

No. 17-71692

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

The United States of America, et al.,
Petitioners,

v.

United States District Court for the District of Oregon,
Respondent,
and
Kelsey Cascadia Rose Juliana; et al.,
Real Parties in Interest.

On Petition for Writ of Mandamus in Case No. 6:15-cv-01517-TC-AA (D. Or.)

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* GLOBAL
CATHOLIC CLIMATE MOVEMENT, ET AL., IN OPPOSITION TO PETITION
FOR WRIT OF MANDAMUS**

Charles M. Tebbutt (OR Bar 96579)
Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence St.
Eugene, OR 97405
Charlie@tebbuttlaw.com
Tel: 541-344-3505
Fax: 541-344-3516
*Attorney for Amici Curiae
Global Catholic Climate Movement, et al.*

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *Amici Curiae* Global Catholic Climate Movement, Leadership Conference of Women Religious, Interfaith Power and Light, The Sisters of Mercy of the Americas' Institute Leadership Team, Sisters of Mercy Northeast Leadership Team, Interfaith Moral Action on Climate, Franciscan Action Network, The National Religious Coalition for Creation Care and Interfaith Oceans, The Faith Alliance for Climate Solutions, Eco-Justice Ministries, San Francisco Zen Center, The Shalom Center, GreenFaith, The Office of Apostolic Action & Advocacy, Christian life Community-USA, and Quaker Earth Witness state that they do not have parent corporations and that no publicly held company owns 10% or more of their stock.

MOTION FOR LEAVE TO FILE BRIEF OF PROPOSED *AMICI CURIAE*
FAITH ORGANIZATIONS

Pursuant to Federal Rule of Appellate Procedure 29 and Ninth Circuit Rule 29-3, Global Catholic Climate Movement, Leadership Conference of Women Religious, Interfaith Power and Light, The Sisters of Mercy of the Americas’ Institute Leadership Team, Sisters of Mercy Northeast Leadership Team, Interfaith Moral Action on Climate, Franciscan Action Network, The National Religious Coalition for Creation Care and Interfaith Oceans, The Faith Alliance for Climate Solutions, Eco-Justice Ministries, San Francisco Zen Center, The Shalom Center, GreenFaith, The Office of Apostolic Action & Advocacy, Christian life Community-USA, and Quaker Earth Witness (collectively, “Faith Organizations” or “*Amici Curiae*”) respectfully request the Court’s leave to participate as *amici curiae* in the above-captioned litigation in opposition to the United States’ Petition for Writ of Mandamus. The Real Parties in Interest (hereinafter “Youth Plaintiffs”) consent to the filing of the Faith Organizations’ brief, and Petitioners United States, et al. consent to the submission of proposed *amici*’s brief provided that the brief meets either the page limit (15 pages) or word limit (4200 words). Respondent United States District Court for the District of Oregon takes no position on the participation of proposed *amici*.

A brief description of each Faith Organization is included in the attached

proposed brief. The common interest in and motivation for the Faith Organizations' submission of an *amicus* brief is that the Youth Plaintiffs' Public Trust Doctrine claims at the heart of their Complaint invoke the same moral imperative that motivates the proposed *amici*. The public trust principle of law mirrors a *sacred trust* based on deep covenants of obligation towards future generations and to all Creation. As the climate crisis threatens the future survival of civilization, the principle could hardly have a more compelling application.

Proposed *amici*'s brief describes the religious and moral bases for the concept of public trust and obligations to future generations that can be found in the underlying values and tenets of many faiths and religious beliefs. The matters asserted in *amici*'s brief are relevant to the Court's evaluation of the United States Petition for Writ of Mandamus, which, in turn, is an extraordinary request that directly affects the ability of the Youth Plaintiffs to have their concerns promptly heard in court.

As is evident from the intensity and magnitude of recent events, the Youth Plaintiffs' desire for action to address climate change is of utmost urgency. Proposed *amici* recognize the urgent nature of the Youth Plaintiffs' claims and the need for their claims to be addressed without delay. Therefore, the Faith Organizations respectfully oppose the United States' Petition for Writ of Mandamus and hereby submit this proposed brief to aid the Court in its resolution

of the United States' Petition.

Respectfully submitted this 5th day of September, 2017.

