

Trial of the Century Pits Trump Climate Denialism Against 'Right to a Climate System Capable of Sustaining Human Life'

byJeremy Brecher

Two days after the election of Donald Trump, 21 plaintiffs aged 9-20 won a court ruling that may be just as important as that election in determining our future. As the world hurtles into climate catastrophe, the decision by Judge Ann Aiken in the federal district court in Oregon sets the stage for a momentous trial of our right to a stable climate – and the constitutional obligation of the United States government to protect that right.

Now President Donald Trump has been named lead defendant in the suit. Trump has not only denied the reality of climate change, he has also defied the authority of the courts to enforce other rights of persons – witness his claim in court that his travel ban on seven majority-Muslim countries is “unreviewable.” The “climate kids” case *Juliana v. United States* is shaping up to be not only a historic trial of the culpability of the U.S. government for destruction of the earth’s climate, but of the power of courts to protect our rights.

“No ordinary lawsuit”

As Judge Aiken emphasized, “This is no ordinary lawsuit.” The youth’s suit, supported by the nonprofit [Our Children’s Trust](#), challenges decisions “across a vast set of topics” -- decisions like “whether and to what extent to regulate CO2 emissions from power plants and vehicles, whether to permit fossil fuel extraction and development to take place on federal lands, how much to charge for use of those lands, whether to give tax breaks to the fossil fuel industry, whether to subsidize or directly fund that industry, whether to fund the construction of fossil fuel infrastructure such as natural gas pipelines at home and abroad, whether to authorize new marine coal terminal projects.”

The climate kids assert that government decisions on these topics over many decades “substantially caused the planet to warm and the oceans to rise.” They draw a “direct causal line” between the government’s policy choices and “floods, food shortages, destruction of property, species extinction, and a host of other harms.”

Judge Aiken noted the personal harms the kids say they face because of climate change. One said the algae blooms harm the water she drinks, and low water levels caused by drought kill the wild salmon she eats. Another says increased wildfires and extreme flooding jeopardize his personal safety. Jayden F., a thirteen-year-old resident of Rayne, Louisiana says that at five o'clock the morning of August 13, 2016, she stepped out of bed into ankle-deep water.

Floodwaters were pouring into our home through every possible opening. We tried to stop it with towels, blankets, and boards. The water was flowing down the hallway, into my Mom's room and my sisters' room. The water drenched my living room and began to

cover our kitchen floor. Our toilets, sinks, and bathtubs began to overflow with awful smelling sewage because our town's sewer system also flooded. Soon the sewage was everywhere. We had a stream of sewage and water running through our house.

Jayden says the storm that destroyed her home "ordinarily would happen once every 1,000 years, but is happening now as a result of climate change."

The Fifth Amendment to the United States constitution bars the federal government from depriving a person of "life, liberty, or property" without "due process of law." The climate kids say that the aggregate actions of the federal government that have permitted, perpetuated, and subsidized our nation's exploitation of fossil fuels does just that – and that the policies of the federal government violate their rights.

The lawsuit alleges that the government has violated their rights by "directly causing atmospheric CO2 to rise to levels that dangerously interfere with a stable climate system." The government knowingly endangered their "health and welfare" by "approving and promoting fossil fuel development," including "exploration, extraction, production, transportation, importation, exportation, and combustion." And after "knowingly creating this dangerous situation" it continued to "knowingly enhance that danger" by "allowing fossil fuel production, consumption, and combustion at dangerous levels." These government decisions have caused the planet to warm and the oceans to rise.

The climate kids say these policies not only violate their individual constitutional rights, but also the duty of the government to preserve the core natural resources like air and water necessary to provide for the well-being and survival of our citizens – our common property that is legally protected as part of the "public trust." Their suit says that the government has violated its duty as trustee of the public trust by allowing the depletion and destruction of the atmosphere – an essential natural resource for the survival of present and future generations.

In January 2016, the National Association of Manufacturers, the American Fuel & Petrochemical Manufacturers, and the American Petroleum Institute, representing almost the entire fossil fuel industry, intervened in the case on the government's side and joined the government as defendants.

"The right to a climate system capable of sustaining human life"

Government lawyers acknowledged in court that climate change poses "a monumental threat to Americans' health and welfare" by "driving long-lasting changes in our climate," leading to an array of "severe negative effects, which will worsen over time." They then argued that the climate kids don't have legal standing to bring such a suit; climate change is a "political question" that should be left to other branches of government; and that courts don't have the power to halt climate change.

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Judge Aiken's decision cuts through this smokescreen to focus on the essential point. "I have no doubt that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society." A stable climate system is quite literally the

foundation of society, "without which there would be neither civilization nor progress."

The judge framed the fundamental right at issue as "the right to a climate system capable of sustaining human life." If "governmental action is affirmatively and substantially damaging the climate system in a way that will cause human deaths, shorten human lifespans, result in widespread damage to property, threaten human food sources, and dramatically alter the planet's ecosystem," then the youth have a claim for protection of their life and liberty under the fifth amendment. "To hold otherwise would be to say that the Constitution affords no protection against a government's knowing decision to poison the air its citizens breathe or the water its citizens drink."

