Case No. 18-36082

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KELSEY CASCADIA ROSE JULIANA, et al.,
Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA, et al,
Defendants-Appellants.

On Appeal from the United States District Court for the District of Oregon
(No. 6:15-cv-01517-AA)

BRIEF OF *AMICI CURIAE* ECO-JUSTICE MINISTRIES, ET AL., IN SUPPORT OF PLAINTIFFS-APPELLEES' BRIEF

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *Amici Curiae* Eco-Justice Ministries, Interfaith Moral Action on Climate, General Synod of the United Church of Christ, Temple Beth Israel of Eugene, Oregon, National Advocacy Center of the Sisters of the Good Shepard, Leadership Council of the Sisters Servants of the Immaculate Heart of Mary of Monroe, Michigan, Sisters of Mercy of the Americas' Institute Leadership Team, GreenFaith, Leadership Team of the Sisters of Providence of Saint-Mary-of-the-Woods Indiana, Leadership Conference of Women Religious, Climate Change Task Force of the Sisters of Providence of Saint-Mary-of-the-Woods, Quaker Earthcare Witness, Colorado Interfaith Power and Light, and the Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces state that they do not have parent corporations and that no publicly held company owns 10% or more of their stock

***AMICI CURIAE* BRIEF IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS**

I. IDENTITY AND INTERESTS OF *AMICI CURIAE*[1]

Eco-Justice Ministries is an ecumenical organization which helps churches "develop programs that are faithful, relevant and effective in working toward ecological sustainability and social justice." A principle of theological ethics that is constantly stressed in that work is that future generations have a right to a livable world.

Interfaith Moral Action on Climate works to bring together communities of faith to awaken our nation's leaders to their moral obligation of taking urgent action to address the climate crisis. Partnering with more than 100 endorsing individuals and organizations representing a broad range of faith and religious perspectives, IMAC initiates and supports efforts to raise awareness of the climate crisis and bring about effective, just and immediate actions to address it. Through this amicus brief, IMAC reasserts its call to our elected officials to honor their sacred pledge to "protect the general welfare of the American people" which climate change puts at great risk.

The General Synod of the United Church of Christ is the representative body of a Christian denomination with approximately 5,000 churches and 850,000 members

[1] The United States and Youth Plaintiffs consent to the filing of this amicus brief. No counsel for any party authored this brief in whole or in part, no such counsel or party made a monetary contribution to fund the preparation or submission of this brief, and no one other than the *amici curiae* and their counsel made any monetary contribution.

across the United States. Over the past 60 years, the General Synod has repeatedly affirmed its commitment to the conservation and development of the Earth's bounty for the benefit of all people, now and in the future, focusing on the disproportionate impact of environmental injustices upon the disenfranchised, and the dangers of climate change. A 2007 resolution on climate change, for example, noted the disproportionate impact of climate change on "children and those least responsible for the emissions of greenhouse gases" and urged the U.S. Government to respond to global warming with great urgency and firm leadership. Most recently, a 2017 resolution urged the denomination to "proclaim truth in the public square" with regard to climate change. This lawsuit represents the ethical mandates that the United Church of Christ has long held and continues to champion as a leading priority of the denomination.

The Temple Beth Israel of Eugene, Oregon Temple Beth Israel of Eugene, Oregon ("TBI") is the largest synagogue in Eugene. We are a center for Jewish life embracing traditional wisdom with contemporary insight, including contemporary ways to fulfill our holy responsibility to engage in Tikkun Olam, or repair of the world. As part of that effort, TBI and its members are committed to environmental justice and limiting the effects of climate change for current and future generations. TBI is a member of the Jewish Reconstructionist Movement and the Community of Welcoming Congregations.

The National Advocacy Center of the Sisters of the Good Shepherd educates and advocates on social justice issues. The Center reflects the spirituality, history and mission of the Sisters of the Good Shepherd, working in solidarity with the disenfranchised - particularly families, women, and children. We have a special interest in protecting the environment since environmental degradation is particularly harmful to people living in poverty. Since 1835, the Sisters of the Good Shepherd, an international congregation of Apostolic and Contemplative Sisters, have established social service ministries. Currently, Good Shepherd Sisters have a presence in over 70 countries. They also further the social justice and peace movement through the United Nations, where they have special consultative status on the Economic and Social Council.