/s/ Charles M. Tebbutt
Charles M. Tebbutt (OR Bar 96579)
Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence St.
Eugene, OR 97405
charlie@tebbuttlaw.com
Tel: 541-344-3505
Fax: 541-344-3516

*Attorney for Amici Curiae Global Catholic
Climate Movement, et al.*

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Eugene, OR 97405
charlie@tebbuttlaw.com
Tel: 541-344-3505
Fax: 541-344-3516
Attorney for Amici Curiae
Global Catholic Climate Movement, et al.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT i

MOTION FOR LEAVE TO FILE BRIEF OF PROPOSED *AMICI CURIAE*
FAITH ORGANIZATIONS ii

TABLE OF CONTENTS..... v

TABLE OF AUTHORITIES vii

I. IDENTITY AND INTEREST OF *AMICI CURIAE*..... 1

II. SUMMARY OF ARGUMENT 4

III. ARGUMENT 5

 A. Introduction..... 5

 B. The Public Trust Doctrine Imposes Sovereign Duties on the
 Federal Government to Protect the Atmosphere Necessary for
 Human Survival..... 6

 C. The Role of the Courts in Preserving the Public Trust 10

 D. The Moral Foundations of the Public Trust Doctrine..... 10

 1. The Covenant Between Generations 13

 2. The Commonwealth Ethic..... 15

 3. The Injunction Against Waste..... 16

 4. The Moral Imperative for Action 16

IV. CONCLUSION..... 17

v

CERTIFICATE OF COMPLIANCE..... 18
CERTIFICATE OF SERVICE 19

TABLE OF AUTHORITIES

CASES

Alabama v. Texas, 347 U.S. 272 (1954) (Douglas J., dissenting) 8, 9

Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities Siting Board, 457 Mass. 663 (Mass. S. Ct. 2010)..... 13

Ariz. Ctr. for Law in Pub. Interest v. Hassell, 837 P.2d 158 (Az. Ct. App. 1991) 10

Arnold v. Mundy, 6 N.J.L. 1 (N.J. 1821) 11

Butchers’ Union v. Crescent City, 111 U.S. 746 (1884) (Justice Field, concurring)..... 6

City of Milwaukee v. State, 214 N.W. 820 (Wis. 1927)..... 10

Geer v. Connecticut, 161 U.S. 519 (1896)..... 8, 10, 11

Illinois Central R.R. Co. v. Illinois, 146 U.S. 387 (1892)..... 7, 8, 11, 16

Juliana, et al., v. United States, et al., Dkt. 7-1, No. 6:15-cv-01517-TC-AA (D. Or. Sept. 10, 2015) 3

Missouri v. Holland, 252 U.S. 416 (1920)..... 8, 9

Snyder v. Massachusetts, 291 U.S. 97 (1934)..... 14

Stone v. Mississippi, 101 U.S. 814 (1879)..... 6

United States v. Causby, 328 U.S. 256 (1946)..... 9

United States v. 1.58 Acres of Land, 523 F. Supp. 120 (D. Mass. 1981) 11

STATUTES

42 U.S.C. § 4331(b)(1).....15

STATE CONSTITUTIONS

Hawaii Constitution, art. IX, § 1 14

Illinois Constitution, art XI, § 1 14-15

Montana Constitution, art. IX, § 1 14

Pennsylvania Constitution, art. I, § 27 14

Other Authorities

William Blackstone, II, *Commentaries on the Laws of England* (1769) 14

Michael C. Blumm & Rachel D. Guthrie, *Internationalization of the Public Trust Doctrine: Natural Law and Constitutional and Statutory Approaches to Fulfilling the Saxion Vision*, 45 U.C. Davis L. Rev. 741 (2012) 11

Michael C. Blumm & Aurora Paulsen, *The Public Trust in Wildlife*, 2013 Utah L. Rev. 1437 (2013)..... 8

Michael C. Blumm & Mary Christina Wood, *The Public Trust Doctrine in Environmental and Natural Resources Law*, Carolina Academic Press (2013)..... 8

George G. Bogert, et al., *Bogert Trusts and Trustees*, West Publishing Co. (2011)..... 10

Karl S. Coplan, *Public Trust Limits on Greenhouse Gas Trading Schemes: A*

Sustainable Middle Ground? 35 Colum. J. Envt'l L. 287 (2010) 8

Francis, Encyclical Letter, *Laudato Si': On Care for Our Common Home*,
 May 24, 2015, available at
http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_encyclica-laudato-si.html..... 1, 5-6, 13, 15

