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10
 11 **UNITED STATES DISTRICT COURT**
 12
 13 **CENTRAL DISTRICT OF CALIFORNIA**

14 **GENESIS B.**, a minor, by and through
 15 her Guardian G.P.; **MAYA W.**, a
 16 minor, by and through her Guardian
 17 R.W.; **MARYAM A.**, a minor, by and
 through her Guardian M.T.; **ZUBAYR**
 18 **M.**, a minor, by and through his
 Guardian S.W.; **MUAAWIYAH M.**, a
 19 minor, by and through his Guardian
 20 S.W.; **DANI R.**, a minor, by and
 21 through her Guardian A.P.; **MAYA R.**,
 a minor, by and through their Guardian
 22 M.R.; **MARYAM D.**, a minor, by and
 23 through her Guardian S.A.; **NOAH C.**,
 a minor, by and through their Guardian
 24 N.M.; **IONE W.**, a minor, by and
 25 through her Guardian C.W.; **AVROH**
S., a minor, by and through his
 26 Guardian P.S.; **ARIELA L.**, a minor,
 27 by and through her Guardian E.L.;

**Case No.: 2:23-CV-10345-MWF-
 AGR**

**FIRST AMENDED COMPLAINT
 FOR DECLARATORY AND
 INJUNCTIVE RELIEF**

**Constitutional Rights;
 Declaratory Judgment Action
 (28 U.S.C. §§ 1331, 2201, 2202)**

1 **HUCK A.**, a minor, by and through his
2 Guardian R.A.; **NEELA R.**, a minor,
3 by and through their Guardian S.R.;
4 **EMMA W.**, a minor, by and through
5 her Guardian S.W.; **ARISHKA J.**, a
6 minor, by and through her Guardian
7 A.J.; **LALI H.**, a minor, by and
8 through her Guardian R.H.; **DEAN S.**,
9 a minor, by and through his Guardian
10 R.K.;

11 **Plaintiffs,**

12 **vs.**

13 **The UNITED STATES**
14 **ENVIRONMENTAL**
15 **PROTECTION AGENCY; The**
16 **UNITED STATES of AMERICA;**
17 **MICHAEL S. REGAN**, in his official
18 capacity as Administrator of the
19 Environmental Protection Agency;
20 **OFFICE OF MANAGEMENT AND**
21 **BUDGET; SHALANDA D. YOUNG**,
22 in her official capacity as Director of
23 the Office of Management and Budget.

24 **Defendants.**

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1 **INTRODUCTION AND NATURE OF THE ACTION**

2 1. This is a Fifth Amendment action to declare and enjoin as
3 unconstitutional the policies and practices of the United States Environmental
4 Protection Agency (“EPA”) and the Office of Management and Budget (“OMB”)
5 that unconstitutionally discriminate against Children by valuing their lives less than
6 adults. Defendants have created and implement the Federal discounting policies
7 stated in Circular No. A-4¹ and Guidelines for Preparing Economic Analyses² (the
8 “Discounting Policies”). These Discounting Policies and Defendants’ practice of
9 carrying them out afflict EPA’s regulatory programs that control the climate
10 pollution that is allowed to enter the Nation’s air space with unequal treatment of
11 Children. The ubiquitous and unequal treatment of Children through Defendants’
12 ongoing Discounting Policies and practices challenged here will continue allowing
13 levels of climate pollution that substantially threaten Plaintiffs’ very lives and their
14 prospects for a livable future, on top of their preexisting injuries from Defendants’
15 past policies and practices.

16 2. The Discounting Policies and practices are an economic calculation
17 Defendants make to decide on their regulatory programs by determining how
18 valuable they are. Defendants’ Discounting Policies and practices are explicitly
19 discriminatory toward Children because they build into Defendants’ decision-
20 making processes a requirement that Defendants value the present more than the
21 future when evaluating the social or health impacts of regulatory programs regarding
22 how much climate pollution to allow. Defendants are violating the Constitution
23 because by design, the Discounting Policies put a thumb on the scale against
24

25 ¹ <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf> (last
26 accessed May 18, 2024).

27 ² [https://www.epa.gov/environmental-economics/guidelines-preparing-economic-
28 analyses-2016](https://www.epa.gov/environmental-economics/guidelines-preparing-economic-analyses-2016) (last accessed May 18, 2024).

1 reducing climate pollution for Children, thereby favoring other groups who benefit
2 economically in the short term from maintaining climate pollution activities.

3 3. Children in the United States are already growing up with polluted air
4 and a government-imposed and -sanctioned climate crisis. If the Discounting
5 Policies and practices are allowed to continue, *more climate pollution will be*
6 *emitted, and Children’s current injuries will worsen and become substantially*
7 *irreparable.*

8 4. The climate system that is vital to ordered liberty and has fostered and
9 supported all human life for thousands of years no longer exists because it has been
10 destabilized by pollution from burning fossil fuels. The ongoing climate crisis, and
11 how much worse it is allowed to become, is the single greatest driver of the health
12 and opportunity of every child born today. This crisis is driven by unjust economic
13 analysis, systematic mismanagement of regulatory authority, and abuses of power.
14 This climate crisis is not just a political issue; it is a constitutional one.

15 5. As members of the class³ of “Children,” Plaintiffs come to this Court
16 as the most vulnerable, unrepresented, powerless people in the Nation. Children in
17 the western United States regularly breathe into their lungs air polluted by toxic
18 smoke from climate-fueled wildfires and fossil fuel operations. Alternately, Children
19 must stay inside their homes to avoid the heat and air quality dangers posed by the
20 climate crisis and must evacuate the safety of their homes due to encroaching
21 climate-driven fires or floods. Children have lost homes from climate-driven fires.
22 Children have lost weeks of education from climate change-related school closures
23 and unsafe air quality conditions. Children cannot swim in water bodies laden with
24 toxic algae spawned by too-warm water and must ration tap water because of

25 _____
26 ³ This case is not a putative class action. In jurisprudence under the Equal Protection
27 Clause, the term “class” is a term of art for a group that is being treated differently.
28 *See Grutter v. Bollinger*, 539 U. S. 306, 326 (2003).

1 unprecedented climate droughts. Children are losing the ability to practice their
2 Indigenous, religious, spiritual, and cultural traditions and their individual dignity.
3 Children face shortened lifespans due to harms to their health and an accumulation
4 of otherwise avoidable adverse childhood events, such as loss of dignity, with
5 lifelong consequences. Plaintiffs, as individual Children, have experienced each of
6 these harms. Each of these injuries is not static, and will certainly worsen, with some
7 becoming irreparable in Plaintiffs’ lifetimes, if Defendants’ Discounting Policies
8 and practices challenged here are allowed to continue.

9 6. Fossil fuel pollution and human-induced climate change specially harm
10 Children and are burdening them with a lifetime of hardship. Children are harmed
11 by the effects of the climate crisis in ways that are different from and worse than
12 fully developed adults because Children’s bodies and minds are still growing, they
13 are still dependent on adults, they have different needs and behaviors from adults,
14 and because they will live longer throughout this century and into the next one. Each
15 additional ton of climate pollution and increment of heating poses increased hardship
16 and risk for Children, including Plaintiffs.

17 7. Plaintiffs seek redress in this Court because, as members of a protected
18 and disenfranchised class, they are politically and economically powerless in our
19 constitutional democracy and cannot effectively participate in and influence the
20 policy decisions that have caused and continue to affirmatively worsen the climate
21 crisis, discriminate against them, and will irreversibly harm them for the remainder
22 of their lives on Earth. Plaintiffs have no vote—the most important right of
23 citizenship that helps preserve all other rights. By the time they can vote, Plaintiffs
24 will have experienced 18 years of discrimination and climate injuries that they carry
25 for the rest of their lives.

26 8. At no time in our Nation’s history has Congress delegated authority to
27 any governmental agency to value Children less than adults and to allow levels of
28

1 pollution that are harmful to Children. Yet that is what Defendants have done
2 through their Discounting Policies and practices, and that is what Defendants will
3 continue to do without relief from the Court.

4 9. Defendants contend these Plaintiffs have no right to be heard.
5 Defendants claim that OMB and EPA have the exclusive and unreviewable power
6 to harm these Children, discriminate against them, and continue taking away the
7 fundamental right these Plaintiffs have to a stable climate system required to sustain
8 their lives. Defendants assert these Plaintiffs have no standing to sue and this Court
9 has no jurisdiction because this Court must leave untouched the Discounting Policies
10 and practices, because each separate permit and rule to allow climate pollution must
11 be challenged singularly by these Plaintiffs, because of alleged effects on the whole
12 economy, or because the problem is allegedly “too big.” Defendants are wrong. The
13 greater the constitutional grievance of these disenfranchised young Plaintiffs and
14 their class, the greater the responsibility of the judiciary to act as a check on
15 Defendants’ infringement of Plaintiffs’ constitutional rights. That the Discounting
16 Policies and practices challenged here are ubiquitous makes Plaintiffs’ grievance all
17 the greater.

18 10. Plaintiffs’ government has made these types of arguments before—
19 against Black children, against Mexican-American children, against Indigenous
20 children, against children of unmarried parents, against children born to
21 undocumented immigrants, against children of Japanese descent, and more—each
22 time in an effort to protect powerful status quo interests and deny disenfranchised
23 Americans their equal rights. Courts have prohibited this type of discriminatory
24 government conduct as violative of the very foundation of our democracy.

25 11. Plaintiffs are Children living in California. They bring this declaratory
26 judgment action under the Fifth Amendment Equal Protection and Due Process
27 Clause, and the Declaratory Judgment Act. Plaintiffs seek, in the first instance, a
28

1 declaratory judgment that, as Children, they are entitled to a heightened level of
2 judicial review over government conduct that burdens them with lifetimes of
3 hardship, that they are members of a constitutionally protected class, and that
4 Defendants have violated their constitutional rights under the Fifth Amendment
5 Equal Protection Clause, as incorporated by the Fourteenth Amendment, by
6 discriminating against them as Children and with respect to rights that are
7 fundamental, including rights to life, personal security and happiness, dignity and
8 worth as an individual, and in so doing Defendants have also acted outside the scope
9 of their delegated authority.

10 12. Plaintiffs seek a declaration that the Discounting Policies and practices
11 described herein are unconstitutional. Plaintiffs also seek an injunction preventing
12 EPA from systematically practicing the Discounting Policies in its regulatory
13 programs affecting climate pollution. Plaintiffs seek a declaration that the
14 Discounting Policies and practices have resulted in discrimination with respect to
15 fundamental rights and an injunction against Defendants’ continued use of the
16 Discounting Policies and practices that have been found to result in discrimination
17 with respect to fundamental rights.

18 13. Plaintiffs seek further relief as deemed necessary and proper to enforce
19 a declaratory judgment after the facts are found and the legal conclusions of this
20 Court are rendered on a full evidentiary record.

21 14. Given the dire emergency of the climate crisis, which Defendants’
22 Discounting Policies and practices worsen, Plaintiffs also respectfully plea that they
23 be granted a swift hearing, including trial, to resolve material issues of disputed facts,
24 on their claims and of their evidence. Fed. R. Civ. P. 57 (“The court may order a
25 speedy hearing of a declaratory-judgment action.”).