Leadership Council of the Sisters Servants of the Immaculate Heart of Mary are a Catholic community of more than 270 vowed sisters and 122 associates. Urged by the love of God to respond to the most serious needs of our time, the IHM Sisters pursue justice, peace and sustainable ways of life. This includes addressing the urgent problem of global climate change.

The Sisters of Mercy of the Americas' Institute Leadership Team represents about 2,800 vowed religious women with a commitment to persons who are poor, especially women and children. Advocating for carbon-emission reduction measures is an important step toward realizing sustainability of life.

GreenFaith is an interfaith environmental organization whose mission is to inspire, equip and mobilize people of diverse religious and spiritual backgrounds around the world for environmental action. We provide training on climate and environmental issues for religious leaders and congregations, organize climate campaigns and mobilizations, and organize local congregations for environmental action.

The Leadership Team of the Sisters of Providence of Saint Mary-of-the-Woods Indiana is the elected leadership of a Roman Catholic apostolic religious community of women founded in 1840 by Saint Mother Theodore Guerin. The Sisters of Providence serve in the United States and Asia in diverse ministries. We have a long history of environmental education and action towards respecting creation as a living gift of God.

The Leadership Conference of Women Religious represents leaders of more than 38,800 women religious across the United States who care deeply about the welfare of future generations and fully appreciate the responsibility to care for creation.

The Climate Change Task Force of the Sisters of Providence of Saint Mary-of-the-Woods was commissioned by the Congregation's Justice Coordinating Commission to develop strategies for engaging members, and the broader community, in becoming aware of the issues involved in climate change. The focus of the group is

advancing climate justice. Activities involve educational and political efforts. A major accomplishment since our September 2017 beginning is widespread participation in the Providence Agreement, which states, "Mindful of the effects of climate injustice on the cosmos, Earth, and all creatures of Earth, particularly the most vulnerable, we commit to work against climate injustice. We pledge that by June 2019, we will have collectively reduced the carbon dioxide (CO2) emissions by 2 million pounds (in personal activities and in local or broader communities). We pledge, in addition, to advocate for strong environmental policy". Our efforts to broaden and deepen participation are ongoing.

Quaker Earthcare Witness is the largest network within the Religious Society of Friends (Quakers) working on Earthcare today. We work to inspire spirit-led action toward ecological sustainability and environmental justice. We provide inspiration and resources to Friends (Quakers) throughout North America. We are dedicated to a spiritual transformation with regard to our connection with the natural world. Out of this has come an urgency to work on climate and related issues.

Interfaith Power and Light draws from multiple faith traditions, convinced of the dignity of life and the urgency of the climate crisis. IPL is present in 40 states and supports getting on a path to achieve the Paris goals.

The Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces represents Sisters who, with their Mission Partners, address the needs of

thousands of low-income people in 28 states of the United States and overseas each year. Dedicated to serving girls, women, and families who experience poverty, exploitation, vulnerability, and marginalization, and also the impact of environmental degradation which impacts these causes. The Congregation and their lay partners minister to immigrants and victims of human trafficking here and abroad as well as persons in situations of domestic violence. Communication is key to our networking within the U.S. and in the other 71 countries where the Congregation is located in order to positively meet the challenges our program participants face.

II. SUMMARY OF ARGUMENT

Amici Curiae believe this Court should rule in favor of the Plaintiffs-Appellees' ("Youth Plaintiffs'") interlocutory appeal of the orders from the District Court. The most important and underlying role of government is protecting present and future generations. The foundational public trust cases hold that government cannot substantially impair or alienate resources crucial to the public welfare. The Nation's public trust over these resources is an attribute of sovereignty that Defendants cannot shed. In conjunction with the constitutional reserved powers doctrine, the public trust prevents any one legislature from depriving a future legislature of the natural resources[2] necessary for the well-being and survival of its

[2] The use of the term "natural resources" does not imply that these aspects of Creation are to be valued only in terms of their benefits to humankind. *Laudato Si'*, ¶ 33.

citizens. Not only is the Public Trust Doctrine firmly grounded in legal precedent, it also reflects the shared reasoning underlying the moral values and religious teachings of many faiths.

The Public Trust Doctrine imposes sovereign duties on the federal government to protect the atmosphere necessary for human survival. Allowing excessive carbon dioxide emissions to imperil the climate system jeopardizes the fundamental rights of the Youth Plaintiffs in this case and future generations. If fossil fuel emissions are not rapidly abated, then Youth Plaintiffs and future generations will confront an inhospitable future.[3] The Court should rule in favor of the Youth Plaintiffs' in this interlocutory appeal from the District Court.