James E. Hansen et al., *Scientific Case for Avoiding Dangerous Climate Change to Protect Young People and Nature*, NASA (Jul. 9, 2012), available at
<http://pubs.giss.nasa.gov/abs/ha08510t.html> 16

Hindu Declaration on Climate Change, November 23, 2015, available at
<http://www.hinduclimatedeclaration2015.org> 11

Islamic Declaration on Global Climate Change, International Islamic Climate Change Symposium, August 2015,
 available at <http://islamicclimatedeclaration.org/islamic-declaration-on-global-climate-change> 11

Letter of Thomas Jefferson to James Madison, September 6, 1789, *Papers of Thomas Jefferson*, Julian Boyd ed., XV (1950) 13

Theodore Roosevelt, *A Book-lover's Holidays in the Open* (1916) 14

Joseph L. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 Mich. L. Rev. 471 (1970) 6

Herbert Sloan, *Principles and Interest: Thomas Jefferson on the Problem of Public Debt* 5 (1995)..... 14

David Takacs, *The Public Trust Doctrine, Environmental Human Rights and the Future of Private Property*, 16 N.Y.U. Envtl. L. J. 711 (2008)..... 11

Mary Turnipseed, et al., *Reinvigorating the Public Trust Doctrine: Expert Opinion on the Potential of a Public Trust Mandate in U.S. and International Environmental Law*, Environment Magazine,

Vol. 52, No. 5 (2010).....	11
Transcript of Pope Francis White House Welcoming Ceremony, <i>available at</i> http://www.popefrancisvisit.com/pope-francis-u-s-visit-speech-transcripts/#whitehouse	16
Mary Christina Wood, <i>Nature’s Trust: Environmental Law for a New Ecological Age</i> , Cambridge University Press (2013)	8, 11, 13
United Nations Framework Convention on Climate Change, S. Treaty Doc. No. 102-38 (1992).....	10

**AMICI CURIAE BRIEF IN OPPOSITION TO PETITION FOR WRIT OF
MANDAMUS**

I. IDENTITY AND INTERESTS OF *AMICI CURIAE*¹

The Global Catholic Climate Movement (“GCCM”) is an international network of over 250 Catholic organizations and thousands of individuals that seeks to raise a strong Catholic voice in global climate change discussions. GCCM’s goal is embodied in the 2015 papal encyclical, *Laudato Si’: On Care for Our Common Home*.²

The Leadership Conference of Women Religious (“LCWR”) represents leaders of more than 38,000 women religious across the United States who care deeply about the welfare of future generations and fully appreciate the responsibility to care for creation.

Interfaith Power and Light is a network of 20,000 congregations nationwide, engaging hundreds of religious leaders, educating people of faith about the moral

¹ The District Court takes no position on proposed *amici*’s participation in this case. The United States and Real Parties in Interest (“Youth Plaintiffs”) consent. No counsel for any party authored this brief in whole or in part, no such counsel or party made a monetary contribution to fund the preparation or submission of this brief, and no one other than the *amici curiae* and their counsel made any monetary contribution.

² Francis, Encyclical Letter, *Laudato Si’: On Care for Our Common Home*, May 24, 2015, available at http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html.

and ethical mandate to address global warming, and advocating for laws to protect future generations.

The Sisters of Mercy of the Americas' Institute Leadership Team represents about 2,800 vowed religious women with a commitment to persons who are poor, especially women and children. Advocating for carbon-emission reduction measures is an important step toward realizing sustainability of life.

Sisters of Mercy Northeast Leadership Team represents approximately 1,000 sisters, Associates, and Companions of Mercy in six Northeast states. These leaders support the fundamental right of children of the United States to clean air and a livable climate.

Interfaith Moral Action on Climate brings communities of faith together with the purpose of awakening our nation's leaders to their urgent moral obligation to act on climate change.

Franciscan Action Network is a collective Franciscan voice seeking to transform U.S. public policy related to peacemaking, care for creation, poverty, and human rights.

The National Religious Coalition for Creation Care and Interfaith Oceans seek to serve God and creation by bringing together the formal policy positions of religious institutions on environmental issues and communicating those positions to government leaders.

The Faith Alliance for Climate Solutions is an interfaith organization of individuals and congregations organized for climate change solutions as an urgent spiritual responsibility.

Eco-Justice Ministries is an ecumenical Christian organization, based in Denver, Colorado, that advocates in churches for ecological sustainability and social justice.