Judge Aiken also refused to halt the climate kids' public trust argument. She quoted a judicial opinion that the right of future generations to a "balanced and healthful ecology" is so basic that it "need not even be written in the Constitution" for it is "assumed to exist from the inception of humankind."

The government confesses

In the last days of the Obama administration, the Justice Department filed the government's *Answer* to the climate kids' case. The government admitted that for over fifty years "officials and persons employed by the federal government have been aware of a growing body of scientific research concerning the effects of fossil fuel emissions on atmospheric concentrations of CO₂—including that increased concentrations of atmospheric CO₂ could cause measurable long-lasting changes to the global climate, resulting in an array of severe deleterious effects to human beings, which will worsen over time."

The Justice Department further admitted that the Federal Defendants "permit, authorize, and subsidize fossil fuel extraction, development, consumption, and exportation." It said that "fossil fuel extraction, development, and consumption produce CO₂ emissions and that past emissions of CO₂ from such activities have increased the atmospheric concentration of CO₂." And it admits that "current and projected concentrations of six well-mixed greenhouse gases in the atmosphere, including CO₂, threaten the public health and welfare of current and future generations."

Judge Aiken's decision said that the climate kids have a claim for protection of their life and liberty under the Fifth Amendment if "governmental action is affirmatively and substantially damaging the climate system in a way that will cause human deaths, shorten human lifespans, result in widespread damage to property, threaten human food sources, and dramatically alter the planet's ecosystem." Isn't that just what the government admitted?

Beyond the courtroom

Defense of the federal government in *Juliana v. United States* has now passed to the Trump administration's Department of Justice. At a February 7 case management conference, Federal Magistrate Judge Thomas Coffin ordered the parties to move forward on preparations for the trial. Defense lawyers, seeking to slow things down, said it would take a long time to gather all the necessary evidence, experts, and witnesses in the case. Counsel for federal government also stated the government is considering an

interlocutory appeal of Judge Aiken's ruling.

According to Michael Burger at Columbia University, Trump's lawyers have a window to withdraw the Obama Justice Department's admissions. Alternatively, the fossil fuel attorneys could contest the facts of climate change even if the Justice Department does not. Withdrawing those admissions, however, would turn the case into a dramatic debate on the science of climate change – with the full scientific evidence accumulated by the government over the past half-century there to refute Trump's denialism. Whatever happens in the courtroom, the case will almost certainly be appealed all the way to the Supreme Court. Given the intent of the government to stall, the case could be in the courts for years to come – as irreversible climate damage goes on.

Juliana v. United States has implications in many arenas beyond the courtroom.

Long before the trial, the case will provide a golden "teachable moment" for a full-scale educational campaign and debate on Trump's commitment to climate destruction. Judge Aiken's decision and the government's admissions can be blazoned in events like the upcoming April 29 People's Climate March and in teach-ins, demonstrations at fossil fuel infrastructure sites, and actions at climate-vulnerable locations from now until the last ruling on the last appeal. Like the Scopes "trial of the century" in which the deniers of evolution made a mockery of themselves, this case provides an opportunity for the deniers of climate science to do the same.

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Climate protection advocates do not need to wait for the legal process to play out in order to argue that the Aiken decision, combined with the Justice Department's admission of the climate change facts, establishes that the people have a right, grounded in the U.S. Constitution, to force the government to protect the climate. If the courts won't enforce that right, it is up to the people to do so.

The climate kids are well aware of the connection between their case and Trump's claims that as president he is above the law. Jacob Lebel, one of the plaintiffs, said he was inspired by the recent rulings that put a hold on President Trump's travel ban on seven Muslim-majority countries, as it showed the judicial branch stepping up to put a check on the executive branch of government. Like the right to due process of law, the "right to a climate system capable of sustaining human life" goes to the heart of whether the United States will be a government bound by law, or whether the executive authority can impose its will regardless of court decisions – a position so clearly articulated in the Trump administration's claim that its travel ban is "unreviewable" by the courts. If the Trump administration appeals Judge Aiken's ruling on similar grounds, the struggle to protect the climate will also become a struggle to preserve democracy and the rule of law. The right to a stable climate will take its place along with the right to free speech and due process of law as fundamental constitutional rights Trump is now threatening.

Juliana v. United States is going to trial in the midst of the greatest movement of civil resistance in American history. The struggle to protect the earth's climate is a critical part of what some are calling "[Social Self-Defense](#)." This case provides an opportunity to put climate protection front and center in Social Self-Defense. The "right to a climate system capable of sustaining human life" can be emblazoned on its banner along with

the rights of immigrants, women, LGBT people, people of color, workers, women, children, the elderly, the disabled, and all the others Social Self-Defense is defending.

The climate kids asked the court to declare that their constitutional and public trust rights have been violated and to order the government to develop a science-based National Climate Recovery Plan to reduce emissions to a climate-safe level. The case will no doubt be fought out for years all the way to the Supreme Court. But the advocates of climate protection need not wait to champion the basic principles enshrined in Judge Aiken's decision. We can and must support the efforts of the climate kids both in court and in every arena where decisions affecting the future of our climate are made.