III. ARGUMENT

A. Introduction.

In the papal encyclical, *Laudato Si'*, Pope Francis issued a clarion call for "the establishment of a legal framework which can set clear boundaries and ensure the protection of ecosystems."[4] The ancient yet enduring Public Trust Doctrine offers just such a legal framework. Under the Public Trust Doctrine, citizens stand as beneficiaries, holding clear public property interests in these essential natural

[3] Dkt. No. 7-1 at ¶ 74, *Juliana, et al., v. United States, et al*., No. 6:15-cv-01517-TC-AA (D. Or.).
[4] *Laudato Si'*, ¶ 53.

resources. The public trust demarcates a society of "citizens rather than serfs."[5] All faiths represented in this brief, and many others, recognize and support upholding the federal governments' public trust obligation.

B. The Public Trust Doctrine Imposes Sovereign Duties on Defendants to Protect the Atmosphere Necessary for Human Survival.

The term "public trust" broadly refers to a fundamental understanding that no legislature can legitimately abdicate its core sovereign powers. In *Stone v. Mississippi*, the Supreme Court held:

> No legislature can bargain away the public health or the public morals . . . . The supervision of both these subjects of governmental power is continuing in its nature . . . . [T]he power of governing is a trust committed by the people to the government, no part of which can be granted away.[6]

This broad trust principle is commonly referred to as the "reserved powers doctrine."

However, as used in this brief, the terms "public trust" and "Public Trust Doctrine" refer to the application of the reserved powers doctrine to sovereign natural resources critical to the public welfare. The reserved powers doctrine and the Public Trust Doctrine prohibit complete privatization of sovereign resources

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[5] Joseph L. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 Mich. L. Rev. 471, 484 (1970).
[6] 101 U.S. 814, 819-20 (1879). *See also Butchers' Union v. Crescent City*, 111 U.S. 746, 766 (1884) (Justice Field, concurring).

because privatization would constitute an impermissible transfer of governmental power into private hands, wrongfully limiting the powers of later legislatures and the rights of the public to safeguard crucial societal interests.

The landmark case is *Illinois Central R.R. Co. v. Illinois,*[7] where the Supreme Court applied the constitutional reserved powers doctrine to crucial natural resources, holding that submerged lands were held in trust and could not be fully privatized. At issue was control of Chicago's Harbor, which the Illinois legislature had privatized. In an explanation that extends beyond submerged lands, the Court explained the rationale of the Public Trust Doctrine:

> The state can no more abdicate its trust over property in which the whole people are interested, *like* navigable waters and soils under them, so as to leave them entirely under the use and control of private parties . . . than it can abdicate its police powers in the administration of government and the preservation of the peace . . . . Any grant of the kind is necessarily revocable, and the exercise of the trust by which the property was held by the state can be resumed at any time . . . . The trust with which they are held, therefore, is *governmental*, and cannot be alienated . . . [.][8]

Illinois Central made clear that alienating or destroying essential resources would amount to relinquishing sovereign powers in violation of the Constitution's reserved powers doctrine.[9]

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[7] 146 U.S. 387 (1892).
[8] *Id*. at 453-55 (emphasis added).
[9] *See* Michael C. Blumm & Mary Christina Wood, *The Public Trust Doctrine in*

Subsequent decisions have applied the Public Trust Doctrine to other crucial resources. For instance, wild game is recognized as a trust resource in virtually all states.[10] In *Geer v. Connecticut*, the Court stated, "[T]he ownership of the sovereign authority [over wild game] is in trust for all the people of the state, and hence by implication it is the duty of the legislature to enact such laws as will best preserve the subject of the trust and secure its beneficial use in the future to the people of the state."[11] Additionally, the Court recognized a parallel federal interest associated with migratory birds in *Missouri v. Holland*.[12]

Similarly, the ocean and coastline present federal public trust interests. In his dissent in *Alabama v. Texas,* Justice Douglas explained the federal trust in the nation's coastline in words that equally well describe the trust over the nation's atmosphere:

> [W]e are dealing here with incidents of national sovereignty. The marginal sea is . . . more than a mass of water; it is a protective belt for the entire Nation over which the United States must exercise exclusive and paramount authority. The authority over it can no more be

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Environmental and Natural Resources Law 72, 234 (2013); Mary Christina Wood, *Nature's Trust: Environmental Law for a New Ecological Age* at 131, Cambridge University Press (2013); *see also* Karl S. Coplan, *Public Trust Limits on Greenhouse Gas Trading Schemes: A Sustainable Middle Ground?* 35 Colum. J. Envt'l L. 287, 311 (2010).

