicus brief. These thousands of young people depend upon on law and the rule of law for their lives, liberty, and opportunity for a future. Amici ask the Court to grant Plaintiffs a trial to prove and secure our right to life, liberty and property.

Summary of Argument

Children are people and citizens. Our rights are real. The U.S. Constitution, the Public Trust Doctrine, and many statutes and treaties recognize our rights. The Constitution states clearly it intends to “secure the Blessings of Liberty to ourselves and our Posterity.” We *are* the Posterity the Constitution protects. Government actions today, including its acts of authorizing greenhouse gas pollution and fossil fuel development, imperil our constitutional rights to life, liberty, and property.

These core protections of life, liberty, and property have sustained our nation and democracy since the creation of the United States of America. There is no worse time to abandon these constitutional protections than now, when government’s fossil fuel policies threaten to push our climate system over tipping points into unending catastrophe that will plague and endanger us our whole lifetimes and well beyond. We ask the Court to grant Plaintiffs the opportunity to try their case and prove the harms caused and intensified by governmental action.

I. THE CONSTITUTION SECURES AND GUARANTEES OUR RIGHTS TO LIFE AND LIBERTY

Our rights are inherent and inalienable. They are real and existed before the Constitution. The Declaration of Independence, the Bill of Rights, and the 14th Amendment did not create our rights, but rather recognize our inherent rights, and guarantee those rights. The Constitution vested the judiciary with the ultimate duty to protect our rights.

The rights guaranteed by the Constitution, the Bill of Rights and the 14th Amendment have not changed, but government recognition of our rights has evolved. The original drafters of the Constitution denied the rights and status of women, African Americans, and children. All were and are people. As we gained public recognition of our legal, political, and property rights, “society began to understand” our “equal dignity.”¹ The arc of logic and history compelled recognition of our inherent rights. The understanding of government and society has evolved. So too have threats that imperil these rights. New threats endanger us and our rights. The government’s fundamental responsibility to protect our inalienable rights must evolve to address new threats. Our rights are no less just because the threats are modern.

We, as children, are harmed by the climate crisis in violation of our constitutional rights. Defendant argues that Plaintiffs have “no constitutional right to particular climate conditions.” This argument misses the point that our right is not to “particular climate conditions,” but to restraint of from affirmative actions by the government that injure us, its youngest citizens. An essential freedom of each individual is the freedom “not to be injured by the unlawful exercise of governmental power.”² The Constitution’s promise is not defined by particular types of threats, nor limited to the dangers faced in 1789.

¹ Obergefell v. Hodges, 135 S. Ct. 2584, 2595, 192 L. Ed. 2d 609 (2015) (giving the example of one group: “As women gained legal, political and property rights, and as society began to understand that women have their own equal dignity, the law of coverture was abandoned”).

² Obergefell v. Hodges, 135 S. Ct. 2584, 2605, 192 L. Ed. 2d 609 (2015) quoting *Schuetz* in concluding that “freedom secured by the Constitution consists, in one of its essential dimensions, of the right of the individual not to be injured by the unlawful exercise of governmental power.”

The actions of the government are complex, but the text of the Constitution is clear. It guarantees our protection against government action that takes our life, liberty, or property without due process. Unless the Court acts, there is no practical recovery in sight. The District Court declared: “I have no doubt that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society.” We children have no doubt that the clear scientific recognition of the grave threats of tipping points and runaway heating mean all courts should protect “a climate system capable of sustaining human life”

II. OUR RIGHTS TO NATURAL INHERITANCE ARE HELD IN PUBLIC TRUST

As the Constitution protects us, the Public Trust Principle protects our inheritance of resources. It articulates the legal duty of the government, as the trustee of property held in common, to conserve our vital natural resources. The government holds and manages the public trust for us, the trust beneficiaries. The government is obligated to protect our right to inheritance of the natural resources upon which all life and liberty depend. “The beneficiaries of the public trust are not just present generations but those to come.”³ The public trust ensures that one generation will not destroy the natural resources needed for the next. The trust is ancient and is the inherent duty of governments around the world. In promoting fossil fuel production while knowing the harm to us of destroying our atmosphere, waters, forests, wildlife, and shorelines, the U.S. government betrays the legal duty it owes us as beneficiaries and bankrupts our trust. Failure to enforce our legal rights under the trust means our generation would “stand to inherit nothing but parched earth incapable of sustaining life.”⁴

³ Ariz. Ctr. for Law in the Pub. Interest v. Hassell, 837 P.2d 158, 169 (Ariz. Ct. App. 1991).

⁴ Oposa v. Factoran, G.R. No. 101083 (S.C. July 30, 1993) (Phil.), *reprinted in* LAITOS, ZELLMER, WOOD & COLE, *supra* note at 443–44.

III. THE CONSTITUTION IMPOSES THE DUTY TO PROTECT US ON THREE BRANCHES OF GOVERNMENT AND VESTS THE POWER TO DETERMINE THE LAW IN THE COURTS

As children and young people, our future is imperiled by the “direct existential threat”⁵ that no other human generation on Earth has faced. The Supreme Court of the United States Court has recognized the serious dangers of climate change.⁶ Despite this reality, Plaintiffs’ trial has been delayed.

All branches share the duty to protect our rights, but the judiciary is the ultimate interpreter and the ultimate protector of our rights.⁷ Thus, “the Constitution requires redress by the courts,” when the rights of persons are violated “notwithstanding the more general value of democratic decision making.”⁸ The “unlawful exercise of governmental power”⁹ can only be checked by the courts.¹⁰ Our constitutional rights are meaningless without judicial enforcement.

A trial is necessary for the court to fulfill its duty of interpreting the law and assessing the proof. Defendant contends courts have no role in this case. If the executive branch has the power to prevent the court from interpreting the law, that branch would “govern without

⁵ UN Chief: World Must Prevent Runaway Climate Change by 2020, AP (Sept. 18, 2018) (quoting UN Secretary-General Antonio Guterres) <https://www.apnews.com/71ab1abf44c14605bf2dda29d6b5ebcc>.

⁶ *Massachusetts v. E.P.A.*, 549 U.S. 497, 499, 127 S. Ct. 1438, 1442, 167 L. Ed. 2d 248 (2007) (stating that by the “Government’s own objective assessment harms associated with climate change are serious and well documented”).

⁷ *Marbury v. Madison*, 5 US 137, 177 (1803) (declaring “It is emphatically the province and duty of the judicial department to say what the law is.”).

⁸ *Obergefell v. Hodges*, 135 S. Ct. 2584, 2605, 192 L. Ed. 2d 609 (2015).

⁹ *Id.*, citing 134 S.Ct., at 1636.

¹⁰ *Id.*

legal constraint,”¹¹ trumping the judiciary’s role and destroying the separation of powers upon which our ordered liberty depends. To fulfill its duty, this Court must allow a trial in this case.

Conclusion

We, the children, grateful for the sustaining power of nature, the Constitution’s guarantee of freedoms, and the judiciary’s duty to interpret the law, ask the Court to grant the Plaintiffs a trial to determine and enforce our rights. By this grant of a trial, the Court will fulfill its duty to protect citizens against government infringement and ensure the blessings of the Constitution for Posterity.

Respectfully submitted,

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¹¹ *Boumediene v. Bush*, 553 U.S. 723, 843, 128 S. Ct. 2229, 2303, 171 L. Ed. 2d 41 (2008) (announcing the supreme authority of the judiciary to interpret the law and warning against limits on the judiciary that make it possible “for the political branches to govern without legal constraint.”)