San Francisco Zen Center was established in 1962 by Shunryu Suzuki Roshi as a place for meditation. The purpose of Zen Center is to express, make accessible, and embody the wisdom and compassion of the Buddha and affirms both lay and monastic practice as expressions of the Bodhisattva Way. Today, San Francisco Zen Center is one of the largest Buddhist sanghas outside Asia.

The Shalom Center, founded in 1983, seeks to be a prophetic voice in Jewish, multireligious, and American life, pursuing peace, eco-social justice, and the healing of our wounded Mother Earth.

GreenFaith is an interfaith environmental organization that works with faith communities globally from Christian, Jewish, Muslim, Hindu, Buddhist, and other faith communities.

The Office of Apostolic Action & Advocacy, Christian Life Community (CLC)-USA identifies, fosters, supports, and communicates CLC's initiatives and ministries across the USA as one Ignatian, lay community on mission in the world.

Quaker Earthcare Witness is a network of Friends (Quakers) in North America and other like-minded people who are taking spirit-led action to address the ecological and social crises of the world from a spiritual perspective, emphasizing Quaker process and testimonies.

Youth Plaintiffs' claims invoke the same moral imperative that motivates the *amici*. The public trust principle of law mirrors a *sacred trust* based on deep covenants of obligation towards future generations and to all Creation. As the climate crisis threatens the future survival of civilization, the principle could hardly have a more compelling application.

II. SUMMARY OF ARGUMENT

Amici Curiae believe this Court should not take up this case before the District Court has an opportunity to fully develop the critical facts of this matter. However, should this Court consider this case, the underlying role of government in protecting present and future generations is a crucial factor. The foundational public trust cases hold that government cannot substantially impair or alienate resources crucial to the public welfare. The Nation's public trust over these resources is an attribute of sovereignty that Defendants cannot shed. In conjunction with the constitutional reserved powers doctrine, the public trust prevents any one

legislature from depriving a future legislature of the natural resources³ necessary for the well-being and survival of its citizens. Not only is the Public Trust Doctrine firmly grounded in legal precedent, it also reflects the shared reasoning underlying the moral values and religious teachings of many faiths.

The Public Trust Doctrine imposes sovereign duties on the federal government to protect the atmosphere necessary for human survival. Allowing excessive carbon dioxide emissions to imperil the climate system jeopardizes the fundamental rights of the Youth Plaintiffs in this case and future generations. If fossil fuel emissions are not rapidly abated, then Youth Plaintiffs and future generations will confront an inhospitable future.⁴ Complaints about discovery should not outweigh the ability of the Youth Plaintiffs to have their day in court.

III. ARGUMENT

A. Introduction

In the papal encyclical, *Laudato Si'*, Pope Francis issued a clarion call for “the establishment of a legal framework which can set clear boundaries and ensure

³ The use of the term “natural resources” does not imply that these aspects of Creation are to be valued only in terms of their benefits to humankind. *Laudato Si'*, ¶ 33.

⁴ Dkt. No. 7-1 at ¶ 74, *Juliana, et al., v. United States, et al.*, No. 6:15-cv-01517-TC-AA (D. Or.).

the protection of ecosystems.”⁵ The ancient yet enduring public trust principle offers just such a legal framework. Under the Public Trust Doctrine, citizens stand as beneficiaries holding clear public property interests in these essential natural resources. The public trust demarcates a society of “citizens rather than serfs.”⁶ All faiths represented in this brief, and many others, recognize and support governments’ public trust obligation.

B. The Public Trust Doctrine Imposes Sovereign Duties on Defendants to Protect the Atmosphere Necessary for Human Survival

The term “public trust” broadly refers to a fundamental understanding that no legislature can legitimately abdicate its core sovereign powers. In *Stone v. Mississippi*, the Supreme Court held:

No legislature can bargain away the public health or the public morals The supervision of both these subjects of governmental power is continuing in its nature [T]he power of governing is a trust committed by the people to the government, no part of which can be granted away.⁷

This broad trust principle is commonly referred to as the “reserved powers doctrine.”

However, as used in this brief, the terms “public trust” and “Public Trust

⁵ *Laudato Si*, ¶ 53.

⁶ Joseph L. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 Mich. L. Rev. 471, 484 (1970).