[10] *See* Michael C. Blumm & Aurora Paulsen, *The Public Trust in Wildlife*, 2013 Utah L. Rev. 1437, 1439-40 (2013).

[11] *Geer v. Connecticut*, 161 U.S. 519, 533-34 (1896).

[12] *Missouri v. Holland,* 252 U.S. 416, 435 (1920).

> abdicated than any of the other great powers of the Federal Government.[13]

The federal trust protects national interests in resources that transcend state borders. To entrust the management and preservation of such resources solely to the states would invite ineffective, piecemeal management on the part of the various state legislatures and judiciaries.[14]

The same reasoning applies to the atmosphere. In *United States v. Causby*, the Court held that the traditional common law doctrine recognizing private rights to airspace had "no place in the modern world": "To recognize such private claims to the airspace would transfer into private ownership that to which only the public has a just claim."[15] Like the trust arising as to navigable waters and migratory wildlife, the atmospheric trust is inherently federal, as it requires management at the national level and, as was the case in *Missouri v. Holland*, cooperation with other nations. Indeed, the national interest in atmospheric resources is obvious by the federal government's own ratification of the United Nations Framework Convention on Climate Change in 1992, which declared a universal trust responsibility among the nations on Earth to "protect the climate system for the benefit of present and future generations of humankind."[16]

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[13] *Alabama v. Texas,* 347 U.S. 272, 282 (1954) (Douglas J., dissenting).
[14] *See Missouri,* 252 U.S. at 435.
[15] *United States v. Causby*, 328 U.S. 256, 261 (1946).
[16] United Nations Framework Convention on Climate Change, S. Treaty Doc. No.

C. The Role of the Courts in Preserving the Public Trust.

The essence of the trust responsibility is the sovereign fiduciary duty to protect the public's crucial assets from irrevocable damage.[17] Under well-established core principles of trust law, trustees have a basic duty not to sit idle and allow damage to the trust property.[18] These fiduciary duties impose a higher standard of care than the permissive nature of administrative discretion under statutory law. Judicial enforcement of fiduciary obligations becomes necessary when the political branches abdicate their responsibility to protect the *res* of the trust.[19] Youth Plaintiffs are calling on the federal courts to ensure that the political branches fulfill their trust obligation to avoid destruction or irreparable harm to an asset that must be sustained for generations of citizens to come.

D. The Moral Foundations of the Public Trust Doctrine.

Courts in the United States have traced the origins of the public trust back through the English legal system to Roman law and natural law, identifying it as one of the pillars of ordered civilization.[20] Not surprisingly, the public trust is also a

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102-38. Art. 3, p. 1 (1992).
[17] *Geer*, 161 U.S. at 534.
[18] *See* George G. Bogert, et al., Bogert Trusts and Trustees, § 582 (2011); *see also City of Milwaukee v. State*, 214 N.W. 820, 830 (Wis. 1927).
[19] *See Ariz. Ctr. for Law in Pub. Interest v. Hassell*, 837 P.2d 158, 169 (Az. Ct. App. 1991), petition dismissed 1992 Ariz. LEXIS 82 (Ariz. 1992).
[20] *Geer*, 161 U.S. at 526; *Illinois Central,* 146 U.S. at 456 (*citing Arnold v. Mundy*, 6 N.J.L. 1, 78 (N.J. 1821)); *United States v. 1.58 Acres of Land*, 523 F. Supp. 120, 122-23 (D. Mass. 1981).

central principle in legal systems of countries throughout the world. Professor Michael Blumm concludes that the doctrine is "close to becoming considered customary law" of an international scale.[21] This enduring nature and universality of the Public Trust Doctrine is based on multiple moral understandings including: (1) an ethic toward future generations; (2) an affirmation of public rights to natural assets; and (3) a condemnation of waste. These values are deeply rooted in this nation's history and tradition and are mirrored in the religious teachings of many faiths, including Christian, Jewish, Catholic, Islamic, Hindu, and Buddhist.[22]

