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## **YOUTH WIN REVERSAL IN CRITICAL CLIMATE RECOVERY CASE**

**Eugene, Oregon** – In a [nationally significant decision](#) in the case *Chernaik v. Kitzhaber*, the Oregon Court of Appeals ruled a trial court must decide whether the atmosphere is a public trust resource that the state of Oregon, as a trustee, has a duty to protect. Two youth plaintiffs were initially told they could not bring the case by the Lane County Circuit Court. The trial court had ruled that climate change should be left only to the legislative and executive branches. Today, the Oregon Court of Appeals overturned that decision.

Two teenagers from Eugene, Kelsey Juliana and Olivia Chernaik, filed the climate change lawsuit against Governor Kitzhaber and the State of Oregon for failing to protect essential natural resources, including the atmosphere, state waters, and coast lines, as required under the public trust doctrine. Their lawsuit asked the State to take action in restoring the atmosphere to 350 ppm of CO<sub>2</sub> by the end of the century. The Oregon Court of Appeals rejected the defenses raised by the State, finding that the youth could obtain meaningful judicial relief in this case.

Kelsey, who is celebrating her win on her last day of high school, said, “This decision makes me feel very proud to be an Oregonian. It validates the younger generation's voice and lets us know that we are listened to and considered, and that our future matters. I'm so grateful to everyone who is working with me to achieve climate justice. We have a lot of work ahead, but I'm very hopeful, and I'm looking forward to having the merits of this case heard in court.”

In reversing the Lane County trial court, the Oregon Court of Appeals remanded the case ordering the trial court to make the judicial declaration it previously refused to make as to whether the State, as trustee, has a fiduciary obligation to protect the youth from the impacts of climate change, and if so, what the State must do to protect the atmosphere and other public trust resources.

Cases of this nature, brought by youth seeking governmental protection of the atmosphere and resulting stabilization of the climate, are pending in a number of other jurisdictions around the country. The Alaska Supreme Court, the New Mexico Court of Appeals and the Texas Court of Appeals will soon issue decisions in related cases, and the U.S. Court of Appeals for the D.C. Circuit just issued a decision last week seemingly placing responsibility for any governmental obligation to protect public trust resources on the states. The U.S. Court of Appeals found in that case that the public trust doctrine on which youth sought to impose federal obligations was solely a matter of state law, but the decision will likely be appealed to the United States Supreme Court.

This is a cornerstone decision from the Oregon Court of Appeals in climate change jurisprudence. The court definitively ruled that the question of whether government has an obligation to protect the atmosphere from degradation leading to climate change is a question for the judiciary, and not for the legislative or executive branches. The Court did not opine as to how that question should be answered, only that it should be answered by the judiciary.

Chris Winter with the Crag Law Center, co-counsel for Kelsey and Olivia said, “the Court found that these young people deserve their day in court to establish that their government has an obligation to protect their public trust resources, including the atmosphere. This is what justice looks like. We look forward to moving forward quickly on the merits.”

“Our youngest generation faces numerable threats from guns in school yards to the rising cost of a college education, but our changing climate is the most daunting and life altering crisis confronting our kids,” said Tanya Sanerib, with the Center for Biological Diversity and co-counsel for Kelsey and Olivia. “Today, Oregon’s judiciary recognized it has the tools to review the climate crisis in Oregon and sent Kelsey and Olivia’s case on so they can show how Oregon is failing its citizens and environment.”

Michael Blumm, Faculty Scholar and Professor of Law at Lewis & Clark Law School and also an *amicus curiae* on the case said, “In short, the court affirmed that courts have a key role to play in articulating governmental responses to the climate crisis under the public trust doctrine.”

Kelsey, Olivia, and their mothers brought the case to compel the state of Oregon to create a viable climate recovery plan for reducing carbon dioxide emissions in order to protect the state’s natural resources. The appellants’ requested relief was based on the urgent warning of leading international climate scientists that failure to restore atmospheric CO<sub>2</sub> to safe levels will result in disastrous climate disruption during the lifetimes of the youth.

Kelsey and Olivia’s lawsuit has gained a broad base of support across the state. Oregon’s political leaders, businesses, agricultural, conservation and student native groups came together to file an *amicus curiae* (“friend of the court”) brief in support of Kelsey and Olivia’s appeal. Eugene’s Mayor Piercy, who attended the hearing, joined Lane County and Eugene Sustainability Commissioners as amici in support of the youth plaintiffs. Their brief details potentially devastating impacts the state faces due to greenhouse gas emissions and climate

instability, from ocean acidification to a decrease in agricultural productivity and significant decreases in snowpack and water supply. The Western Environmental Law Center also filed a separate *amicus curiae* brief on behalf of twenty-two top legal scholars from around the country urging the court to apply the public trust doctrine to the atmosphere.

“Climate change is the biggest threat to our children,” said Julia Olson, Executive Director and Chief Legal Counsel of Our Children’s Trust. “Our political branches of government around the country have failed to meaningfully protect our fundamental rights to a healthy atmosphere. The Oregon Court of Appeals has affirmed the very purpose of our justice system to seek judicial review when other branches of our government violate our basic rights. The decision of the Oregon Court of Appeals affirms that youth deserve a judicial determination on whether the atmosphere is a natural resource that warrants governmental protection as a public trust resource. We are confident that the Oregon trial court will make the right determinations to protect our most precious natural resource on which all others rely: our atmosphere.”

Kelsey and Olivia’s lawsuit was filed with the help of Our Children’s Trust, an Oregon-based nonprofit orchestrating 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](http://www.ourchildrenstrust.org/trust-films).

*Kelsey and Olivia are represented by Crag Law Center, Western Environmental Law Center, Tanya Sanerib at Center for Biological Diversity, and Liam Sherlock at Hutchinson, Cox, Coons, Orr & Sherlock, P.C.*

***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/](http://www.ourchildrenstrust.org/)*

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