26 15. As the Chief Justice of the U.S. Supreme Court stated: “There is no
27 better gift a society can give children than the opportunity to grow up safe and free—
28

1 the chance to pursue whatever dreams they may have. Our Constitution guarantees
2 that freedom.”⁴ Through their Discounting Policies and practices Defendants have
3 acted, by design, to discriminate against Children and to diminish their opportunity
4 to grow up safe and free, much less pursue their dreams. Plaintiffs, as part of the
5 protected class of Children, seek equitable remedies to right the injustice of these
6 ongoing constitutional wrongs.

7
8 **JURISDICTION AND VENUE**

9 16. This action is brought pursuant to the United States Constitution. It is
10 authorized by Article III, Section 2, which extends the federal judicial power to all
11 cases arising in equity under the Constitution. The Fifth Amendment is self-
12 executing.

13 17. This action arises under the laws of the United States, involves a federal
14 question, and this Court has jurisdiction pursuant to 28 U.S.C. § 1331.

15 18. “In a case of actual controversy within its jurisdiction, [] any court of
16 the United States, upon the filing of an appropriate pleading, may declare the rights
17 and other legal relations of any interested party seeking such declaration, whether or
18 not further relief is or could be sought. Any such declaration shall have the force and
19 effect of a final judgment or decree and shall be reviewable as such.” 28 U.S.C.
20 § 2201.

21 19. “Further necessary or proper relief based on a declaratory judgment or
22 decree may be granted, after reasonable notice and hearing, against any adverse party
23 whose rights have been determined by such judgment.” 28 U.S.C. § 2202.

24 20. A case and actual controversy exists between Plaintiffs and Defendants
25 because in exercising sovereign and delegated statutory authority over the quality of

26 ⁴ *Celebrating the Constitution: Chief Justice John G. Roberts tells Scholastic News*
27 *why kids should care about the U.S. Constitution*, Scholastic News, Sept. 11, 2006,
28 at 4, 5.

1 the Nation’s air and the pollution that enters it, Defendants have adopted and carried
2 out the Discounting Policies and practices that are ongoing and worsening climate
3 destabilization, endangering and discriminating against Plaintiffs, and caused them
4 injuries to rights protected by the Fifth Amendment.

5 21. The actual controversy lies in: (1) whether Defendants’ Discounting
6 Policies and practices burden Children with a lifetime of hardship in violation of the
7 Equal Protection Clause; (2) whether Children are a protected class under the Equal
8 Protection Clause; (3) whether Defendants’ Discounting Policies and practices are
9 discriminating against Plaintiffs, as part of the protected class of Children, in
10 violation of the Equal Protection Clause; (4) whether the injurious climate pollution
11 sanctioned and systematically allowed by Defendants’ Discounting Policies and
12 practices discriminate against Children with respect to rights that are fundamental;
13 and (5) whether EPA has exceeded its statutorily delegated authority in violation of
14 the Constitution. The resolution of these actual controversies involves questions of
15 scientific evidence and a factual record and cannot be decided merely as a matter of
16 law.

17 22. At minimum, declaratory relief will redress the actual controversy by:
18 clarifying Plaintiffs’ equal protection rights as Children; resolving whether the
19 Discounting Policies and practices are unconstitutional; resolving whether the
20 Discounting Policies and practices have resulted and will continue to result in
21 discrimination with respect to fundamental rights; and provide constitutional
22 direction to Defendants in how they may carry out their benefit-cost analyses and
23 other authorities in a manner that applies the law equally and fairly to Children. EPA
24 would henceforth be constitutionally constrained from using the challenged
25 Discounting Policies and practices in its systematic management of the air and
26 climate pollution.

27 23. Defendants admit they will comply with any Declaratory Judgment of
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1 this Court, which means Plaintiffs will have immediate relief from the ongoing
2 discrimination that is occurring if Declaratory Judgment is entered in their favor.

3 24. Enjoining Defendants’ Discounting Policies and practices in EPA’s
4 regulatory programs will provide immediate relief to Plaintiffs from the ongoing
5 discrimination they suffer. If EPA is enjoined from using its discriminatory and
6 ubiquitous Discounting Policies and practices, it would alter its conduct by
7 systematically controlling and managing climate pollution through its regulatory
8 programs in a manner that would result in fewer tons of CO₂ allowed to be emitted
9 into the air because there would no longer be an economic thumb on the scale of
10 policies that allow more climate pollution. EPA has exclusive delegated authority
11 and numerous methods to regulate and control climate pollution free from the
12 discriminatory approach challenged herein.

13 25. An injunction preventing EPA from practicing discriminatory
14 Discounting Policies would also remedy Children’s disparate treatment under law
15 by preventing more economically-biased regulatory programs that allow unsafe
16 levels of climate pollution.

17 26. The Court has equitable authority to fashion further meaningful relief
18 as the evidentiary record warrants.

19 27. If Defendants can continue to exercise their sovereign and statutorily
20 delegated authority unchecked by the U.S. Constitution, with the errant belief that
21 discriminating against Children to allow climate pollution that further destroys the
22 air and climate system and Children’s livable future is permissible under the U.S.
23 Constitution, Plaintiffs will face an insurmountable burden in securing their rights
24 compared to adults. Many Children will succumb to physical or mental illness
25 caused by Defendants’ allowance of climate pollution that discriminates against
26 Children. Some will die from extreme climate events or lack of access to basic life
27 necessities well before their given life expectancy. The gains in life expectancy over
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1 the last century are now reversing for Children born today. Ending the Discounting
2 Policies and practices will aid in protecting Plaintiffs’ rights from complete
3 extinguishment, and at least partially alleviate Plaintiffs’ constitutional injuries.

4 28. Once Plaintiffs and Children reach the age of suffrage and are
5 enfranchised, their vote on the matter of their lives and health will be ineffectual at
6 altering the consequences of 18 years of being treated as worth less than adults and
7 the resulting cumulative climate pollution and early exposures to climate harms, as
8 well as the policies established during their formative years that will abide for years
9 to come. Children are increasingly losing an open livable future, one where liberty
10 and life are increasingly constrained, and additional property destroyed, by an
11 increasingly and dangerously destabilized climate system. A timely declaration in
12 their favor regarding the unconstitutionality of Defendants’ Discounting Policies and
13 practices will provide redress and reduce the risk of the ongoing and certainly
14 impending future harm to their rights.

15 29. Plaintiffs have no adequate remedy at law to redress the harms herein,
16 which, if left unresolved, will be irreversible and life-threatening.

17 30. Venue lies in this judicial district by virtue of 28 U.S.C. § 1391(e).
18 Plaintiffs reside in this judicial district, and the harms giving rise to the claims herein
19 arise, in part, in this judicial district. Plaintiffs Genesis, Maya W., Maryam A.,
20 Zubayr, Muaawiyah, and Dani reside in the Western Division of this judicial district.

21 **PLAINTIFFS**

22 31. Plaintiff **Genesis B.** is a 17-year-old lifelong resident of Long Beach,
23 California. Rising temperatures due to climate change are threatening Genesis’s
24 safety and decreasing her ability to learn. Genesis’s home, designed for moderate
25 temperatures that were previously typical of coastal cities in Southern California,
26 has no air conditioning. Installing air conditioning is cost prohibitive for Genesis’s
27

1 family. As extreme heat days become more common in Long Beach, Genesis is
2 unable to cool off in her home during the day. On many days, Genesis must wait
3 until the evening to do schoolwork when temperatures cool down enough for her to
4 be able to focus. On July 29, 2023, Genesis experienced symptoms of heat
5 exhaustion, including a headache and bodily weakness after spending time outdoors
6 on a hot day, and had to cancel her appearance to receive an award for her activism
7 from a local youth group.

8 32. Extreme heat days (measuring 95°F and above) in Long Beach,
9 California.



17 33. Without air conditioning, Genesis must keep the windows in her house
18 open in the summer, which can be unsafe and exposes her to more pollen, worsening
19 her allergies and resulting in frequent runny nose, cough, and congestion. Ash from
20 wildfires that are exacerbated by climate change and increasingly close to Genesis's
21 home also blows in through her windows causing headaches, fatigue, and worsening
22 of her allergy symptoms. Genesis wears masks to go outside in particularly bad
23 smoke seasons, including the past two years.

24 34. Genesis feels a deep connection to the earth, tied closely to her Afro-
25 Latina and Indigenous roots. She has made substantial efforts to lessen her
26 contribution to climate change by adopting a vegan lifestyle at the age of six and
27 educating the public about greenhouse gas emissions. Genesis experiences climate
28

1 anxiety and instead of thinking about college, she constantly worries about the
2 climate crisis and how it will affect her future and the future of her four younger
3 siblings. One way Genesis deals with her anxiety is by being in nature, though this
4 becomes more difficult as climate change worsens. The heat and smoke prevent her
5 from even taking walks near her home. In August 2023, after Tropical Storm Hilary,
6 Genesis was unable to take a family trip to the Colorado River, because the route,
7 the I-5 freeway, flooded.

8 35. Plaintiff **Maya W.** is a 17-year-old resident of Los Angeles, California.
9 Maya was diagnosed with bronchospasms due to her asthma and must regularly use
10 a steroid inhaler to participate in physical activities essential for her health, like
11 soccer. Increasing interaction with wildfire smoke, driven by climate change, causes
12 Maya to have chest pains related to her asthma and severe headaches. Maya plays
13 soccer and would like to compete at a competitive level but is unable to do so due to
14 her asthma. Wildfire smoke has caused practices to be cancelled in the past, which
15 also prevents Maya from performing at her highest level. When Maya participated
16 in PE classes, wildfire smoke forced the students to exercise inside, but on several
17 occasions, ash lined the floor of the gym. Wildfires have also increasingly threatened
18 Maya’s grandparents’ property in Burbank, a home she visits on nearly a weekly
19 basis. While her grandparents’ home has thus far been spared from fire, Maya was
20 shocked to see her grandparents’ lush backyard turned to ash by wildfires.

21 36. Maya’s participation in soccer is also affected by rising temperatures
22 caused by climate change which causes her fatigue, headaches, and more loss of
23 breath when she exercises. Maya plays soccer on turf fields that intensify the heat
24 and cause her feet to feel like they are burning. At times, air conditioning has broken
25 down at Maya’s school making it difficult to focus due to the heat. Her school has
26 lost power on especially hot days, which caused school cancellations.

27

28

1 37. Maya started experiencing anxiety in 2020. This anxiety is worsened as
2 she learns about climate change and experiences its effects. Maya’s anxiety around
3 climate change rises to the level of panic attacks, which she manages by engaging
4 in therapy and climate action. Maya feels compelled to adjust her lifestyle and
5 activities, like eating a vegan diet, choosing not to get her driver’s license,
6 purchasing reused items, reducing her consumption, and declining trips involving
7 airplanes, to reduce her carbon footprint. Even with these outlets and lifestyle
8 choices, Maya’s anxiety persists as she thinks about her government making climate
9 change worse. She feels like she has been robbed of the bright future adults promised
10 her as she was growing up.

11 38. Plaintiff **Maryam A.** is a 13-year-old resident of Santa Monica,
12 California. Increasing wildfires and wildfire smoke harm Maryam’s physical health
13 and her family’s safety. When Maryam is exposed to wildfires and wildfire smoke,
14 she has difficulty breathing and her nose hurts around her sinuses. When air quality
15 is poor due to wildfires, Maryam is unable to do activities she enjoys like biking,
16 hiking, and enjoying time in nature. In 2019, Maryam’s grandparents came to stay
17 in Maryam’s home because their house in Malibu was unlivable from being filled
18 with ash from frequent wildfires. When they returned two months later, her
19 grandparents’ property had been partially burned and the house had to be remediated
20 to rid it of ash and smoke.