1. The Religious Underpinnings of the Public Trust Doctrine.

The Public Trust Doctrine, as evidenced above, has elements found in many religious organizations today, including Baha'i, Buddhism, many Christianity

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[21] Michael C. Blumm & Rachel D. Guthrie, *Internationalization of the Public Trust Doctrine: Natural Law and Constitutional and Statutory Approaches to Fulfilling the Saxion Vision,* 45 U.C. Davis L. Rev. 741 (2012). *See also* Mary Turnipseed, et al., *Reinvigorating the Public Trust Doctrine: Expert Opinion on the Potential of a Public Trust Mandate in U.S. and International Environmental Law*, Environment Magazine, Vol. 52, No. 5 at 12 (2010); David Takacs, *The Public Trust Doctrine, Environmental Human Rights and the Future of Private Property*, 16 N.Y.U. Envtl. L. J. 711, 746 (2008).

[22] *See*, *e.g.*, *Islamic Declaration on Global Climate Change*, International Islamic Climate Change Symposium, August 2015, *available at* http://islamicclimatedeclaration.org/islamic- declaration-on-global-climate-change; *Hindu Declaration on Climate Change*, November 23, 2015, *available at* http://www.hinduclimatedeclaration2015.org; *see also*, Mary Christina Wood, *Nature's Trust: Environmental Law for a New Ecological Age* at 279-280 (citing multiple faiths as recognizing public trust obligations to present and future generations).

sects, Hinduism, Interfaith groups, Judaism, Islam, Sikh, Unitarian Universalists, and others, for these religions have a desire to protect and maintain the environment against the negative effects of climate change.[23]

Perhaps the oldest extant affirmation of the importance of taking to heart the young and future generations in protecting the Earth and preventing its destruction is the very last passage of the last of the ancient Hebrew Prophets (Malachai 3:20-21):

> Here! Before the coming of the great and awesome day of YHWH / The Eternal Breath of Life, I will send you the Prophet Elijah to turn the hearts of parents to children and the hearts of children to parents, lest I come and smite the earth with utter destruction.

The first book of the Torah, Genesis, proclaims a similar message to those on Earth, that humans have a responsibility to protect the environment so humans can thrive (Genesis 2:15): "Then the LORD God took the man and put him into the garden of Eden to cultivate it and keep it." In our own generation, Jewish wisdom and leaders have underscored this truth:

> In Leviticus 26, the Torah warns us that if we refuse to let the Earth rest, it will "rest" anyway, despite us and upon us – through drought and famine and exile that turn an entire people into refugees. Human behavior that overworks the Earth – especially the over-burning of fossil fuels -- crests in a systemic planetary response that

[23] *Religious Statements on Climate Change*, Interfaith Power & Light, https://www.interfaithpowerandlight.org/religious-statements-on-climate-change/ (last visited on February 24, 2019).

> endangers human communities and many other life-forms as well.[24]

Roman Catholicism's religious teachings reflect similar principles as the Public Trust Doctrine. In 2001, the United States Bishops expressed that the issue of climate change is "about the future of God's creation and the one human family." [25]Additionally, Catholic teachings enjoin all to care for the garden He created, and the natural world "serves as a source of inspiration for our faith and our love for the Creator." *Id.*

In 2017, the Catholic Pontifical Academy of Sciences release a declaration on the dangers of climate change and the responsibilities of Catholics to participate in the actions to mitigate the impending and ongoing damages caused by climate change.[26] In addition, the Pontifical Academy of Sciences directed its focus on the exacerbated damages the poor and destitute feel due to the actions of the rich. *Id.* The solutions proposed, among other things, included education of the young to

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[24] "To the Jewish People, to all Communities of Spirit, and to the World: A Rabbinic Letter on the Climate Crisis," signed by 425 Rabbis of all streams of Judaism, originally published May 2015, *available at* https://theshalomcenter.org/RabbinicLetterClimate.

[25] *Why Does the Church Care About Global Climate Change*, United States Conference of Catholic Bishops, http://www.usccb.org/issues-and-action/human-life-and-dignity/environment/why-does-the-church-care-about-global-climate-change.cfm (last visited on February 24, 2019).

