THE SUPREME COURT OF WASHINGTON

AJI P., et al.,	)	No. 99564-8
Petitioners,	)	**O R D E R**
v.	)	Court of Appeals No. 80007-8-I
STATE OF WASHINGTON, et al.,	)	
Respondents.	)	

This case came before the Court on its October 4, 2021, En Banc Conference to consider the petition for review. A majority of the Court voted in favor of the following result:

Now, therefore, it is hereby

ORDERED:

That the petition for review is denied.

DATED at Olympia, Washington this 6th day of October, 2021.

For the Court

González C.J.

CHIEF JUSTICE

GONZÁLEZ, C.J. (dissenting)—This case is an opportunity to decide whether Washington's youth have a right to a stable climate system that sustains human life and liberty. We recite that we believe the children are our future, but we continue actions that could leave them a world with an environment on the brink of ruin and no mechanism to assert their rights or the rights of the natural world. This is our legacy to them described in the self-congratulatory words of judicial restraint. Today, the court declined the important responsibility to seriously examine their claims. I respectfully dissent.

Thirteen youths between the ages of 8 and 18 and their supporting amici curiae present colorable argument that they have the right to a stable climate system that sustains human life and liberty. The youths, most unable to vote yet, call out for local and state action and accountability. They asked this court to recognize a fundamental right to a healthful and pleasant environment that may be inconsistent with our State's maintenance of a fossil-fuel-based energy and transportation system that it knows will result in greenhouse gas emissions. These greenhouse gases hasten a rise in the earth's temperature. This temperature change foreshadows the potential collapse of our environment. In its place is an unstable climate system, conceivably unable to sustain human life[1] and continued enjoyment of ordered liberty under law. Today, we have an opportunity to consider whether these are the sorts of harms that are remediable under Washington's law and constitution. We should have granted review to decide that question.

This case raises significant questions of constitutional law and issues of substantial public interest warranting our review. RAP 13.4(b)(3), (4). The youths have witnessed an alarming acceleration of record temperatures, roaring forest fires, and extreme weather conditions across our great state and nation. The youths sought review to determine what rights they have in the face of these present and future harms. If there is in fact a right to a healthful and pleasant environment, we could so declare.

Amici[2] also urge review based on the accelerating harm that present and future generations will incur from climate changes within the State's control. For

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[1] I recognize that our jurisprudence is focused on human life and human rights and does not recognize rights in nature. It may, however, be time to revisit Justice Douglas's call to consider whether some other living things should have standing in court. *Sierra Club v. Morton*, 405 U.S. 727, 741-42, 92 S. Ct. 1361, 31 L. Ed. 2d 636 (1972) (Douglas, J., dissenting).

[2] The following organizations filed amici curiae memorandum supporting review: (1) the Fred T. Korematsu Center of Law and Equality; the Center on Race, Inequality, and the Law at NYU

example, three local tribes with land abutting marine waters have already seen impacts from rising sea levels, as well as impacts from wildfires and changes to river systems. Amicus Curiae Mem. of the Swinomish Indian Tribal Community, Quinault Indian Nation, and Suquamish Tribe at 1. These changes have damaged fish, shellfish, and native plant harvests and have degraded traditional lands and waters. *Id.* These are specific, localized harms.

The Environmental Law Alliance Worldwide (ELAW-US), a global alliance of experts and advocates that helps communities promote a healthy and sustainable future, emphasizes cases from around the world that have determined climate change threatens human rights, including the right to life. It argues that the court should not ignore its constitutional obligation to protect the rights of present and future generations to a stable climate system that sustains human life and liberty and note that many courts have started to shoulder this obligation. Mem. of Amicus Curiae ELAW-US at 8 ("Courts around the world . . . have determined that fundamental rights, including the right to life and personal security, can be impaired by government conduct that contributes to climate change."). ELAW-US warns that this court's failure to review the "climate change-based constitutional claims [in this case] ignores the profound and unprecedented impacts that climate change will have on the ecology, well-being, and rights of this and future generations." *Id.* at 1.