21 39. Maryam has also been impacted by the increasingly hot temperatures
22 which cause Maryam headaches, while the dry air worsens her eczema flare-ups.
23 The heat forces Maryam to limit her outdoor activities, including biking to school.
24 Maryam practices Islam, and because her age, she is considering what practices of
25 the faith she will adopt in the future. The heat makes it difficult for Maryam to fast
26 for Ramadan and has affected her decision on whether to fast. As she looks to the
27 future, Maryam believes that wearing a hijab would be very difficult in the heat. She
28

1 also is concerned about her ability to participate in the Hajj, the pilgrimage to Mecca
2 that is done on foot, with increasing temperatures. Maryam tries to change her daily
3 activities to reduce water use, given the historical drought in California.

4 40. Until Maryam’s family recently had their roof repaired in Summer
5 2023, it would leak due to increasing extreme precipitation. In August 2023,
6 Maryam had to cancel her thirteenth birthday with friends due to Tropical Storm
7 Hilary. Even with the repaired roof, Maryam’s home still experienced some leaks
8 from the storm.

9 41. Maryam enjoys going to Santa Monica Beach over the summer where
10 oil spills often run onto the beach. The oil has ruined her shoes when she takes long
11 walks along the beach. Maryam is concerned about how her future will be affected
12 by climate change and how much she will be able to go outside due to poor air
13 quality. She worries that the state of the planet will affect her ability to live her life
14 and explore opportunities when she becomes a young adult, including going to
15 college, traveling and hiking, choosing her career, and all of the small and big
16 choices adults get to make, like starting a family and having future children. Maryam
17 believes that her generation, and all generations after, are owed a future.

18 42. Plaintiffs **Zubayr M.** and **Muaawiyah M.** are brothers, 11- and 16-
19 years-old respectively. They are residents of Los Angeles, California and live near
20 several oil and gas wells, including 3½ miles from a fracked well. Zubayr and
21 Muaawiyah regularly face climate pollution from fossil fuel infrastructure as they
22 recreate. They enjoy visiting Kenneth Hahn Park, approximately five miles from
23 their home, once or twice a month and which is located next to an oil field. In April
24 2021, their ability to visit the park was disrupted by an oil leak which threatened
25 health of residents by releasing contaminants in the air and water.

26 43. Zubayr and Muaawiyah experienced increased rainfall in their area due
27 to climate change. In August 2023, winds from Tropical Storm Hilary blew off a
28

1 panel of the roof of their apartment building, on which they live on the top floor.

2 44. Zubayr and Muaawiyah regularly experience smog, driven by fossil
3 fuel emissions and wildfire smoke. Muaawiyah checks the air quality several times
4 a week and has observed below average air quality on his weather app about half the
5 time. When Zubayr and Muaawiyah visit downtown on smoggy days they have
6 trouble breathing, coughing, and at times, eye irritation.

7 45. Zubayr and Muaawiyah have also experienced an increase of mosquitos
8 in their area. They frequently receive mosquito bites and through the fall of 2023,
9 they could see mosquitos on the inside walkway of their apartment building. In 2022,
10 Zubayr developed a staph infection from a mosquito bite and had to receive medical
11 treatment.

12 46. Zubayr feels angry and sad when he thinks about how fossil fuels will
13 increase in the future and make his future worse. Muaawiyah can feel despair for
14 days at a time if he thinks too deeply about the climate crisis.

15 47. Plaintiff **Dani R.** is a 17-year-old resident of Santa Clarita, California.
16 Dani faces increasing extreme weather events due to climate change. Dani lives in a
17 canyon where heavy rains in 2022 caused mudslides that caused severe damage to
18 the foundation of her home and holes in the ceiling. The repairs on the home took a
19 long time and cost her family \$100,000 as it was not covered by homeowner's
20 insurance.

21 48. Dani has experienced extreme heat and wildfire, which are increasing
22 in frequency and severity with climate change. Wildfire smoke and poor air quality
23 caused severe allergies for Dani in 2021, where she was unable to attend school
24 because of migraines, shakes, and congestion—missing about 15 days of school.
25 Dani worked with a physician to get these allergies under control, which required
26 taking Benadryl. Dani loses power several times a year at her home due to climate
27 related events. In 2019, the Tick fire came very close to her house. Dani's family

1 has housed displaced friends who have been evacuated or lost their homes to
2 wildfires.

3 49. Dani’s school and community have issues with contaminated water. In
4 the past, particularly in time of drought driven by climate change, Dani’s family has
5 struggled to find packaged water on the shelf.

6 50. Dani is an active member in her community, and frequently volunteers
7 in climate action, works with women and children in need, and in the past, assisted
8 in Covid relief. She has observed inequity and social issues in her community
9 exacerbated by climate change. Dani had hoped to become a nurse practitioner in
10 the future, but her concerns about climate change have made her shift her plans to
11 focus on targeting climate change through non-profit work.

12 51. Plaintiff **Maya R.** is a 10-year-old resident of Fullerton, California.
13 Maya’s first encounter with the threat of wildfire and smoke was when they were a
14 baby and their parents were making plans to evacuate from their home in La Habra
15 when it was difficult to know where to safely go. In their young life, Maya has
16 experienced the physical discomfort of smoke from wildfires, which has harmed
17 their ability to safely engage in outdoor activities they enjoy, like biking. Maya has
18 been forced to stay inside at school due to ash falling and unhealthy air quality. Maya
19 has observed burned landscapes while traveling for family vacations such as to
20 Yosemite. Wildfire smoke and orange skies make Maya feel scared. Maya has
21 experienced extremely high temperature days, requiring them to stay indoors at
22 school when it is too hot for recess or lunch. Orange County experienced one of its
23 hottest days ever in September 2022, reaching 111°F in Fullerton, where average
24 high temperatures normally range near 85°F.

25 52. Maya also experiences anxiety about the impacts of drought on the
26 Colorado River and their water supply in Southern California. Maya feels a strong
27 connection to animals and experiences anxiety about climate change’s harm to
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1 animals and their habitat, especially birds and canines. Maya uses art to help with
2 the anxiety they feel around climate change, and they attend events and marches
3 whenever they can to try to have their voice heard.

4 53. Plaintiff **Maryam D.** is a 15-year-old resident of Garden Grove,
5 California. The effects of climate change are already impacting Maryam’s religious
6 practices. As a Muslim, Maryam feels a deep connection to Islam’s call to care for
7 both the environment and animals. She practices veganism as part of her devotion
8 and is discouraged by governments’ neglect of the earth. The increasing heat in
9 Southern California due to climate change burdens Maryam when the month-long
10 fast during Ramadan falls during periods of heat as it has for the last several years.
11 The heat makes it very difficult to abstain from both food and water from dawn to
12 dusk, which is an important part of her religious practice. Maryam also wears a hijab
13 and conforms with other religious attire including long sleeves and long pants, which
14 increasing temperatures make more difficult and lead to physical discomfort.

15 54. Maryam faced a tropical storm warning for the first time in August
16 2023 when Tropical Storm Hilary, caused in part by climate change, hit Southern
17 California. Her home was under threat of evacuation causing stress to her and her
18 family. Along with worsening storms, wildfire and wildfire smoke have harmed
19 Maryam’s quality of life. Maryam considers her academics, and her love of
20 mathematics, to be one of the most important aspects of her life and, in middle
21 school, Maryam’s school closed down for multiple days each year due to the threat
22 of wildfire and wildfire smoke, interfering with her learning. Even when fires are
23 not close to Maryam’s home, she has had ash fall on her property from fires several
24 miles away. Maryam worries for her younger brother with asthma, which is
25 worsened by wildfire smoke, and requires their family to run air purifiers.

26 55. Wildfires, smoke, and heat have also interfered with Maryam’s
27 enjoyment of family gatherings. In 2020, Maryam visited her family in Northern
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1 California for about a week and was exposed to extremely smoky air and poor air
2 quality in addition to heat, which forced her to stay indoors. In recent years, two
3 campsites that Maryam and her family regularly visited were burned down in
4 wildfires. One campsite was a camp Maryam’s mother used to also stay at as a child,
5 a now-broken tradition she had passed down to Maryam and her siblings.

6 56. Maryam worries about how climate change will affect her and her loved
7 ones in the future. She worries about immediate climate related threats to her family
8 and friends, like those living in Pakistan who have been harmed by extreme flooding.
9 She also worries about the long-term future and sustainability of life in California
10 and other parts of the world. As a result of her climate anxiety, she spends her free
11 time outside of school volunteering for youth-led climate organizations, which has
12 left no time for a childhood of play and social time with friends.

13 57. Plaintiff **Noah C.** is a 15-year-old resident of Sebastopol, California.
14 Noah loves Sebastopol and even though they have visited other places in California
15 and the country, Sebastopol is their favorite place and is where Noah feels a sense
16 of connection and belonging. Noah remembers having a great childhood until they
17 were 8-years-old, in third grade, when the 2017 Tubbs Fire started. That was the first
18 time Noah was evacuated from their home for wildfire. Noah lost 19 days of school
19 and ultimately had to leave the state to find safe air quality for their brother with
20 asthma. The Tubbs Fire destroyed homes of Noah’s friends and threatened their
21 school and entire community. Noah’s home was layered with smoke and ash. Noah
22 remembers being very scared. Both Noah and their younger brother share the month
23 of October for their birthdays. The Tubbs Fire occurred a couple of days after Noah’s
24 brother’s birthday and shortly before Noah’s birthday, ruining an otherwise
25 celebratory time. While nothing had ever happened like that to Noah before, and
26 they thought it was a one-time catastrophe, the Tubbs Fire was just the beginning.

1 Now every year since 2017, Noah has had to be afraid every fall, especially in
2 October—their birth month, that they will lose their house and everything they love.

3 58. Again, in 2018, the Camp Fire caused five more days of school closures
4 for Noah, and their family planned for potential evacuation. In 2019, during the
5 Kincaid Fire, Noah had to evacuate their home once again, leaving their dogs at a
6 neighborhood boarding, causing Noah to fear for their home and pets. Noah packed
7 stuffed animals to take with them, knowing they might lose all of their possessions
8 and their home. The evacuation disrupted Noah’s Halloween, and they were forced
9 to celebrate the holiday away from home and their community. Noah’s school was
10 shut down for several weeks, and they had anxiety that their school might burn down.
11 In 2020, Noah’s home was threatened again by an even closer fire, the Walbridge
12 Fire. Noah evacuated to San Francisco and missed the first day of sixth grade at a
13 new school. After the 2020 fire, Noah’s family relocated from their farm into town
14 for fear of future wildfires, but they are not free from danger.

15 59. Noah has spent significant portions of their childhood running from
16 fires, spending holidays in rental houses not being able to enjoy their October
17 birthday or Halloween, from feeling constantly afraid about fire and their house
18 burning down. Noah has witnessed their friends struggle with the impact of losing
19 homes. Noah has also spent many days wearing masks to help protect against the
20 inhalation of pollutants like PM_{2.5}, and their family has had to purchase multiple air
21 purifiers for every room in their home to try to keep their indoor air quality safe.

22 60. After the Tubbs Fire, in fourth grade, Noah began to struggle in school
23 and with anxiety and depression for which they have sought medical treatment. Noah
24 uses therapy, meditation, art, and sacred time in nature to help manage their climate
25 anxiety and depression, but the ongoing harms of climate change in Noah’s life make
26 it extremely challenging. Climate change has fundamentally changed Noah’s
27 childhood.