[26] *Declaration of the Health of People, Health of Planet and Our Responsibility Climate Change, Air Pollution, and Health Workshop*, The Pontifical Academy of Sciences, http://www.pas.va/content/accademia/en/events/2017/health/declaration.html (last visited on February 24, 2019).

become sustainability leaders, to undertake actions to protect public health, and to restore degraded lands to protect biodiversity. *Id.*

Buddhist environmentalism also involves principles of trusteeship. Justice Weeramantry recounts a story of a monk's sermon to a king: although the king was King of the country, he was not the owner but the trustee of the land on which he was hunting. His Holiness the Dalai Lama also presents religious instruction infused with obligations to future generations, the hallmark of a trust.[27]

2. The Covenant between Generations.

Scores of public trust cases declare that future generations are legal beneficiaries with entitlement to the *res* of the public trust.[28] The Framers recognized each generation's fundamental obligation to *preserve* the value and integrity of natural resources for later generations. The most succinct, systematic treatment of intergenerational principles is provided by Thomas Jefferson to James Madison:

> The question [w]hether one generation of men has a right to bind another . . . is a question of such consequence as not only to merit decision, but place among the fundamental principles of every government . . . . I set

[27] Mary Christina Wood, *supra,* n.23 (citing C.G. Weeramantry, *Buddhist Contribution to Environmental Protection*, Asian Tribune (June 20, 2007); Dalai Lama, *An Ethical Approach to Environmental Protection* (June 5, 1986), *available at* http://www.dalailama.com/messages/environment/an-ethical-approach).
[28] *See, e.g.*, *Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities Siting Board*, 457 Mass. 663, 702 (Mass. S. Ct. 2010) (Marshall C.J., concurring in part and dissenting in part): *see also*, *Laudato Si'*, ¶ 159.

> out on this ground, which I suppose to be self-evident, 'that the earth belongs in usufruct to the living' . . . [.][29]

Strikingly, Jefferson based his theory of intergenerational political sovereignty on a prior "self-evident" concept of intergenerational rights and obligations to the Earth. In Jefferson's time as now, "usufruct" referenced the rights and responsibilities of tenants, trustees, or other parties temporarily entrusted with an asset—usually land. Usufructuary rights-holders were prohibited from committing waste (lasting damage) to the property.[30] These dual concepts of usufruct and waste, applied to entailed estates over the course of centuries, eventually fostered a principle of intergenerational stewardship that became ethical bedrock by the late 1700s. This sense of intergenerational responsibility was widely shared,[31] shaping the early "traditions and conscience of our people."[32]

The Founding Fathers of our nation provide the court with additional references to protecting the covenant between generations, including the founding documents of our nation, by pointing to the Public Trust Doctrine as deeply rooted in our history and traditions. As James Madison succinctly wrote in the Federalist

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[29] Jefferson to James Madison, September 6, 1789, *Papers of Thomas Jefferson*, Julian Boyd ed., XV at 392-98 (1950).
[30] *See* William Blackstone, II, *Commentaries on the Laws of England* (1769) at 281.
[31] *See* Herbert Sloan, *Principles and Interest: Thomas Jefferson on the Problem of Public Debt* 5 (1995).
[32] *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).

Papers, "the federal and State governments are in fact but different agents and trustees of the people." [33]

The writings of Theodore Roosevelt also furnish powerful expressions of the duty to future generations as the foundation of the American conservation ethic:

> The "greatest good of the greatest number" applies to the number within the womb of time, compared to which those now alive form but an insignificant fraction. Our duty to the whole including the unborn generations, bids us restrain an unprincipled present-day minority from wasting the heritage of these unborn generations. The movement for the conservation of . . . all our natural resources [is] essentially democratic in spirit, purpose, and method.[34]

The trust approach provides tangible legal backing to the concept of intergenerational equity. The same public trust principles continue to find expression in state constitutions[35] and federal statutes[36] today, supporting their recognition as a matter of federal substantive due process.

3. The Moral Imperative for Action.

The Plaintiffs' claims against the United States Government indicate to the *amici* of the imperative nature of the issue at hand – namely, that climate change

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[33] *The Federalist No. 46* (James Madison).
[34] Theodore Roosevelt, *A Book-lover's Holidays in the Open* 299-300 (1916).
[35] *See*, *e.g.*, Pa. Const. art. I, § 27; Mont. Const. art. IX, § 1; Haw. Const. art. IX, § 1; Ill. Const. art XI, § 1.
[36] *See*, *e.g.*, National Environmental Policy Act of 1969, 42 U.S.C. § 4331(b)(1).

must be addressed at once, and a delay in ceasing conduct that causes and contributes to climate change is immoral.

