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Court Questions Whether Atmosphere is a “Natural Resource”

Eugene, Oregon – Today, without considering any of the undisputed evidence by expert witnesses, a Lane County Circuit Court Judge tarnished Oregon's strong environmental record, holding in [an unprecedented opinion](#) that the state has no responsibility to preserve beaches, shorelands, islands, fish, wildlife, or the atmosphere for future generations.

The opinion was written by Judge Karsten Rasmussen, who was [reversed](#) last year by the Oregon Court of Appeals in the nationally significant climate change case brought by Eugene teenagers Kelsey Juliana and Olivia Chernaik. The plaintiffs and their attorneys stated they would appeal the decision.

“Today's decision is only one step along the path to justice for our kids and future generations,” said Chris Winter, co-executive director at Crag Law Center, who represented the youth plaintiffs. “We will not rest until the judicial branch upholds the inherent rights of the people to demand meaningful action from the government to prevent the catastrophic impacts of climate change.”

Without considering any of the evidence presented in expert declarations supporting the youth, which include declarations from the state's own experts, the court “questions whether the atmosphere is a ‘natural resource’ at all,” and says “it is difficult for the Court to imagine how the atmosphere can be entirely alienated.”

The court quotes the Merriam-Webster definition of “resource” as “a natural feature or phenomenon that enhances the quality of human life.” Given that life on Earth would not exist but for the balance of gases in our atmosphere, few people would suggest the atmosphere is *not* an irreplaceable natural resource. Nonetheless, the judge ultimately ruled that because he believes the atmosphere is not irreplaceable and is not a “commodity,” the public trust doctrine does not apply to it.

“By ignoring the factual record, including expert testimony on the catastrophic impacts facing Oregon's public trust resources, the court did these youth and all Oregonians a great injustice today,” said Julia Olson, executive director of Our Children's Trust. “The decision is unsupported by law and fact, and we have every confidence in the appellate process.”

“If this judge is right that the sustainability of our atmosphere is merely a question for political debate and disagreement, rather than an inherent constitutional right of all citizens and future generations, then we are in real trouble,” said Kelsey Juliana, 19-year-old plaintiff in the case. “This opinion sends a devastating message to all citizens that none of the three branches of government can be trusted to

ensure our future. The courts must enforce our right to a healthy atmosphere and stable climate for all future generations.”

Ultimately, the court believes that whether greenhouse gas emissions should be limited or whether global warming should be stopped is a question solely for the legislature. The plaintiffs in the case do not disagree that solutions to the climate crisis lie with the legislature branch. However, the judiciary has a well-established role in our democratic form of government in which it provides a check on the legislative branch when the legislature is violating the people’s constitutional rights and failing to protect irreplaceable public resources. This case was brought to correct violations of the legal rights of Oregonians and prevent the irreversible catastrophes facing the state if climate disruption is not stopped. Contrary to recent decisions issued by the Pennsylvania and Alaska Supreme Courts and the New Mexico Court of Appeals, this one Oregon judge has declared that the Oregon legislature has no obligation to help prevent catastrophic and irreversible impacts to the atmosphere, surface waters, beaches, shorelands, fish, and wildlife.

Public trust scholars say that the decision is legally flawed and contradicts both Oregon’s body of law and the fundamental principles underlying the public trust doctrine.

“The decision handed down today is a crabbed interpretation of the state’s public trust doctrine,” said Michael Blumm, Jeffrey Bain Faculty scholar and professor of law at Lewis and Clark Law School. “Judge Rasmussen’s opinion is founded on erroneous notions of the state’s fiduciary responsibilities for natural resources it clearly owns in a sovereign capacity, like water and fish and wildlife. Moreover, the opinion’s questioning of whether the atmosphere is a natural resource because the state doesn’t hold title to the air – allegedly due to the fact that the atmosphere is not a tradable commodity – ignores the fact that pollution rights in the atmosphere are indeed traded every day under several programs, including those regulating acid rain, nitrogen oxide, and interstate emissions. One hopes that the Court of Appeals will once again correct Judge Rasmussen’s errors.”

Youth plaintiffs are represented by Crag Law Center, Liam Sherlock at Hutchinson, Cox, Coons, Orr & Sherlock, P.C. and the Western Environmental Law Center. Kelsey and Olivia’s lawsuit was filed with the help of Our Children’s Trust, an Oregon-based nonprofit coordinating a global, game-changing, youth-driven legal campaign to establish the right to a healthy atmosphere and stable climate. The legal effort advances the fundamental duty of government today: to address the climate crisis based on scientific baselines and benchmarks, and to do so within timeframes determined by scientific analysis.

Short documentary films of Kelsey and other young people taking legal action can be seen at www.ourchildrenstrust.org/trust-films.

***Our Children's Trust** is a nonprofit organization advocating for urgent emissions reductions on behalf of youth and future generations, who have the most to lose if emissions are not reduced. OCT is spearheading the international human rights and environmental TRUST Campaign to compel governments to safeguard the atmosphere as a "public trust" resource. We use law, film, and media to elevate their compelling voices. Our ultimate goal is for governments to adopt and implement enforceable science-based Climate Recovery Plans with annual emissions reductions to return to an atmospheric carbon dioxide concentration of 350 ppm. www.ourchildrenstrust.org/*

***Crag Law Center** is a public interest law firm that provides legal aid for the environment to protect and sustain the natural legacy of the Pacific Northwest. www.crag.org*