1 65. Noah loves the coastal environment and tidepools of California and
2 wants to study marine biology one day, but knows that some marine species are
3 dying out or moving to different locations due to the increase in ocean temperatures.
4 This additional loss exacerbates Noah’s climate anxiety.

5 66. Noah’s life has been frequently disrupted by the increasing wildfires,
6 heatwaves, and flooding due to climate change. However, the physical climate harms
7 and disruptions cause an even greater psychological harm from the fear and anxiety
8 Noah experiences thinking about their safety and the future as climate change
9 worsens and governments maintain the status quo. Noah has met with members of
10 Congress to ask them to support H. RES. 259 aimed at promoting youth mental
11 health and well-being in a changing climate, including funding school districts to
12 help children cope with climate-related disasters. Noah felt frustrated that many
13 politicians did not listen to them. To date, only 29 members of Congress have
14 supported H. RES. 259.

15 67. Plaintiff **Ione W.** is a 12-year-old resident of Sebastopol, California.
16 Wildfire seasons worsened by climate change are already harming Ione’s home,
17 family, community, and way of life. In 2017, when Ione was 5 years old, she was
18 forced to evacuate her home in the middle of the night due to the Tubbs Fire,
19 California’s most destructive wildfire at that time. Ione’s family had about 15
20 minutes notice before evacuating, and their home was completely destroyed in the
21 fire, losing all possessions except those in their car, and the charred swing set in their
22 yard—the only thing remaining of the property they still own. Ione’s family was
23 fortunate to escape across the bridge that burned down behind them. Ione missed
24 approximately one week of school and was displaced for six months. During that
25 time, Ione had to move three times before settling into her current home, each move
26 adding additional stress to her as a young child.

27 68. Since the Tubbs Fire, Ione feels extreme anxiety around fires. During
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1 the growing wildfire seasons, she checks the color of the sky before going to bed to
2 confirm there is no fire in the area. At age 7, Ione photographed the sunset each night
3 on her iPod to compare against prior sunsets, looking for hints of wildfire orange, to
4 feel calm enough to go to sleep. Ione has also worked with a therapist to develop
5 coping skills to address her fire anxiety. Despite these measures, Ione does not feel
6 safe, even in her own home, from September through the first heavy rain, due to the
7 increasing presence of wildfires in her area due to climate change. The smell of
8 smoke heightens her anxiety and causes extreme headaches that sometimes make it
9 difficult to participate in school, harming Ione's health, education, and security.
10 Ione's family has considered rebuilding on their property but is unable to do so due
11 to the inability to insure the property as homeowner insurance companies flee
12 California. Since 2017, Ione has evacuated her home two additional times due to the
13 Kincade (2019) and Walbridge (2020) fires. During the 2018 Paradise fire, Ione
14 evacuated home to escape prolonged smoke exposure. Ione's family ultimately
15 moved to a more coastal and less forested area that should have less wildfire risk,
16 but there is nowhere to live in their community to escape the growing wildfire season
17 from climate change.

18 69. Ione has researched climate change since third grade and believes that
19 climate change is something that needs to be talked about and stopped. She wants to
20 share her story of loss and fear through these claims to prevent additional harm to
21 herself and other children by the choices her government makes.

22 70. Plaintiff **Avroh S.** is a 14-year-old lifelong resident of Palo Alto,
23 California. Avroh first had to wear a mask as a fourth grader in 2018 when the air
24 was filled with ash and smoke from the deadliest and most destructive wildfire
25 season in California history. Avroh was exposed to wildfire smoke that caused
26 headaches, coughing, and discomfort, leading to the cancellation of school. In 2020
27 when he was in sixth grade, Avroh began regularly checking his outdoor air quality
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1 after repeatedly waking up to a sky that had turned an apocalyptic orange from yet
2 another series of devastating wildfires. The poor air quality has made it unsafe for
3 Avroh to go outside for months at a time, eliminating his recreational activities
4 important for his health and wellbeing like soccer games, practices, simple daily
5 walks, or hanging outdoors with friends. Avroh's family has canceled family
6 vacations in other parts of California due to extreme heat and smoke from wildfires
7 that cover large parts of the state. Avroh now suffers from more frequent nosebleeds
8 that occur during periods of poor air quality and excessive heat, and has had to have
9 a blood vessel in his nose cauterized during wildfire season. During the 2023 fire
10 and smoke season, Avroh experienced more respiratory symptoms such as
11 congestion, coughing, and a sore throat, which made it hard to concentrate in school.
12 Avroh worries for his safety as each year fires burn closer to his community.

13 71. Avroh has also been exposed to increasingly severe storms that have
14 closed his school, interrupted his education, and prevented participation in activities.
15 For example, at the start of 2023, Avroh's school was canceled for at least five days
16 from an extreme storm event. Extreme precipitation flooded school grounds making
17 it unsafe to access the buildings for several days. High winds from another storm in
18 the winter of 2023 downed power lines on campus, forcing all school children to be
19 sent home while the power lines were fixed and the power restored. Even when
20 school was in session, parts of Avroh's school have been blocked off as unsafe
21 because of the risk that trees weakened by storms may fall. Avroh is scared that
22 another severe storm could send a tree crashing into his classroom in the future.

23 72. Avroh feels a deep, spiritual connection to nature and grieves the
24 sudden loss of wildlife and ecosystems that he is witnessing in Northern California
25 due to climate change. When Avroh was 9 years old, he started a Nature Club, to do
26 his part to clean up the environment. Avroh has known since he was 10 years old
27 that leading climate scientists have warned we have a limited window of opportunity
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1 to avert climate disaster, and while he does what he can in his own school and home
2 to care for himself and nature, he feels anxiety wondering whether those in power
3 will continue to perpetuate the harm to him and future generations.

4 73. Plaintiff **Ariela L.** is a 17-year-old resident of San Leandro, California
5 and the first generation of her family to be born in the United States. Ariela feels a
6 deep connection to her community in San Leandro as well as her extended family
7 and community in Oaxaca, Mexico, who she visits regularly.

8 74. During the August 2020 Lightning wildfires that ignited across
9 Northern California, Ariela opened her front doors to orange skies with air thick and
10 heavy with smoke, causing throat aches and watering eyes – an experience that now
11 happens every year with the increasing wildfire season made worse by climate
12 change. As part of a low-income immigrant community in San Leandro, Ariela, as
13 well as other students in her community, is forced to suffer climate hazards
14 compounded by social and economic burdens. For example, Ariela has had to go to
15 school during periods of hazardous air quality from wildfires while wealthier area
16 schools have closed. Ariela’s classrooms filled with smoke, disrupting her learning,
17 and causing Ariela and her classmates sore throats and other physical effects.
18 Likewise, Ariela’s mom has had to continue working during hazardous smoke waves
19 because taking time off work as a preschool teacher would cause the family financial
20 hardship.

21 75. Ariela has also endured heat waves, with no air conditioning at her
22 home and in many areas of her school. Frequently, on the hottest days, the air quality
23 is also poor from smoke and it is not safe to cool down her home with open windows
24 at night.

25 76. Ariela has a large extended family in Oaxaca where she spends time.
26 During her childhood, while in Oaxaca in her family’s pueblo, Ariela experienced
27 intense storms whose flood waters demolished homes and crops central to her
28

1 family’s economic wellbeing and cultural traditions. Ariela experiences anxiety over
2 the impact of extreme weather, like storms and hurricanes, as well as heat, on maize
3 and other crops in Oaxaca because these crops sustain her family, community, and
4 cultural traditions. Shortly after her family lost homes and crops in Oaxaca, Ariela
5 returned home to the Bay Area where smoke engulfed her community. Ariela recalls
6 waking up at dawn to take the bus with her mom to school, breathing in toxic smoke
7 and understanding it was not safe for her or her mom and feeling trapped in the lack
8 of safety for herself and her family.

9 77. Ariela has been a community organizer with Sunrise Movement since
10 age 14, fighting to stop the climate crisis. She has trained students from across the
11 country for a national campaign and has gone to D.C., participating in a
12 demonstration in an effort to be heard by the people in power. She would like to
13 spend time doing other activities or enjoy her hobbies, but Ariela worries about her
14 future, her community, her life, and future generations and knows that we are
15 running out of time, so she has foregone parts of her childhood in order to protect a
16 livable future.

17 78. Plaintiff **Huck A.** is a 13-year-old lifelong resident of Truckee,
18 California. Huck enjoys many outdoor activities including mountain biking, cross-
19 country running, baseball, river inner-tubing, skiing, and other winter activities,
20 which are an important part of his childhood and development. As climate change
21 worsens, Huck’s ability to engage in these activities is being harmed.

22 79. Worsening wildfires and air quality due to climate change, are
23 commonplace in Huck’s life, a symbolic beginning of the summer. Though Huck
24 would enjoy running or biking throughout the summer and fall, the pervasive smoke
25 during wildfire season often forces him to stay indoors. In 2021, Huck’s school was
26 closed for one week due to the Caldor fire that caused evacuation warnings for the
27 Tahoe Truckee Unified School District. That same fire affected Huck’s family’s

1 ability to safely move his ailing grandparents into their home. In 2022, hazardous
 2 smoke from the Mosquito fire, which Huck avoided only by being out of town,
 3 impacted Huck’s grandma and family members who were stuck in the smoke. When
 4 Huck attends school during wildfire season, he wears N95 masks during the day at
 5 high air quality indexes. If the air quality index exceeds 150, Huck’s cross-country,
 6 biking, and baseball practices and events are canceled, which occurs regularly.
 7 Though Huck is preparing for high school and would like to compete competitively
 8 in these sports, smoke days cause him to miss training and competition days and
 9 interfere with his performance.

10 80. The Tahoe Truckee Unified School District closes schools for smoke
 11 days when AQI exceeds 400, causing Huck to miss school, and has instituted other
 12 restrictions on student activities to reduce smoke inhalation. The School District
 13 instituted this new smoke protocol in 2021 in response to the increasing number and
 14 severity of wildfires from climate change.

15 81.

TTUSD Guidelines for Outdoor Activity Based On Air Quality Level
 Use your best judgment; the AQI reports do not always reflect what we see on the ground.

AQI Value (Air Quality Index)	Level 1: 0-50 Good	Level 2: 51-100 Moderate	Level 3: 101-150 Unhealthy for Sensitive Individuals	Level 4: 151-200 Unhealthy	Level 5: 201-300 Very Unhealthy	Level 6: 301-399 Hazardous	Level 7: 400+ Hazardous
Windows/Doors	OK to Open	OK to Open	Keep Closed	Keep Closed	Keep Closed	Keep Closed	Keep Closed
Lunch/Breaks Outdoors	No Restrictions	No Restrictions	No Restrictions Ensure sensitive individuals are medically managing their condition.*	15-30 minutes max with no physical activity	No Outdoor Activity	No Outdoor Activity	No Outdoor Activity
Recess (15 Minutes)	No Restrictions	Ensure sensitive individuals are medically managing their condition. *	Sensitive individuals should exercise or play indoors. Encouraged to move indoors if AQI exceeds 100, if possible.	Indoors Only	No Outdoor Activity	No Outdoor Activity	No Outdoor Activity
P.E. (1 hour)	No Restrictions	Ensure sensitive individuals are medically managing their condition. *	Sensitive individuals should exercise or play indoors. Encouraged to move indoors if AQI exceeds 100, if possible.	Indoors Only	No Outdoor Activity	No Outdoor Activity	No Outdoor Activity
Athletic Practices & Training and Athletic Competitions (2-4 Hours)	No Restrictions	Ensure sensitive individuals are medically managing their condition. *	Athletic Practice p Limit to 30 minutes per hour of practice time with increased rest breaks and substitutions Encouraged to move indoors if AQI exceeds 100, if possible. Athletic Competitions Increase rest breaks and substitutions per CIF guidelines for extreme heat.** Ensure sensitive individuals are medically managing their condition.*	CT Athletic Practice Indoors Outdoor Athletic Competitions Cancelled or relocated	Athletic Practice Indoors (monitor indoor air quality to ensure it does not exceed 150) Outdoor Athletic Competitions Cancelled or relocated	Athletic Practice Cancelled (Site Administrators have discretion to hold practice if schools remain open. Students will be monitored for health impacts) All Athletic Competitions Cancelled or relocated	Athletic Practice Cancelled All Athletic Competitions Cancelled or relocated
School Status	Open	Open	Open	Open	Open	Potential Smoke Day based on air quality outside and inside of buildings and location of school.	Smoke Day Schools Closed

1 82. At home, Huck’s family has implemented evacuation plans because
2 wildfires have been near to their home. In 2022, Huck’s family received an
3 evacuation notice while on vacation, for the Butterfield fire, creating anxiety about
4 how to evacuate Huck’s grandma who also lived in Huck’s home.