His All-Holiness Ecumenical Patriarch Bartholomew of the Eastern Orthodox Church, in a resounding statement to the United Nations Conference of the Parties in December 2018, held firm in the stance that the world must address the issue of climate change, and at once: "We are convinced that the time for reflection and deliberation is long gone. The truth is that we can no longer afford to wait; indecision and inaction are not options. Faith makes it clear that we have a choice. The time to choose is now."[37]

Rev. James Antal of the United Church of Christ mirrors the Eastern Orthodox Church's message of a moral imperative for action. He states that "the time has come for people of faith to embrace climate change as a moral issue. It's up to us to compel civic, municipal, educational, health, business, state, and federal leaders to embrace the available robust responses to climate change that are already at our disposal." [38]

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[37]Ecumenical Patriarch Batholomew, *Message by HAH Ecumenical Patriarch Bartholomew to COP*, https://www.oikoumene.org/en/resources/message-by-hah-ecumenical-patriarch-bartholomew-to-cop24-10-december-2018 (last visited February 24, 2019).

[38] Barb Powell, *UCC Environmental Justice Leaders Respond to Moral Imperative Inherent in New Federal Climate Change Report*, http://www.ucc.org/news_ucc_environmental_justice_leaders_respond_to_moral_imperative_inherent_in_new_federal_climate_change_report_11272018 (last visited February 24, 2019).

The backbone of the moral imperative for action in response to climate change relies on the fact that all children have a right to respond to this environmental crisis, and that children's rights have been and should continue to be protected by the United States government.

Dating back to 1909, President Theodore Roosevelt issued a special message to Congress speaking directly to this issue, in an attempt to protect children:

> It is high time to realize the responsibility to the coming millions is like that of parents to their children, and that in wasting our resources we are wronging our descendants. . . If we of this generation destroy the resources from which our children would otherwise derive their livelihood, we reduce the capacity of our land to support a population, and so either degrade the standard of living or deprive the coming generations of their right to life on this continent. [39]

In 1950, President Harry Truman echoed Theodore Roosevelt's statements on the imperative to protect children at all costs: "We must remember … that we cannot insulate our children from the uncertainties of the world in which we live. We must equip them to meet these problems . . . and to build up those inner resources of character which are the main strength of the American people." [40]

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[39]Theodore Roosevelt, *Special Message to the Senate and House of Representatives*, Jan. 22, 1909, available at https://www.presidency.ucsb.edu/documents/special-message-368

[40] Harry S. Truman, *Address Before the Midcentury White House Conference on Children and Youth*, Dec. 5, 1950, available at http://www.presidency.ucsb.edu/ws/index.php?pid=13677&st=conference&st1=ch

While the United States has not yet recognized the rights of young people in the context of climate change (other than the District Court's orders on interlocutory appeal in this case), in April of 2018, the Supreme Court of Columbia ruled in favor of 25 children who sued their government for the destruction of the rainforest and increased carbon dioxide emissions. [41] This non-binding but significant precedent should set a standard for the United States to follow, that children have a right to protect themselves from their government that is contributing to climate change.

IV. CONCLUSION

The Public Trust Doctrine plainly applies to the Nation's air and atmosphere, both of which are crucial resources needed for the welfare of present and future generations. All signatories to this brief, a broad cross-section of faiths united on this principle, respectfully submit this proposed brief in support of the brief submitted by the Youth Plaintiffs and ask the Court to grant the Youth Plaintiffs a trial.

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[41] STC-4360-2018, Radicación n.° 11001-22-03-000-2018-00319-01, Corte Suprema de Justicia de Colombia, 34-35 (2018) (unofficial English translation)

RESPECTFULLY SUBMITTED on February 28th, 2019.

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 29(a)(4)(G) and 32(g)(1), I certify that the foregoing Brief of *Amici Curiae* Faith Organizations complies with the type volume limitation and typeface requirements set forth in Federal Rules of Appellate Procedure 29(a)(4) and (5) and Ninth Circuit Rule 32-3(2), because it is proportionally spaced, has a typeface of 14 points, contains less than 7,000 words, excluding the parts of the brief exempted based on the word processing system used to prepare the brief.

DATED this 28th day of February 2019.

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