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FOSSIL FUEL DEFENDANTS JOIN TRUMP ADMINISTRATION'S MOVE FOR RARE INTERLOCUTORY APPEAL IN YOUTH CLIMATE LAWSUIT

Fossil fuel defendants portray climate science as "debate that swirls"

On Friday, March 10, lawyers representing fossil fuel defendants in a youth climate lawsuit filed a motion with a U.S. District Court seeking an appeal to the Ninth Circuit Court of Appeals on a November 10, 2016 order in *Juliana v. United States*. As reported by [The Washington Post](#), the Trump Administration filed a [similar motion](#) requesting appeal on Tuesday. Fossil fuel defendants support the Trump Administration's motion.

Fossil fuel defendants claim Judge Ann Aiken erred when ruling that "the political question doctrine is not a barrier to plaintiffs' claims." The fossil fuel defendants argue the executive and legislative branches of government, and not the judiciary, should resolve the issues presented by plaintiffs in this case.

Attorneys with [Sidley Austin](#) represent the fossil fuel defendants, who are members of trade associations API (formerly directed by now Secretary of State, Rex Tillerson), AFPM, and NAM. From their [motion](#) filed on Friday:

"If the case proceeds to expert discovery, that phase will certainly be complicated and protracted, given the complex scientific debate that swirls around the issues raised by the plaintiffs' lawsuit. The resources required to engage in fact and expert discovery will be enormous, and those resources will be preserved if the intervenor-defendants prevail on interlocutory appeal."

Judge Aiken, informed by Magistrate Judge Thomas Coffin's recommendation, holds the power to decide whether or not to certify the questions for appeal sought with defendants' motions.

But Judge Aiken has already made her position clear on the political question issue. From her [November 10th order](#) that the government and fossil fuel defendants are seeking to appeal, Judge Aiken wrote:

“However, the scope of the political question doctrine should not be overstated. As Alexis de Tocqueville observed, [t]here is hardly any political question in the United States that sooner or later does not turn into a judicial question.” Alexis de Tocqueville, *Democracy in America* 440 (Liberty Fund 2012).”

In fact, more than eleven pages of Judge Aiken's order thoughtfully and judicially analyzed and concluded on the political question issue. Her order walked through all six “Baker factors” from the Supreme Court's 1962 opinion in *Baker v. Carr*, a case recently featured in a [2016 podcast](#) produced as part of the RadioLab Series “More Perfect.” Following her analysis, Judge Aiken included a section entitled “Summary: This Case Does Not Raise a Nonjusticiable Political Question.” From that section:

“There is no need to step outside the core role of the judiciary to decide this case. At its heart, this lawsuit asks this Court to determine whether defendants have violated plaintiffs' constitutional rights. That question is squarely within the purview of the judiciary.”

“This case shares some key features with Baker itself. In Baker, a group of voters challenged a statute governing the apportionment of state legislative districts. 369 U.S. at 188-95. Sixty years of population growth without legislative reapportionment had led to legislative districts had led to some votes carrying much more weight than others. *Id.* at 192-93. Here, the majority of youth plaintiffs are minors who cannot vote and must depend on others to protect their political interests. Thus, as amicus the League of Women Voters persuasively argues, the youth plaintiffs' claims are similar to the Baker claims because they are ‘rooted in a ‘debasement of their votes’ and an accompanying diminishment of their voice in representational government.” [Br. for the League of Women Voters in the United States et al. as Amici Curiae at 19-20 \(doc 79-1\)](#).”

“In Baker, the Court acknowledged that the plaintiffs' claims had political dimensions and ramifications - but nonetheless concluded none of the Baker factors was inextricable from the case. 369 U.S. at 209. Similarly as discussed in detail above, this case raises political questions yet is not barred by the political question doctrine.”

Julia Olson, plaintiffs' counsel and executive director of Our Children's Trust said:

“The political question argument is a last ditch effort to avoid judicial review. When our political branches deny our plaintiffs their fundamental rights, it is absolutely the court's job to step in. This is well-settled and this defense is dead.”

Juliana v. United States was filed in 2015 by 21 young plaintiffs who argue that their constitutional and public trust rights are being violated by the government's creation of climate danger. Judge Ann Aiken's [November order](#) denied motions to dismiss brought by both the Obama administration and fossil fuel industry defendants.

Juliana v. United States is one of many related legal actions brought by youth in several states and countries, all supported by Our Children's Trust, seeking science-based action by governments to stabilize the climate system.

Counsel for Plaintiffs include Philip L. Gregory, Esq. of Cotchett, Pitre & McCarthy of Burlingame, CA, Daniel M. Galpern Esq. and Julia Olson, Esq. of Eugene, OR.

Our Children's Trust is a nonprofit organization, elevating the voice of youth, those with most to lose, to secure the legal right to a healthy atmosphere and stable climate on behalf of present and future generations. We lead a coordinated global human rights and environmental justice campaign to implement enforceable science-based Climate Recovery Plans that will return atmospheric carbon dioxide concentration to below 350 ppm by the year 2100. www.ourchildrenstrust.org/

Earth Guardians is a Colorado-based nonprofit organization with youth chapters on five continents, and multiple groups in the United States with thousands of members working together to protect the Earth, the water, the air, and the atmosphere, creating healthy sustainable communities globally. We inspire and empower young leaders, families, schools, organizations, cities, and government officials to make positive change locally, nationally, and globally to address the critical state of the Earth. www.earthguardians.org

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