5 83. Huck has been susceptible to heat exhaustion as temperatures increase
6 due to climate change. While attending cross-country meets, Huck has had to run in
7 the heat, causing his lungs to burn, intense sweating, and headaches. On a few
8 occasions, Huck has been biking in his full protective mountain biking gear in high
9 temperatures when he got a severe headache and started vomiting and spent the rest
10 of the day trying to cool down. Huck enjoys inner tubing down the Truckee River
11 and has noticed the water getting warmer in the summer. Some summers, the river
12 levels are too low to float due to drought.

13 84. Extreme weather events, increasing with climate change, have also
14 affected Huck’s favorite time of year, winter, and winter sports. Huck loves snow
15 and anxiously awaits the first snowflakes. Some winters, Huck has had difficulty
16 skiing because there were patches of dirt everywhere and little snowpack. On the
17 other side of extreme conditions, Huck has missed school for winter weather events
18 made more extreme by climate change. Record-setting snow in 2016-17 and 2022-
19 23 caused several weeks of school day cancellations. In 2023, the record-setting
20 amount of snow caused concern over school building stability, canceling school for
21 additional days. Huck was not able to ski during this time because the snow blocked
22 roads to the ski resorts, which also had closures. Huck is worried that as climate
23 change worsens, he will not be able to sled or ski because the snow will disappear
24 with rising temperatures and the altered precipitation patterns will forever change
25 winter in the Sierra Nevada. The number of days when air temperatures averaged
26 below-freezing has declined by almost 30 days since 1911. Not only is the snow
27 getting heavier and concrete-like, but there are increasingly fewer days when it is

1 even cold enough to snow. Huck lives at just below 6,000 feet in elevation. The
2 number of average days below freezing at Huck’s home are continuing to decline.

3 85. Plaintiff **Neela R.** is an 8-year-old resident of Petaluma, California.
4 Neela experiences smoky seasons every year from increasing wildfires due to
5 climate change and cannot remember a year without smoke. The smoke causes Neela
6 headaches so severe that their parents have had to pick them up early from school
7 on many occasions. Neela also experiences stomachaches during smoke seasons.
8 The smoke has caused Neela to miss school, camps, recess, and multiple planned
9 family vacations in California. When Neela was very young, their family faced
10 evacuation threats due to wildfires. Their family continues to prepare for wildfire
11 threats, including plans to ensure the safety of Neela’s aging grandparents who also
12 live in California and have faced similar threats from smoke and fire evacuations.

13 86. Neela has an autoimmune disease. There is increasing evidence of a
14 relationship between exposure to PM₁₀ and the risk of developing autoimmune
15 diseases.

16 87. Neela endures increasingly extreme temperatures during the summer
17 due to climate change. Neela feels discomfort as they participate in outdoor activities
18 including soccer, which they sometimes must play on artificial turf that further
19 increases the heat. Drought has, at times, dried up the creek near a friend’s house
20 where Neela likes to play. Extreme precipitation from climate change has threatened
21 to flood Neela’s home. In 2021, Neela and their parents had to dump buckets of
22 water from immediately outside their home to prevent its flooding.

23 88. Neela has a deep love for animals and nature. Neela worries that as
24 climate change worsens it will affect their family’s ability to garden the fruit and
25 vegetables they love to eat, the safety of their pets, and local flora and fauna.

26 89. Plaintiff **Emma W.** is a 16-year-old resident of La Jolla, California.
27 Emma is a citizen of Switzerland, and a permanent resident of the United States
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1 since she was 2 years old, with plans to naturalize into a United States citizen when
2 she turns 18. Emma’s parents are also permanent residents and as non-citizens do
3 not vote in U.S. elections.

4 90. Emma was diagnosed in summer 2023 with exercise-induced asthma.
5 She uses an inhaler before physical activity, including field hockey. Increasing heat
6 due to climate change worsens Emma’s asthma. Emma also experiences heat
7 sensitivity and has nausea and exhaustion in high temperatures, which are
8 increasing. She has had to sit out field games and practices because of heat,
9 preventing her from competing at the high level at which she would like. Emma
10 visits her extended family every summer in Switzerland. During these visits, Emma
11 has lived through European heat waves and temperatures in excess of 100°F.

12 91. Emma’s quality of life improves when she interacts with nature and she
13 worries about losing access to forests, which are her favorite place to be, and
14 underwater habitats where she scuba dives, because of climate change. Emma has a
15 generalized anxiety disorder which is triggered by extreme climate events and
16 politicians not acting to stop climate change. This anxiety is often immobilizing and
17 affects her ability to function at school and in her social life. While being involved
18 in climate activism herself is a way she tries to manage her anxiety, Emma still
19 worries about her future and the lives of vulnerable people. While she dreams of
20 pursuing a career as a history teacher, she believes the only path she can morally
21 take is to work against the climate crisis; because without a stable climate system,
22 she does not have the opportunity to choose a different future. As a minor and a child
23 of non-citizen residents, Emma feels the profound weight of not being able to vote
24 and have decades of decisions made about her future and the climate crisis without
25 having a voice.

26 92. Emma has also noticed a large increase in mosquitos in her area and is
27 highly susceptible to mosquito bites and allergic inflammation. Emma’s open skin
28

1 from scratching the bites will make her more susceptible to infection and disease.

2 93. Plaintiff **Arishka J.** is a 15-year-old resident of Redwood City,
3 California. Arishka lives close to the bay coastal line and worries about sea level rise
4 driven by climate change, which could affect infrastructure near her home by 2030
5 under current government projections. According to the *Sea Level Rise Vulnerability*
6 *Assessment* conducted in 2018 by San Mateo County, her neighborhood of Redwood
7 Shores is likely to be flooded completely if a 100-year flood with 3.3 feet of sea level
8 rise occurs. Arishka enjoys recreating at the beach and has noticed rising tides and
9 erosion that have prevented her from accessing beaches that are important to her.
10 Arishka’s life is connected to the sea and coastlines, and her opportunities about
11 where she lives and how she spends her time will be increasingly affected by rising
12 sea levels if climate pollution continues.

13 94. Extreme weather is already harming Arishka today. In late December
14 2022, after record-breaking rainfall, Arishka’s kitchen was flooded from water
15 flooding in from their saturated backyard and coming up through the floorboards.
16 Because of the extreme flooding happening in other areas as well as the time of year,
17 most contractors were unavailable to help. Arishka’s family tried to reach out to
18 contractors for over a week, but ended up having to spend hundreds of dollars and
19 over 20 hours to repair the damage and prevent further flooding on their own.

20 95. Arishka is regularly impacted by increasing wildfire and wildfire
21 smoke. On smoky days, Arishka has trouble breathing and gets headaches. From 4th
22 to 7th grade, her classes and sports practices were cancelled for more than a week
23 due to wildfires or poor air quality. Safety drills at her high school, including
24 evacuation drills for wildfires, have even been canceled due to poor air quality. On
25 the poor air quality days, the students are forced to stay inside at school. Students
26 had to shelter in place for two days in September 2023 alone. Arishka has had to
27 change her plans and alter activities due to wildfire smoke, including canceling a
28

1 planned beach clean-up with friends. Arishka is aware of the harm wildfire smoke
2 can have on her health and brain chemistry and worries about how her exposure to
3 wildfire smoke, which has become the norm each year in the Bay Area, is affecting
4 her.

5 96. Arishka also worries how climate change will affect her future and is
6 concerned that the world will not be safe for future generations. She also worries
7 about the future of her communities including vulnerable communities near her in
8 California, as well as her extended family in India, who she fears may be affected
9 by extreme weather conditions.

10 97. Plaintiff **Lali H.** is a 12-year-old resident of Berkeley, California. For
11 half of Lali's life, since she was six, Lali has lived with smoke season from the
12 increasing wildfires due to climate change. Lali remembers a Tuesday in second
13 grade when she woke up and her bedroom was red from the light outside, which was
14 created by wildfire and smoke. Lali's mom had her wear long-sleeved clothes to
15 protect her from the ash as they went to school where she was not allowed outside
16 for recess, and afterward they went straight home and stayed indoors. Years before
17 the Covid pandemic began, Lali's family was already wearing masks during periods
18 of poor air quality from smoke. Even inside Lali's home, she cannot escape the
19 smoke because their home is older and drafty and the back door does not close all of
20 the way. During smoke season, Lali can smell the smoke inside her home. Smoke
21 irritates Lali's eyes and makes her teary. She also feels physically weaker when she
22 breathes in the smoky air.

23 98. Lali has missed school because of wildfire smoke. She attended an
24 elementary school that was also drafty and allowed smoke inside the classrooms.
25 The school was not able to install air filtration and parents would bring in portable
26 air filters, but still the children were in poor air quality. There were days during
27 Lali's elementary school when teachers would teach wearing full gas masks.

1 99. Often during smoke season, Lali has not been allowed outside at recess,
2 and she would have PE at her desk in the classroom. Lali is an active child and has
3 a harder time paying attention in class without breaks for physical activity. Both
4 smoke and heat make it harder for Lali to pay attention in school and do her
5 homework.

6 100. Lali’s family has canceled trips to visit family in India due to extreme
7 flooding events, which were caused by climate change. They have also canceled
8 summer vacations due to fire. The redwood trees of California are really important
9 to Lali and she values their fire resistance and hopes they will withstand climate
10 change. Her extended family loves to ski together in the winter for vacation, which
11 can only happen in years when there is enough snow to go. Lali has believed adults
12 need to stop hurting the environment since she saw a sign in second grade that said,
13 “There is no Planet B.”

14 101. Plaintiff **Dean S.** is an 11-year-old resident of Lee Vining, California.
15 Dean is a member of the Mono Lake Kutzadika’a Tribe, the southernmost band of
16 the Northern Paiute. Dean has lived his whole life on the lands and waters of his
17 ancestors from time immemorial. It is part of Dean’s and his family’s tradition to
18 gather native food from the land, like the deer, fish, buck berries, and pine nuts.
19 Climate change is changing the availability of these foods and harming Dean’s
20 traditional and nourishing practices. Dean has been fishing since the age of three,
21 learned how to gut a fish when he was 7, and to say the prayers when he takes a life.
22 In recent years, Dean has noticed a lot of dead fish and not as many native fish to
23 catch. In 2023, Dean and his dad did not find any deer during their hunting season.
24 There has also been a decline in buck berries over the last few seasons. The pinyon
25 pine nuts have not been predictable and lately have been rotten. Dean and his family
26 notice these changes from what used to be.