The League of Women Voters of Washington (League) argues eloquently that we should not close the courthouse doors especially where the actions of the government "infringe[] upon the fundamental rights of individuals who cannot yet vote." Amicus Curiae Br. of the League Amicus Br. at 1. As the League properly notes, it is the "judiciary's duty to safeguard the individual rights enshrined in the constitution," and "[g]iven the urgency of climate change and the disproportionate harms children will suffer from it, [this] Court must act now to safeguard the Youth's constitutional rights." *Id.* at 10.

Law; and the Charles Hamilton Houston Institute for Race & Justice, (2) the Swinomish Indian Tribal Community, the Quinault Indian Nation, and the Suquamish Tribe, (3) the Center for Environmental Law & Policy, Cascadia Climate Action, Climate Action Bainbridge, East Shore Unitarian Church, Earth Law Center, Friends of Toppenish Creek, Kitsap Environmental Coalition, NoMethanol360, Olympic Climate Action, Puget Soundkeeper Alliance, the Sierra Club, South Seattle Climate Action Network, 350 Eastside, 350 Seattle, 350 Tacoma, and 350 Wenatchee, (4) the Environmental Law Alliance Worldwide–US, and (5) the League of Women Voters of Washington.

Finally, a collective group of environmental advocacy agencies (Environmental Groups) argue that "the right to a healthful and pleasant environment underlies our continued ability to claim our explicitly-guaranteed rights to life and liberty." Br. of Amici Curiae Environmental Groups at 3. The group urges us to accept review so this court could give meaningful consideration to the youths' constitutional rights, believing that there is a fundamental right to a "healthful environment" and that this right presupposes the "enjoyment of the unique rights of our people and is recognized by both statute and decisional law in Washington." *Id.* at 10.

Primarily at issue in this case is whether the youths' claims are justiciable. I would have granted review so this court could give meaningful consideration to that question. The Uniform Declaratory Judgments Act, ch. 7.24 RCW, "is peculiarly well suited to the judicial determination of controversies concerning constitutional rights." *Seattle v. Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 490, 585 P.2d 71 (1978). The Court of Appeals held that the youths could not satisfy the "final and conclusive" requirement of justiciability because there was no legitimate remedy to provide. This presents a debatable issue because if the youths were provided with an opportunity and could show the State's conduct violates their fundamental rights, such a declaration of rights from this court would be a final and conclusive determination of the controversy irrespective of whether any other relief is requested or granted. *See, e.g.*, *Wash. State Coal. for Homeless v. Dep't of Soc. & Health Servs.*, 133 Wn.2d 894, 918, 949 P.2d 1291 (1997) ("a judicial determination as to the authority and responsibility of the Department and of the juvenile court when involved with homeless children will be final and conclusive as to the issue raised in this case").

As the youths and amici point out, the Court of Appeals decision unnecessarily expanded the political question doctrine. Mem. of Amici Curiae Fred T. Korematsu Ctr. For Law & Equality et al. at 3. The youths' requested relief would require actions by the other branches of government to resolve complex issues, but the political question doctrine should not foreclose review of the declaratory issue presented. Critically, the Court of Appeals also addressed the substantive issue and held there is no fundamental right to a clean and healthful environment.[3] Whether this is correct warrants our review given considerable statutory authority that suggests otherwise. *See* RCW 43.21A.010 ("it is a fundamental and inalienable right of the people of the state of Washington to live

[3] In opposing review, Governor Inslee took no position on this issue.

in a healthful and pleasant environment"); RCW 70A.305.010 ("[e]ach person has a fundamental and inalienable right to a healthful environment"). This holding underscores the need for this court to address the constitutional questions presented.

A declaration of rights from this court is meaningful relief, even if it is not a magic wand that will eliminate climate change. Even though an "issue is complex and no option may prove wholly satisfactory," the judiciary should not "throw up its hands and offer no remedy at all." *McCleary v. State*, 173 Wn.2d 477, 546, 269 P.3d 227 (2012). The court should not avoid its constitutional obligations that protect not only the rights of these youths but all future generations who will suffer from the consequences of climate change. For these reasons, I would have granted review.

I respectfully dissent.

González C.J.
CHIEF JUSTICE

Whitener J.
Whitener, J.