⁷ 101 U.S. 814, 819-20 (1879). See also *Butchers’ Union v. Crescent City*, 111 U.S. 746, 766 (1884) (Justice Field, concurring).

Doctrine” refer to the application of the reserved powers doctrine to sovereign natural resources critical to the public welfare. The reserved powers doctrine and the Public Trust Doctrine prohibit complete privatization of sovereign resources because privatization would constitute an impermissible transfer of governmental power into private hands, wrongfully limiting the powers of later legislatures and the rights of the public to safeguard crucial societal interests.

The landmark case is *Illinois Central R.R. Co. v. Illinois*,⁸ where the Supreme Court applied the constitutional reserved powers doctrine to crucial natural resources, holding that submerged lands were in trust and could not be fully privatized. At issue was control of Chicago’s Harbor, which the Illinois legislature had privatized. In an explanation that extends beyond submerged lands, the Court explained the rationale of the Public Trust Doctrine:

The state can no more abdicate its trust over property in which the whole people are interested, *like* navigable waters and soils under them, so as to leave them entirely under the use and control of private parties . . . than it can abdicate its police powers in the administration of government and the preservation of the peace Any grant of the kind is necessarily revocable, and the exercise of the trust by which the property was held by the state can be resumed at any time The trust with which they are held, therefore, is *governmental*, and cannot be alienated . . . [.]⁹

⁸ 146 U.S. 387 (1892).

⁹ *Id.* at 453-55 (emphasis added).

Illinois Central made clear that alienating or destroying essential resources would amount to relinquishing sovereign powers in violation of the Constitution's reserved powers doctrine.¹⁰

Subsequent decisions have applied the Public Trust Doctrine to other crucial resources. For instance, wild game is recognized as a trust resource in virtually all states.¹¹ In *Geer v. Connecticut*, the Court stated, “[T]he ownership of the sovereign authority [over wild game] is in trust for all the people of the state, and hence by implication it is the duty of the legislature to enact such laws as will best preserve the subject of the trust and secure its beneficial use in the future to the people of the state.”¹² The Court recognized a parallel federal interest associated with migratory birds in *Missouri v. Holland*.¹³

Similarly, the ocean and coastline present federal public trust interests. In his dissent in *Alabama v. Texas*, Justice Douglas explained the federal trust in the nation's coastline in words that equally well describe the trust over the nation's

¹⁰ See Michael C. Blumm & Mary Christina Wood, *The Public Trust Doctrine in Environmental and Natural Resources Law* 72, 234 (2013); Mary Christina Wood, *Nature's Trust: Environmental Law for a New Ecological Age* at 131, Cambridge University Press (2013); see also Karl S. Coplan, *Public Trust Limits on Greenhouse Gas Trading Schemes: A Sustainable Middle Ground?* 35 *Colum. J. Env't'l L.* 287, 311 (2010).

¹¹ See Michael C. Blumm & Aurora Paulsen, *The Public Trust in Wildlife*, 2013 *Utah L. Rev.* 1437, 1439-40 (2013).

¹² *Geer v. Connecticut*, 161 U.S. 519, 533-34 (1896).

¹³ *Missouri v. Holland*, 252 U.S. 416, 435 (1920).

atmosphere:

[W]e are dealing here with incidents of national sovereignty. The marginal sea is . . . more than a mass of water; it is a protective belt for the entire Nation over which the United States must exercise exclusive and paramount authority. The authority over it can no more be abdicated than any of the other great powers of the Federal Government.¹⁴

The federal trust protects national interests in resources that transcend state borders. To entrust the management and preservation of such resources solely to the states would invite ineffective, piecemeal management on the part of the various state legislatures and judiciaries.¹⁵

The same reasoning applies to the atmosphere. In *United States v. Causby*, the Court held that the traditional common law doctrine recognizing private rights to airspace had “no place in the modern world”: “To recognize such private claims to the airspace would transfer into private ownership that to which only the public has a just claim.”¹⁶ Like the trust arising as to navigable waters and migratory wildlife, the atmospheric trust is inherently federal, as it requires management at the national level and, as was the case in *Missouri v. Holland*, cooperation with other nations. Indeed, the national interest in atmospheric resources is obvious by the federal government’s own ratification of the United Nations Framework

¹⁴ *Alabama v. Texas*, 347 U.S. 272, 282 (1954) (Douglas J., dissenting).

¹⁵ See *Missouri v. Holland*, 252 U.S. at 435.