27 102. Dean’s Tribe is named after Mono Lake and the lake is a huge part of
28

1 them. Kutzadika’a means “we ate the brine flies.” When the lake is hurting, Dean
2 and his family are hurting. Mono Lake is like medicine for Dean and his family, to
3 heal his mosquito bites or other ailments. It is important to Dean to swim in the lake,
4 to sing to her, and to find healing in her waters. When Mono Lake water levels are
5 low, it becomes almost dangerous to swim there because of the higher concentration
6 of minerals, which can cause burning. Dean knows it is important to protect nature
7 and help Mother Earth heal, which will also heal people.

8 103. In the winter of 2023, Dean lived through an extreme snowpack that
9 trapped wild horses who died, but other years there is now very low snowpack and
10 not enough water for the horses. Too much snow is too much water, and too hot is
11 too little water, both of which affect the way things grow. During the hotter drier
12 summers, some of the lakes Dean likes to swim in, like Saddlebag Lake, are
13 contaminated with toxic algae and unsafe to be in. Dean can feel and see these
14 changes worsening during his 11 years. Because Dean is in nature all the time,
15 walking barefoot in the summer, tasting the snow, harvesting food from the land and
16 waters, he notices the changes. The snow or rain used to be more predictable and
17 now with climate change it is hard to know what will happen.

18 104. One of Dean’s favorite activities is playing football and he hopes to
19 play college football one day, but his football practices have been canceled for heat
20 and games ended early. Dean gets headaches from the heat. Dean has also had school
21 canceled for several days due to smoke from increasing wildfires. The red skies and
22 thick smoke that comes inside Dean’s house have increased with the increase in fires
23 in Dean’s area. Dean wants to help Mother Earth heal so that his brothers, sisters,
24 and friends can have a healthy safe future.

25 105. Each Plaintiffs’ existing injuries to their individual physical and mental
26 health, homes, education, spiritual practices, dignity, and other individual rights
27 resulted from Defendants’ ubiquitous practice of discounting the value of Children’s
28

1 lives and future, and the economic value of controlling past climate pollution to
2 protect their lives today. That discrimination has already occurred by Defendants’
3 design. Plaintiffs’ injuries described above are the natural and intended consequence
4 of discounting the value of Children’s lives and a livable future.

5 106. Defendants’ systematic control and management of climate pollution,
6 through their Discounting Policies and practices, contributed to Plaintiffs’ past
7 injuries including damage and loss of homes for Plaintiffs Ione, Dani, Muaawiyah,
8 Zubayr, and Arishka; development of asthma for Emma, Noah, and Maya W.; health
9 impacts from heat and smoke to Genesis, Maya W, Maryam A, Dani, Noah, Avroh,
10 Ariela, Huck, Neela, Emma, Lali, and Dean; and educational, learning, and
11 recreational disruptions to all Plaintiffs.

12 107. Defendants’ ubiquitous ongoing Discounting Policies and practices—
13 which continue to discount Children’s value, and the value of controlling pollution
14 today and going forward—will result in more climate pollution that exacerbates
15 Plaintiffs’ injuries and deprives them of an equally-valued future in government
16 decision-making than would otherwise occur if Defendants did not use positive
17 discount rates to artificially undervalue the future benefits of reducing climate
18 pollution now. Plaintiffs Maryam A., Maryam D., and Dean will experience
19 increasing disruptions to religious and cultural practices; Plaintiffs Noah, Genesis,
20 Avroh, Dani, Emma, Huck, Neela, and Maya W. will experience more frequent
21 adverse episodes of their existing health conditions, including asthma attacks for
22 Emma, Noah, and Maya W; Plaintiffs Genesis, Maya W., Maryam A. Maya R.,
23 Maryam D., Noah, Ariela, Huck, Neela, Emma, and Dean will face increasing
24 exposure to unhealthy heat that causes physical reactions and interrupts daily
25 activities; and nearly all Plaintiffs will experience worsening anxiety.

26 108. All Plaintiffs face the continuing and underlying injury from
27 Defendants’ Discounting Policies and practices of being denied equal treatment
28

1 under law and their basic dignity of being valued equally to other groups of people.
2 This explicit devaluing leads to the extreme hazards and barriers to Children’s
3 health, natural development, and opportunity for a livable future. Defendants’
4 discriminatory control of climate pollution and their Discounting Policies and
5 practices continue to place the present interests of adults above Children in a grave
6 threat to Children’s health and well-being and an open livable future.

7 109. Plaintiffs are increasingly denied the privilege of equal treatment in
8 having clean air and a stable climate because of Defendants’ Discounting Policies
9 EPA practices. Plaintiffs’ lives depend on clean air. The air Plaintiffs breathe
10 circulates through their bloodstream and fills their lungs so there is no clear line
11 separating where the air ends and where they begin. The air Plaintiffs breathe will
12 continue to become less healthy if Defendants continue their discriminatory
13 Discounting Policies and practices.

14 110. Plaintiffs cannot escape the ubiquitous discriminatory Discounting
15 Policies EPA practices throughout its regulatory programs that value Children and
16 their futures as worth less than adults today. Plaintiffs cannot escape climate
17 pollution or climate destabilization they have been born into. They are confined by
18 the climate system as now degraded by Defendants, with no other solution but to
19 come to the court to seek to stop the discriminatory Discounting Policies and
20 practices by which Defendants intentionally allow each additional ton of climate
21 pollution to enter the air, thereby worsening Plaintiffs’ existing injuries.

22 111. Plaintiffs have volunteered, spoken to elected officials, peacefully
23 protested, marched and taken many individual actions to try to stop the climate crisis
24 from worsening. Their efforts, alongside many other Children’s efforts, have not
25 stopped the discriminatory conduct of their government. They are politically
26 powerless to effectively and permanently alter the Discounting Policies and practices
27 they challenge here because they cannot vote and do not have economic power to
28

1 lobby and compete with the fossil fuel industry. Children and these Plaintiffs are
2 consistently ignored, overlooked, tokenized, and undervalued even when they try to
3 affect political processes without the franchise.

4 112. Plaintiffs’ impending and accumulating injuries of more explicit
5 discrimination and more climate pollution being allowed would be avoided by
6 Defendants eliminating their Discounting Policies and practices, thereby allowing
7 Defendants to limit climate pollution to levels that are constitutionally compliant.
8 Every ton of climate pollution emitted adds more heat-trapping molecules to the air.
9 Inversely, every ton of climate pollution not emitted reduces the amount of heat that
10 can be trapped by those molecules. In the context of climate crisis, incremental
11 changes offer meaningful relief in mitigating and avoiding additive physical harms
12 to Plaintiffs, additive economic harms to Plaintiffs, and avoiding irreversible climate
13 tipping points that would leave Plaintiffs no recourse to restore Earth’s energy
14 balance.

15 **DEFENDANTS**

16 113. Defendant **United States Environmental Protection Agency** (“EPA”)
17 is the federal agency with delegated authority from Congress since 1970 to prevent,
18 control, and protect the Nation’s air from pollution. Some of EPA’s delegated
19 authorities, most relevant to the allegations herein, come from the Clean Air Act.

20 114. The stated mission of EPA is “to protect human health and the
21 environment” including “clean air, land and water . . . based on the best available
22 scientific information.”

23 115. According to EPA, “Congress designed the Clean Air Act to protect
24 public health and welfare from different types of air pollution caused by a diverse
25 array of pollution sources.” The primary goals of the Clean Air Act are pollution
26 prevention and the protection of human health and welfare. 42 U.S.C. § 7401(c).

1 116. Congress has delegated EPA statutory authority to systematically
2 control pollution through its regulatory programs over the following:

- 3 a. All stationary sources of pollution, including factories, chemical and
4 fertilizer plants, petroleum refineries, power plants, cement plants,
5 glass plants, and other industrial facilities;
- 6 b. All mobile sources of pollution, including all motor vehicles, engines,
7 and equipment including small gasoline-powered engines like
8 generators, mowers, chainsaws, and leaf-blowers;
- 9 c. Fuels;
- 10 d. Locomotives;
- 11 e. Ocean-going vessels and large ships with marine diesel engines,
12 including ferry boats, and marine recreational equipment; and
- 13 f. Aircraft.

14 117. Through its regulatory programs, EPA sets the national floor for air
15 quality protection. States and Tribes may limit air pollution more stringently than
16 EPA, but they may not allow more air pollution than does EPA. EPA oversees the
17 conduct of states in controlling pollution emanating from within their borders and is
18 authorized to take legal action should states not comply with federal law.

19 118. Acting as the sovereign’s agent, and under its delegated authorities
20 since 1970, EPA has exercised control over the Nation’s air, and air pollution over
21 international waters. In exercising this control, EPA uses Discounting Policies and
22 practices to make decisions about its regulatory programs.

23 119. There is no statutory language in the Clean Air Act that explicitly or
24 implicitly gives EPA the authority to allow pollution at levels that degrade the public
25 health and welfare and the productive capacity of the national population. There is
26 no statutory language in the Clean Air Act that explicitly or implicitly gives EPA the
27

1 authority to allow pollution from the sources it regulates at levels that discriminate
2 against and injure Children.

3 120. EPA has been delegated no authority by Congress to discount the lives
4 of Children and future generations of Children when it exercises its authority to
5 control air pollution.

6 121. Through its Discounting Policies and practices, EPA has allowed and
7 permitted substantial amounts of climate pollution to enter the air above the Nation's
8 sovereign territory since 1970. EPA continues through its Discounting Policies and
9 practices to allow and systematically permit large amounts of climate pollution to
10 enter the Nation's sovereign air space.

11 122. By and through its exercise of control over climate pollution, EPA
12 discriminates against Children as a class by treating their lives as less valuable than
13 adults, ubiquitously using Discounting Policies and practices that devalue the benefit
14 to Children of controlling climate pollution, and undervaluing the hardship EPA's
15 regulatory programs will have on Children in the coming decades.

16 123. In exercising control over the quality of the Nation's air from 1970
17 through the date of this action, through its Discounting Policies and practices, EPA
18 has intentionally allowed an accumulation of climate pollution that EPA's own
19 documents and the best available scientific information show is harmful to the health
20 and welfare of Children today.

21 124. Without judicial intervention, EPA will continue to implement its
22 Discounting Policies and ubiquitous practice of discounting the value of Children's
23 lives and their future when exercising its regulatory control over the quality of the
24 Nation's air. By diminishing the true costs to Children's health, lives, and future,
25 EPA will continue to allow additional climate pollution, which will exacerbate
26 Plaintiffs' already-existing injuries, and further impair their lives and future.

27

28

1 125. By discounting the economic costs to Children’s lives to allow the
2 pollution of the air, the destabilization of Earth’s energy balance, and thus the
3 climate crisis, EPA has acted in excess of its congressionally-delegated authority.

4 126. Defendant **the United States of America** (“United States”) is
5 sovereign over our Nation’s air space and atmosphere. In its sovereign capacity, the
6 United States controls the climate pollution that enters the Nation’s air or emanates
7 from the United States to the air above international waters. As sovereign, the United
8 States has caused constitutionally significant amounts of climate pollution to enter
9 the air, and levels of CO₂ to accumulate in the atmosphere, which have already
10 destabilized Earth’s energy balance and climate system and are causing the planet to
11 heat. The United States Congress and President delegated authority to Defendant
12 Environmental Protection Agency to protect and enhance the quality of the Nation’s
13 air resources to promote the public health and welfare.

