Suit Accuses U.S. Government of Failing to Protect Earth for Generations Unborn

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SAN FRANCISCO — Advocates of stringent curbs on greenhouse gas emissions sued the federal government on Wednesday, arguing that key agencies had failed in their duty to protect the earth’s atmosphere as a public trust to be guarded for future generations.

Similar lawsuits are to be filed against states around the country, according to the plaintiffs, a coalition of groups concerned about climate change called Our Children’s Trust.

Most of the individual plaintiffs in the suit, filed in United States District Court in San Francisco, are teenagers, a decision apparently made to underscore the intergenerational nature of the public trust that the earth’s atmosphere represents. More novel, however, is the suit’s reliance on the public trust doctrine, which dates to Roman times.

That doctrine has been invoked in cases involving the protection of Chicago’s lakefront and of Mono Lake in the Sierra Nevada.

But in some ways the suit parallels a current case, brought by several states against the five largest utilities in the country, that frames greenhouse gas emissions as a public nuisance, legal experts noted.

Last month, the Supreme Court heard oral arguments on issues in that case, including the standing of the states to bring such lawsuits. Several justices expressed skepticism: Justice Ruth Bader Ginsberg, for example, questioned whether the courts were being asked to intervene in an arena in which the executive branch — specifically the Environmental Protection Agency — has the requisite expertise to act.

The E.P.A. has determined that greenhouse gases pose a danger to the public health and welfare and are therefore subject to regulation under the Clean Air Act. It has argued that this regulatory process, which is already under way, should not be pre-empted by the courts.

Legal experts interviewed on Wednesday said they were unsure whether the new lawsuit...
could gain legal traction, given that it presents issues that overlap in some ways with the public nuisance case. The Supreme Court is expected to issue an opinion on that case this spring.

Courts that hear these cases will be heavily influenced by the Supreme Court’s opinion, said Michael B. Gerrard, director of Columbia University’s Center for Climate Change Law.

Mr. Gerrard said that by filing such lawsuits, environmentalists were “trying to use all available options in view of the failure of Congress” to act on greenhouse gas emissions. The House approved a sweeping bill to limit such emissions in 2009, but a more cautious effort died in the Senate last year. And the recently elected Republican majority in the House is threatening to strip the E.P.A. of regulatory powers related to global warming.

Lisa Heinzerling, an environmental law expert at Georgetown University, said of the new suit, “Part of this is keeping the issue alive in lots of different settings and having all the branches, including the courts, continually react to it.”

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