¹⁶ *United States v. Causby*, 328 U.S. 256, 261 (1946).

Convention on Climate Change in 1992, which declared a universal trust responsibility among the nations on Earth to “protect the climate system for the benefit of present and future generations of humankind.”¹⁷

C. The Role of the Courts in Preserving the Public Trust

The essence of the trust responsibility is the sovereign fiduciary duty to protect the public’s crucial assets from irrevocable damage.¹⁸ Under well-established core principles of trust law, trustees have a basic duty not to sit idle and allow damage to the trust property.¹⁹ These fiduciary duties impose a higher standard of care than the permissive nature of administrative discretion under statutory law. Judicial enforcement of fiduciary obligations becomes necessary when the political branches abdicate their responsibility to protect the *res* of the trust.²⁰ Youth Plaintiffs are calling on the federal courts to ensure that the political branches fulfill their trust obligation to avoid destruction or irreparable harm to an asset that must be sustained for generations of citizens to come.

D. The Moral Foundations of the Public Trust Doctrine

Courts in the United States have traced the origins of the public trust back

¹⁷ United Nations Framework Convention on Climate Change, S. Treaty Doc. No. 102-38. Art. 3, p. 1 (1992).

¹⁸ *See Geer*, 161 U.S. at 534.

¹⁹ *See* George G. Bogert, et al., *Bogert Trusts and Trustees*, § 582 (2011); *see also City of Milwaukee v. State*, 214 N.W. 820, 830 (Wis. 1927).

²⁰ *See Ariz. Ctr. for Law in Pub. Interest v. Hassell*, 837 P.2d 158, 169 (Az. Ct. App. 1991), petition dismissed 1992 Ariz. LEXIS 82 (Ariz. 1992).

through the English legal system to Roman law and natural law, identifying it as one of the pillars of ordered civilization.²¹ Not surprisingly, the public trust is also a central principle in legal systems of many other countries throughout the world. Professor Michael Blumm concludes that the doctrine is “close to becoming considered customary law” of an international scale.²² This enduring nature and universality of the Public Trust Doctrine is based on multiple moral understandings including: (1) an ethic toward future generations; (2) an affirmation of public rights to natural assets; and (3) a condemnation of waste. These values are deeply rooted in this nation’s history and tradition, and are mirrored in the religious teachings of many faiths, including Christian, Jewish, Islamic, Hindu, and Buddhist.²³

²¹ See *Geer*, 161 U.S. at 526; *Illinois Central*, 146 U.S. at 456 (citing *Arnold v. Mundy*, 6 N.J.L. 1, 78 (N.J. 1821)); *United States v. 1.58 Acres of Land*, 523 F. Supp. 120, 122-23 (D. Mass. 1981).

²² Michael C. Blumm & Rachel D. Guthrie, *Internationalization of the Public Trust Doctrine: Natural Law and Constitutional and Statutory Approaches to Fulfilling the Saxion Vision*, 45 U.C. Davis L. Rev. 741 (2012). See also Mary Turnipseed, et al., *Reinvigorating the Public Trust Doctrine: Expert Opinion on the Potential of a Public Trust Mandate in U.S. and International Environmental Law*, *Environment Magazine*, Vol. 52, No. 5 at 12 (2010); David Takacs, *The Public Trust Doctrine, Environmental Human Rights and the Future of Private Property*, 16 N.Y.U. Envtl. L. J. 711, 746 (2008).

²³ See, e.g., *Islamic Declaration on Global Climate Change*, International Islamic Climate Change Symposium, August 2015, available at <http://islamicclimatedeclaration.org/islamic-declaration-on-global-climate-change>; *Hindu Declaration on Climate Change*, November 23, 2015, available at <http://www.hinduclimatedeclaration2015.org>; see also, Mary Christina Wood, *Nature’s Trust: Environmental Law for a New Ecological Age* at 279-280 (citing

Perhaps the oldest extant affirmation of the importance of taking to heart the young and future generations in protecting the Earth and preventing its destruction is the very last passage of the last of the ancient Hebrew Prophets (Malachai 3:20-21):

Here! Before the coming of the great and awesome day of YHWH / The Eternal Breath of Life, I will send you the Prophet Elijah to turn the hearts of parents to children and the hearts of children to parents, lest I come and smite the earth with utter destruction.