14 127. Defendant **Michael Regan** is the Administrator of EPA and, in his
15 official capacity, is responsible for all policies and practices of EPA, including its
16 Discounting Policies and practices that lead to the ongoing allowance of climate
17 pollution that will worsen Plaintiffs’ existing injuries.

18 128. Defendant **Office of Management and Budget** (“OMB”) is an agency
19 of the United States government that is responsible for setting, implementing, and
20 enforcing executive branch policies, including coordination and review of all
21 significant federal regulations, issuance of executive orders, and other regulatory
22 guidance to agencies, like EPA. OMB is responsible for Circular No. A-4, which is
23 the policy that directs Federal agencies, including EPA, in their regulatory analysis
24 of benefits and costs and the use of discount rates.

25 129. Defendant **Shalanda D. Young** is the Director of OMB, an office
26 within the Executive Office of the President of the United States. 31 U.S.C. §501.
27 She is sued in her official capacity. In her official capacity, Director Young is
28

1 charged with the supervision and management of all actions of OMB, including its
2 ongoing benefit-cost analysis (“BCA” or “CBA”) and Discounting Policies and
3 practices that EPA implements.

4 **STATEMENT OF FACTS**

5 **Defendants’ Discriminatory Discounting Policies**

6 130. Circular No. A-4 (“Circular A-4”) is the Executive Branch policy on
7 benefit-cost analysis (“BCA” or “CBA”) and discounting. Circular A-4 states: BCA
8 “is the primary analytical tool used for regulatory analysis” and provides a
9 systematic framework for executive agencies to identify, compare, and evaluate the
10 likely outcomes of alternative regulatory choices. Circular A-4 and its appendix
11 constitute OMB’s discounting policies challenged here.

12 131. The Guidelines for Preparing Economic Analyses document (the “EPA
13 Guidelines”) is EPA’s policy on performing BCA and other economic analyses of
14 contemplated regulations in accordance with Circular A-4.

15 132. EPA Guidelines Sections 6.3 and 6.4 require positive discounting
16 regardless of the long time horizon of a policy or its effect on Children. Section
17 8.3.1.3 of the EPA Guidelines directs that “[b]enefits and costs that occur over time
18 must be properly and consistently discounted if any comparisons between them are
19 to be legitimate.” “[I]t is equally important to properly discount cost estimates of
20 different regulatory approaches to facilitate valid comparisons.”

21 133. Circular A-4 and EPA Guidelines, set forth the Discounting Policies
22 challenged here because they discriminate against Children and result in the
23 substantial climate pollution that is injuring, and will continue to injure, the
24 Plaintiffs.

25 134. Regulatory Impact Analyses (“RIAs”), of which BCAs are the primary
26 analytical tool, are the “formal way” that EPA anticipates and evaluates the likely
27

1 consequences of its regulatory actions allowing climate pollution. RIAs, including
2 the BCAs, inform EPA about the effects of its regulatory actions and influence how
3 EPA develops regulations, chooses between regulatory alternatives, and adopts final
4 regulations. Used early in the regulatory design phase, EPA’s economic analysis
5 directs the selection of regulatory options.

6 135. OMB’s Circular A-4 directs agencies to “select those [regulatory]
7 approaches that maximize net benefits.”

8 136. The most recent Circular A-4 policy was published on November 9,
9 2023, superseding the prior policy issued on September 17, 2003. The 2003 Circular
10 A-4 policy still applies for certain regulatory programs currently under consideration
11 and the 2023 Circular A-4 policy takes full effect beginning in January 2025.

12 137. Circular A-4 requires: “All future effects, regardless of what form they
13 take (*e.g.*, changes to consumption, health, environmental amenities, etc.), should be
14 discounted to reflect changes in valuation of impacts across time.”

15 138. In accordance with the Discounting Policies, EPA selects the regulatory
16 approach that maximizes “net benefits.”

17 139. In accordance with the Discounting Policies, EPA has discounted and
18 is discounting “all future effects, regardless of what form they take (*e.g.*, changes to
19 consumption, health, environmental amenities, etc.)” in order to value effects
20 differently across time.

21 140. Discounting “reflects that people prefer consumption today to future
22 consumption” and tells EPA “how much future benefits and costs are worth today.”

23 141. Starting in 2003, the Discounting Policies required agencies, including
24 EPA, to apply discount rates of 3% and 7% in regulatory impact analyses BCAs.

25 142. Section 6.4 of the EPA Guidelines sets a default policy that for “long
26 time horizons” of more than 50 years, the effects of CO₂-reducing regulations should
27 be evaluated at discount rates of 2.5%, 3%, and 5%. Section 6.4 also instructs that:

1 “When implementing any discounting approach the following principles should be
 2 kept in mind: In all cases social benefits and costs should be discounted in the same
 3 manner, . . . The monetary benefits from the expected future impacts should be
 4 discounted at the same rate as other benefits and costs in the analysis. This includes
 5 changes in human health, environmental conditions, ecosystem services, etc.” Even
 6 where Children are affected, the same policy applies.

7 143. EPA has been and continues evaluating the benefits of its regulatory
 8 programs compared to the costs in terms of present value, using OMB’s discount
 9 rates of 3 and 7%. For regulatory programs being considered presently, EPA has
 10 used discount rates of 2.5, 3, 5, and/or 7%.

11 144. The new Circular A-4 Discounting Policy, which takes full effect in
 12 2025, sets a required 2% discount rate. OMB’s new Circular A-4 policy also includes
 13 a new “long-term estimate of the social rate of time preference” discount rate. For
 14 regulatory impacts through year 2079, the discount rate remains 2%. Through year
 15 2105, it drops to 1.8%. For impacts in years 2164-2172, the discount rate applied is
 16 still over 1% as depicted in OMB’s chart below.

17 145. OMB’s new long-term estimate of the social rate of time preference:⁵

<u>Years</u>	<u>Discount Rate</u>
2023 – 2079	2.0%
2080 – 2094	1.9%
2095 – 2105	1.8%
2106 – 2115	1.7%
2116 – 2125	1.6%
2126 – 2134	1.5%
2135 – 2143	1.4%
2144 – 2153	1.3%
2154 – 2163	1.2%
2164 – 2172	1.1%

26 _____
 27 ⁵ <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4Appendix.pdf> (last accessed May 18, 2024).

146.

**How Even Small Positive Discount Rates Erase
Nearly All Climate-Pollution Reduction Benefits from Consideration**

Year	Share of Benefits Ignored at 0% Discount Rate	OMB's Long-Term Discount Rate for That Year	Share of Benefits Ignored at OMB's Discount Rate
2025	0.00	2.0%	0.02
2030	0.00	2.0%	0.11
2040	0.00	2.0%	0.28
2050	0.00	2.0%	0.41
2060	0.00	2.0%	0.52
2070	0.00	2.0%	0.61
2080	0.00	1.9%	0.68
2090	0.00	1.9%	0.73
2100	0.00	1.8%	0.78
2110	0.00	1.7%	0.81
2120	0.00	1.6%	0.84
2130	0.00	1.5%	0.87
2140	0.00	1.4%	0.88
2150	0.00	1.3%	0.90
2160	0.00	1.2%	0.91
2170	0.00	1.1%	0.92

A 0.92 share means the specified discount rate causes EPA's analysis to ignore 92% of benefits in that year.

A 0.00 share means the discount rate is not causing EPA to ignore climate benefits.

147. Circular A-4 requires: “Any agency that wishes to account for risk using alternative discount rates in primary or sensitivity analyses should provide specific justification for their approach, and should confer with OMB before proceeding.”

148. EPA conforms its Discounting Policy and practices to OMB’s Circular A-4 Discounting Policy.

149. A 2% discount rate means that the value of reducing climate pollution today for the benefit of Children 30 years from now is only worth 55 cents on a dollar as depicted in OMB’s chart below.

150. Discount rate over next 30 years:⁶

<u>Year</u>	<u>Discount Factor</u>	<u>Year</u>	<u>Discount Factor</u>
1	0.9804	16	0.7284
2	0.9612	17	0.7142
3	0.9423	18	0.7002
4	0.9238	19	0.6864
5	0.9057	20	0.6730
6	0.8880	21	0.6598
7	0.8706	22	0.6468
8	0.8535	23	0.6342
9	0.8368	24	0.6217
10	0.8203	25	0.6095
11	0.8043	26	0.5976
12	0.7885	27	0.5859
13	0.7730	28	0.5744
14	0.7579	29	0.5631
15	0.7430	30	0.5521

151. Defendants’ Discounting Policies applied to controlling climate pollution are explicitly discriminatory towards Children, including Plaintiffs, because Defendants’ Discounting Policies put a thumb on the scale against reducing climate pollution tomorrow and in the years ahead. When a regulatory BCA applies *any* positive discount rate (more than zero) to a proposed regulation versus a more stringent alternative, the discount rate guarantees that the calculation will generate a result that makes the future benefits of reducing climate pollution—or the future costs of *not* reducing pollution today—appear much lower than the future costs actually are.

152. Defendants’ Discounting Policies put their thumb on the scale *against* urgent and ambitious regulatory programs to reduce climate pollution, and *in favor* of taking less ambitious actions in the present. Because the U.S. continues to be one of the globe’s top emitters, the Discounting Policies and EPA’s continuing practice of using positive discount rates ensure that more climate pollution will be emitted causing more harm to the lives and future of Children, including Plaintiffs.

⁶ *Id.*

1 153. Even small discount rates greatly affect the outcome of a BCA because
 2 discount rates compound every year. Thus, the longer the time-horizon considered
 3 in the calculation, the more EPA’s choice of discount rate matters. Using a 1.4%
 4 discount rate, after 36.5 years, future people are worth just three-fifths of a person’s
 5 worth today. With a 3% discount rate, a future person just 17 years from now is
 6 worth three-fifths of a person today.

7 154. When evaluating how much a climate-pollution-control measure taken
 8 today will benefit Children 30 years from now, a discount rate of 2% ignores
 9 (discounts) 45% of the benefit that would exist in 30 years’ time—and a discount
 10 rate of 7% ignores 89% of the benefit. Thus, the higher the discount rate is, the more
 11 heavily it censors and excludes the benefits to Children, including Plaintiffs, of
 12 controlling pollution from being considered in the analysis, as depicted in the chart
 13 below.

14 155.

