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Youth Vow to Appeal Decision in Landmark Federal Litigation Concerning Climate Change

District Court Refuses to Reconsider Decision in Favor of U.S. Government and Fossil Fuel Industry in Precedent-Setting Federal Case

Washington, D.C. – Youth plaintiffs vow to appeal a string of decisions in their precedent-setting federal litigation over climate change. The case places the youth of America against the federal government and the fossil fuel industry over the government's failure to protect the atmosphere from irreversible damage. Their claim is rooted in the public trust doctrine, a legal doctrine that imposes a fundamental, fiduciary obligation on all governments to protect our shared natural resources, including our air and water.

“I sued the government because the Obama administration has no plan to take the necessary steps to protect my future from irreversible climate change,” said youth plaintiff Grant Serrels, a member of the iMatter Youth Council. “While we waited for this decision we have seen atmospheric CO2 levels reach 400 ppm and more and more devastation from extreme weather.”

On May 22, 2013, federal District Court Judge Robert Wilkins of Washington, D.C. decided not to reconsider his decision that the federal government has no constitutional responsibility to protect the atmosphere on behalf of present and future generations of Americans. This decision follows a decision by the same judge issued one year ago on May 31, 2012, when the court granted motions by the federal government and the fossil fuel industry to dismiss the case. (*Alec L. v. Jackson*, D.D.C., No. 11-CV-022235).

In response to the 2012 decision, the youth plaintiffs filed a motion asking the court to correct its clear legal errors and reconsider its decision to dismiss the case. Nearly one year later, the court declined to reconsider its decision and also declined to force the federal government to take immediate steps to protect these young plaintiffs.

The plaintiffs include youth too young to vote, as well as two national non-profits, Kids vs. Global Warming and WildEarth Guardians. They brought the suit to require the federal government both to immediately conduct a detailed accounting of the carbon emissions in the United States and to develop and implement a national Climate Recovery Plan to protect our

nation's atmosphere. In denying these plaintiffs an opportunity to argue the merits of their case, the court refused to recognize the federal government is bound by a public trust obligation to protect essential natural resources for future generations.

"This is a great opportunity to move forward," said 19-year old plaintiff Alec Loorz, founder of Kids vs. Global Warming and the iMatter Movement. "Now we can finally ask the Court of Appeals to consider our federal public trust claims or otherwise explain to our nation's youth why only our federal government is above this necessary law when every state in the nation, and countries around the world, are subject to it."

This decision is the most recent in a long line of lawsuits over an "atmospheric public trust" brought by youth plaintiffs throughout the world. In dismissing the case, the court relied on the 2012 U.S. Supreme Court decision in *PPL Montana v. Montana*. In that decision, Supreme Court Justice Anthony Kennedy explained that the U.S. Constitution does not control state public trust law. Even though Justice Kennedy never addressed the federal public trust obligation in the *PPL Montana* case, Judge Wilkins interpreted the case to mean that only states have public trust obligations, but not the federal government.

Attorneys for the youth plaintiffs announced their clients would appeal the decision. The position of the youth plaintiffs has been supported by more than twenty prominent environmental law scholars from across the country. These scholars recently wrote in an *amicus curiae*, or "friend of the court," brief:

The public trust doctrine speaks to one of the most essential purposes of government: protecting natural resource assets for the common benefit of the citizenry. As Professor Joseph Sax suggested over four decades ago, the public trust responsibility underpins democracy itself, demarcating a "society as one of citizens rather than of serfs." As recently as 2012, in PPL Montana, LLC v. Montana, the U.S. Supreme Court recognized that the public trust doctrine "is of ancient origin" dating back to Roman civil law; that the public trust doctrine is found in state laws throughout our nation; and that federalist principles of our nation affirm the state's rights and duties over public trust resources within their borders. The public trust is also a central principle in legal systems of many other countries throughout the world. Professor Michael Blumm concludes in a recent article that the doctrine internationally "incorporates the principles of precaution, sustainable development, and intergeneration equity in the process." (internal citations omitted).

In his May 22, 2013 decision, Judge Wilkins also wrote that the youth plaintiffs had not asserted constitutional claims in their complaint. The youth plaintiffs believe the court was incorrect, quoting from their complaint, which expressly seeks relief under the Due Process, Equal Protection, and Commerce Clauses of the U.S. Constitution. As plaintiff Alec Loorz noted, "the court's opinion sidesteps the language in our complaint. It's important to point out that even Judge Wilkins recognized the problem we face. Over a year ago, he stated in open court that we have filed 'a very important case' that 'raises serious questions.'" Those serious questions about whether the U.S. Constitution protects citizens' right to protection of land, air, and water by their government for posterity will now go before the Circuit Court of Appeals in Washington, D.C.

“This case is about the fundamental nature of our government, our constitutional system, and the relationship between citizens and their government,” said Philip Gregory of Cotchett, Pitre & McCarthy, LLP, one of the attorneys for the plaintiffs. “We are glad the court finally made a decision on our Motion for Reconsideration so that we can now take these critical questions to the Court of Appeals.”

To learn more about the plaintiffs in this case and others, watch the 10-part documentary series: *Stories of TRUST: Calling for Climate Recovery*, at <http://ourchildrenstrust.org>.

***Our Children's Trust** is a nonprofit advocating for urgent emissions reductions on behalf of youth and future generations, who have the most to lose. 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 350 ppm. www.OurChildrensTrust.org/*

***iMatter Campaign** is a youth-led campaign of the nonprofit group, Kids vs Global Warming, that is focused on mobilizing and empowering youth to lead the way to a sustainable and just world. We are teens and moms and young activists committed to raising the voices of the youngest generation to issue a wake-up call to live, lead and govern as if our future matters. www.imattercampaign.org/*

***WITNESS** is the global pioneer in the use of video to promote human rights. We empower people to transform personal stories of abuse into powerful tools for justice, promoting public engagement and policy change. To view *Stories of TRUST: Calling for Climate Recovery* told by our youth plaintiffs, go to www.witness.org/campaigns/all-campaigns/imatter*

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