In our own generation, Jewish wisdom has underscored this truth:

Overworking Earth is precisely what our Torah teaches we must not do. (Lev. 25-16). So now we must let our planet rest from overwork. For Biblical Israel, this was a central question in our relationship to the Holy One. And for us and for our children and their children, this is once again the central question of our lives and of our God.²⁴

Buddhist environmentalism also involves principles of trusteeship. Justice Weeramantry recounts a story of a monk's sermon to a king: although the king was King of the country, he was not the owner but the trustee of the land on which he was hunting. His Holiness the Dalai Lama also presents religious instruction

multiple faiths as recognizing public trust obligations to present and future generations).

²⁴ "To the Jewish People, to all Communities of Spirit, and to the World: A Rabbinic Letter on the Climate Crisis," signed by 425 Rabbis of all streams of Judaism, originally published May 2015, *available at* <https://theshalomcenter.org/RabbinicLetterClimate>.

infused with obligations to future generations, the hallmark of a trust.²⁵

1. The Covenant Between Generations

Scores of public trust cases declare that future generations are legal beneficiaries with entitlement to the *res* of the public trust.²⁶ The Framers recognized each generation's fundamental obligation to *preserve* the value and integrity of natural resources for later generations. The most succinct, systematic treatment of intergenerational principles is provided by Thomas Jefferson to James Madison:

The question [w]hether one generation of men has a right to bind another . . . is a question of such consequence as not only to merit decision, but place among the fundamental principles of every government I set out on this ground, which I suppose to be self-evident, 'that the earth belongs in usufruct to the living' . . . [.]²⁷

Strikingly, Jefferson based his theory of intergenerational political sovereignty on a prior "self-evident" concept of intergenerational rights and obligations to the Earth. In Jefferson's time as now, "usufruct" referenced the

²⁵ Mary Christina Wood, *supra*, n.23 (citing C.G. Weeramantry, *Buddhist Contribution to Environmental Protection*, Asian Tribune (June 20, 2007); Dalai Lama, *An Ethical Approach to Environmental Protection* (June 5, 1986), available at <http://www.dalailama.com/messages/environment/an-ethical-approach>).

²⁶ See, e.g., *Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities Siting Board*, 457 Mass. 663, 702 (Mass. S. Ct. 2010) (Marshall C.J., concurring in part and dissenting in part): see also, *Laudato Si'*, ¶ 159.

²⁷ Jefferson to James Madison, September 6, 1789, *Papers of Thomas Jefferson*, Julian Boyd ed., XV at 392-98 (1950).

rights and responsibilities of tenants, trustees, or other parties temporarily entrusted with an asset—usually land. Usufructuary rights-holders were prohibited from committing waste (lasting damage) to the property.²⁸ These dual concepts of usufruct and waste, applied to entailed estates over the course of centuries, eventually fostered a principle of intergenerational stewardship that became ethical bedrock by the late 1700s. This sense of intergenerational responsibility was widely shared,²⁹ shaping the early “traditions and conscience of our people.”³⁰

The writings of Theodore Roosevelt also furnish powerful expressions of the duty to future generations as the foundation of the American conservation ethic:

The “greatest good of the greatest number” applies to the number within the womb of time, compared to which those now alive form but an insignificant fraction. Our duty to the whole including the unborn generations, bids us restrain an unprincipled present-day minority from wasting the heritage of these unborn generations. The movement for the conservation of . . . all our natural resources [is] essentially democratic in spirit, purpose, and method.³¹

The trust approach provides tangible legal backing to the concept of intergenerational equity. The same public trust principles continue to find

²⁸ See William Blackstone, II, *Commentaries on the Laws of England* (1769) at 281.

²⁹ See Herbert Sloan, *Principles and Interest: Thomas Jefferson on the Problem of Public Debt* 5 (1995).

³⁰ *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).

³¹ Theodore Roosevelt, *A Book-lover's Holidays in the Open* 299-300 (1916).

expression in state constitutions³² and federal statutes³³ today, supporting their recognition as a matter of federal substantive due process.

2. The Commonwealth Ethic

The other dimension of the trust protects property rights to crucial natural resources held in common by present citizens. These are resources which are “a subject of concern to the whole people” clothed with sovereign trust interests compelling protection.³⁴ This aspect reinforces a societal value that could be termed the “commonwealth ethic.” In the United States, the idea of the “commonwealth” formed a central part of the identity of states. Even today, Massachusetts, Kentucky, Pennsylvania, and Virginia still bear the “commonwealth” title.

The commonwealth ethic mirrors the religious teachings of many faiths which view the earth as a sacred endowment created for the benefit of all humanity. Pope Francis repeatedly refers to this sacred trust in *Laudato Si'*, describing the natural environment as “a collective good, the patrimony of all humanity and the responsibility of every one.”³⁵

³² See, e.g., Pa. Const. art. I, § 27; Mont. Const. art. IX, § 1; Haw. Const. art. IX, § 1; Ill. Const. art XI, § 1.

³³ See, e.g., National Environmental Policy Act of 1969, § 101(b)(1), 42 U.S.C. § 4331(b)(1).

³⁴ 146 U.S. at 455.

³⁵ *Laudato Si'*, ¶ 95; see also ¶ 93 (“Whether believers or not, we are agreed today that the earth is essentially a shared inheritance, whose fruits are meant to benefit everyone.”).

3. The Injunction Against Waste

Another core principle of public trust law compels using highest and most beneficial public use, and rejects waste. In the trust context, this often refers to protecting future interests by prohibiting trustees from raiding the trust inheritance, thereby reducing the wealth available to future beneficiaries.

4. The Moral Imperative for Action

Our rapidly heating atmosphere implicates public trust principles to a far greater degree than did the submerged lakebed of *Illinois Central*. Atmospheric degradation poses a threat to human society of a magnitude unimaginable in the day when Justice Field invoked the doctrine to protect Chicago Harbor. As the preeminent climatologist, Dr. James Hansen, has warned, “Failure to act with all deliberate speed in the face of the clear scientific evidence of the long term dangers posed is the functional equivalent of a decision to eliminate the option of later generations and their legislatures to preserve a habitable climate system.”³⁶

Speaking at the White House in 2015, Pope Francis urged action: “[C]limate change is a problem which can no longer be left to a future generation. When it comes to the care of our ‘common home,’ we are living at a critical moment in

³⁶ James E. Hansen et al., *Scientific Case for Avoiding Dangerous Climate Change to Protect Young People and Nature*, NASA (Jul. 9, 2012), available at <http://pubs.giss.nasa.gov/abs/ha08510t.html>.

history.”³⁷ With so little time remaining to curb carbon dioxide emissions before our nation crosses irrevocable climate thresholds, this Court should allow the trial court to hear the evidence on the need for the government to protect the atmospheric trust before we leave an uninhabitable country to future generations.

IV. CONCLUSION

The Public Trust Doctrine plainly applies to the nation’s air and atmosphere, both of which are crucial resources needed for the welfare of present and future generations. All signatories to this brief, a broad cross-section of faiths united on this principle, respectfully request this Court to allow the Youth Plaintiffs to present their case at trial on behalf of all.

Respectfully submitted on September 5th, 2017.

/s/ Charles M. Tebbutt
Charles M. Tebbutt (OR Bar # 96579)
Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence St.
Eugene, OR 97405
charlie@tebbuttlaw.com
Tel: 541-344-3505
Fax: 541-344-3516

*Attorney for Amici Curiae Global Catholic
Climate Movement, et al.*

³⁷ Transcript of Pope Francis White House Welcoming Ceremony, *available at* <http://www.popefrancisvisit.com/pope-francis-u-s-visit-speech-transcripts/#whitehouse>.

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Pursuant to Federal Rules of Appellate Procedure 29(a)(4)(G) and 32(g)(1), I certify that the foregoing Brief of *Amici Curiae* Faith Organizations complies with the type volume limitation and typeface requirements set forth in Federal Rules of Appellate Procedure 29(a)(4) and (5) and Ninth Circuit Rule 32-3(2), because it is proportionally spaced, has a typeface of 14 points, and contains 3,898 words, inclusive of headings and footnotes, but exclusive of caption, tables, signatures of counsel, and certificates (word count calculated using the “Word Count” feature in Version 15.32 of Microsoft® Word for Mac).

Dated this 5th day of September, 2017.

/s/ Charles M. Tebbutt
Charles M. Tebbutt (OR Bar 96579)
Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence St.
Eugene, OR 97405
charlie@tebbuttlaw.com
Tel: 541-344-3505
Fax: 541-344-3516

*Attorney for Amici Curiae Global Catholic
Climate Movement, et al.*

9th Circuit Case Number(s) 17-71692

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