Share of Future Benefits from Reducing Climate Pollution that are Ignored under Four Different Discount Rates (0%, 2%, 3%, and 7%)

Number of Years in the Future	0% Discount Rate	2% Discount Rate	3% Discount Rate	7% Discount Rate	Number of Years in the Future	0% Discount Rate	2% Discount Rate	3% Discount Rate	7% Discount Rate
1	0.00	0.02	0.03	0.07	16	0.00	0.28	0.39	0.69
2	0.00	0.04	0.06	0.14	17	0.00	0.29	0.40	0.71
3	0.00	0.06	0.09	0.20	18	0.00	0.30	0.42	0.73
4	0.00	0.08	0.11	0.25	19	0.00	0.32	0.44	0.75
5	0.00	0.10	0.14	0.30	20	0.00	0.33	0.46	0.77
6	0.00	0.11	0.17	0.35	21	0.00	0.35	0.47	0.78
7	0.00	0.13	0.19	0.40	22	0.00	0.36	0.49	0.80
8	0.00	0.15	0.22	0.44	23	0.00	0.37	0.50	0.81
9	0.00	0.17	0.24	0.48	24	0.00	0.38	0.52	0.82
10	0.00	0.18	0.26	0.52	25	0.00	0.40	0.53	0.84
11	0.00	0.20	0.28	0.55	26	0.00	0.41	0.55	0.85
12	0.00	0.22	0.31	0.58	27	0.00	0.42	0.56	0.86
13	0.00	0.23	0.33	0.61	28	0.00	0.43	0.57	0.87
14	0.00	0.25	0.35	0.64	29	0.00	0.44	0.59	0.88
15	0.00	0.26	0.37	0.66	30	0.00	0.45	0.60	0.89

*A 0.89 share means the specified discount rate causes the EPA’s analysis to ignore 89% of benefits in that year;
 A 0.00 share means the discount rate is not causing EPA’s analysis to ignore benefits.*

25 156. Applying a 10% discount rate to the cost of a program to save lives
 26 results in a life today having the same value as 117 lives in 50 years and 13,781 lives
 27

1 in 100 years, resulting in a valuing of one life today more than thousands in the
2 future. Looked at another way, a proposed regulation that will generate \$100 in
3 benefits in 50 years is worth only \$61 in present value using a 1% discount rate, \$14
4 at 4%, \$3 at 7%, and less than \$1 at 10%.

5 157. The higher the discount rate, the lower the value for the Social Cost of
6 Carbon, another economic valuation meant to inform Defendants of the value of
7 reducing levels of climate pollution.

8 158. Since the effects of climate pollution are long-lasting and cumulatively
9 worse over time, the Discounting Policies dictate that what happens in the future to
10 Children does not matter nearly as much as the costs of controlling the future effect
11 today, which has substantially biased Defendants' exercise of its regulatory authority
12 against Children.

13 159. Both EPA and OMB have refused to set a policy of a discount rate of
14 zero when analyzing benefits and costs of regulatory programs that create a lifetime
15 of hardship for Children, such as those regarding allowing climate pollution.

16 160. In its RIAs, as a matter of policy, EPA also systematically places a
17 lesser economic value on reducing climate pollution health risks to Children than on
18 reducing health risks to adults.

19 161. In its RIAs, as a matter of policy, EPA also economically devalues the
20 lives of Children by treating them as worth fewer dollars than an adult because
21 Children are not yet wage-earners.

22 **EPA's Discounting Policies in Practice**

23 162. The Discounting Policies in practice inform EPA of the purported net
24 benefits and efficiency of its regulatory programs, and the BCA in the RIAs control
25 EPA's decision in establishing alternative regulatory programs, in determining the
26 preferred program, and in selecting the final rule. Defendant EPA has a past and
27

1 ongoing systematic practice of using the Discounting Policies to develop, analyze,
2 and select regulatory programs that allow substantial amounts of climate pollution
3 that is harming Children, as evidenced by numerous RIAs, including those below.

4 163. From 1980 to 1986, EPA exclusively used a 10% discount rate. It
5 continued to use discount rates as high as 10% until 1994. For instance, in 1983,
6 EPA’s RIA for the “Alternative National Ambient Air Quality Standards for
7 Particulate Matter” used a discount rate of 10% because of “OMB requirements.”

8 164. In the 1990s, nearly all of EPA’s discount rates were between 3% and
9 7%. From 2004 to 2010, EPA exclusively used discount rates of 3% and 7%. These
10 discount rates were used because of the Discounting Policies.

11 165. Between 1983 and 2018, EPA issued scores of RIAs for regulatory
12 programs over sources of pollution that contribute to climate change that used a
13 positive discount rate because of the Discounting Policies.

14 166. In 2019, EPA’s RIA for the “Proposed Reclassification of Major
15 Sources as Area Sources under Section 112 of the Clean Air Act” used discount rates
16 of 3% and 7% because of OMB’s Circular A-4.

17 167. In 2019, EPA’s RIA for the “Proposed Oil and Natural Gas Sector:
18 Emission Standards for New, Reconstructed, and Modified Sources Review” used
19 discount rates of 3% and 7%, “as recommended by OMB Circular A-4.”

20 168. In 2019, EPA’s RIA for the “Repeal of the Clean Power Plan, and the
21 Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility
22 Generating Units” used discount rates of 3% and 7%, “as recommended by OMB
23 Circular A-4.”

24 169. In 2020, EPA’s Memorandum on the “Analysis of Potential Costs and
25 Benefits for the ‘National Emission Standards for Hazardous Air Pollutants: Coal-
26 and Oil-Fired Electric Utility Steam Generating Units – Subcategory of Certain
27 Existing Electric Utility Steam Generating Units Firing Eastern Bituminous Coal
28

1 Refuse for Emissions of Acid Gas Hazardous Air Pollutants” used discount rates of
2 3% and 7% “consistent with OMB guidance.”

3 170. In 2020, EPA’s RIA for the “Review and Reconsideration of the Oil
4 and Natural Gas Sector Emission Standards for New, Reconstructed, and Modified
5 Sources” used discount rates of 3% and 7%, “consistent with the guidance contained
6 in the Office of Management and Budget (OMB) Circular A- 4.”

7 171. In 2020, EPA’s RIA for the “Final Reclassification of Major Sources
8 as Area Sources under Section 112 of the Clean Air Act” used discount rates of 3%
9 and 7% because of OMB’s Circular A-4.

10 172. In 2020, EPA’s RIA for the “Proposed Industrial, Commercial, and
11 Institutional Boilers and Process Heaters NESHAP Reconsideration” used discount
12 rates of 2.5%, 3%, and 7%, due to guidance from OMB’s Circular A-4 stating that a
13 “further sensitivity analysis using a lower but positive discount rate in addition to
14 calculating net benefit using discount rates of 3 and 7 percent” should be used.

15 173. In 2020, EPA’s RIA for the “Proposed Revised Cross-State Air
16 Pollution Rule (CSAPR) Update for the 2008 Ozone NAAQS” used discount rates
17 of 3% and 7% “consistent with OMB guidance.”

18 174. In 2021, EPA’s RIA for the “Final Revised Cross-State Air Pollution
19 Rule (CSAPR) Update for the 2008 Ozone NAAQS” used discount rates of 3% and
20 7% because of OMB’s Circular A-4, despite acknowledging that “a consideration of
21 climate benefits calculated using discount rates below 3 percent, including 2 percent
22 and lower, are also warranted when discounting intergenerational impacts.”

23 175. In 2021, EPA’s RIA for the “Proposed Standards of Performance for
24 New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing
25 Sources: Oil and Natural Gas Sector Climate Review” used discount rates of 3% and
26 7% because of OMB’s Circular A-4.

27

28

1 176. In 2022, EPA’s RIA for the “Proposed Federal Implementation Plan
2 Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air
3 Quality Standard” used discount rates of 3% and 7%, “as directed by OMB’s
4 Circular A-4.”

5 177. In 2022, EPA’s RIA for the “Industrial, Commercial, and Institutional
6 Boilers and Process Heaters NESHAP Amendments” used discount rates of 3% and
7 7%, “as directed by OMB’s Circular A-4.”

8 178. In 2022, EPA’s RIA for the “Proposed Reconsideration of the National
9 Ambient Air Quality Standards for Particulate Matter” used discount rates of 3%
10 and 7%, “as directed by OMB’s Circular A-4.”

11 179. In 2022, EPA’s RIA for the “Proposed National Emission Standards for
12 Hazardous Air Pollutants: Gasoline Distribution Technology Review and Standards
13 of Performance for Bulk Gasoline Terminals Review” used discount rates of 3% and
14 7%, “as directed by OMB’s Circular A-4.”

15 180. In 2022, EPA’s RIA for the “Supplemental Proposal for the Standards
16 of Performance for New, Reconstructed, and Modified Sources and Emissions
17 Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review” used
18 discount rates of 3% and 7% because of OMB’s Circular A-4.

19 181. In 2022, EPA’s Technical Memorandum for the “Addendum to the
20 Regulatory Impact Analysis: Monetizing Climate Benefits for the Proposed FIP for
21 Addressing Regional Ozone Transport for the 2015 Ozone NAAQS” used discount
22 rates of 3% and 7% because of OMB’s Circular A-4.

23 182. In 2022, EPA’s Supplementary Material for the RIA for the
24 “Supplemental Proposed Rulemaking, ‘Standards of Performance for New,
25 Reconstructed, and Modified Sources and Emissions Guidelines for Existing
26 Sources: Oil and Natural Gas Sector Climate Review’ - EPA External Review Draft
27 of Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent
28

1 Scientific Advances” used discount rates of 3% and 7% because of OMB’s Circular
2 A-4.

3 183. In 2022, EPA’s RIA for the “Control of Air Pollution from New Motor
4 Vehicles: Heavy-Duty Engine and Vehicle Standards” used discount rates of 3% and
5 7% because of OMB’s Circular A-4.

6 184. In March 2023, EPA’s RIA for the “New Source Performance
7 Standards for the Synthetic Organic Chemical Manufacturing Industry and National
8 Emission Standards for Hazardous Air Pollutants for the Synthetic Organic
9 Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry”
10 used discount rates of 3% and 7%, “as directed by OMB’s Circular A-4.”

11 185. In March 2023, EPA’s RIA for the “Final Federal Good Neighbor Plan
12 Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air
13 Quality Standard” used discount rates of 3% and 7%, “as directed by OMB’s
14 Circular A-4.”

15 186. In April 2023, EPA’s RIA for the “Proposed National Emission
16 Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam
17 Generating Units Review of the Residual Risk and Technology Review” used
18 discount rates of 3% and 7%, “as directed by OMB’s Circular A-4.”

19 187. In July 2023, EPA’s RIA for the “Proposed Revisions to the Air
20 Emissions Reporting Requirements” used discount rates of 3% and 7% “as directed
21 by OMB’s Circular A-4.”

22 188. In November 2023, EPA’s RIA for the “Proposed Supplemental
23 Federal ‘Good Neighbor Plan’ Requirements for the 2015 8-hour Ozone National
24 Ambient Air Quality Standard” used discount rates of 3% and 7% because of OMB’s
25 Circular A-4.

26 189. In December 2023, EPA’s RIA for the “Standards of Performance for
27 New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing
28

1 Sources: Oil and Natural Gas Sector Climate Review” used discount rates of 2%,
2 3%, and 7%, because of a recent revision to OMB’s Circular A-4.

3 190. In January 2024, EPA’s RIA for the “Proposed Standards of
4 Performance for New Stationary Sources and Emission Guidelines for Existing
5 Sources: Large Municipal Waste Combustors” used discount rates of 3% and 7%
6 “as directed by OMB’s Circular A-4.”

7 191. In January 2024, EPA’s RIA for the “Final National Emission
8 Standards for Hazardous Air Pollutants: Gasoline Distribution Technology Review
9 and Standards of Performance for Bulk Gasoline Terminals Review” used discount
10 rates of 3% and 7%, “as directed by the current version of OMB’s Circular A-4.”

11 192. In January 2024, EPA’s RIA for the “Reconsideration of the National
12 Ambient Air Quality Standards for Particulate Matter” used discount rates of 3%
13 and 7% because of OMB’s Circular A-4.

14 193. In March 2024, EPA’s RIA for the “Multi-Pollutant Emissions
15 Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles”
16 used discount rates of 2%, 3%, and 7% because of OMB’s Circular A-4.

17 194. In March 2024, EPA’s RIA for the “Final New Source Performance
18 Standards for the Synthetic Organic Chemical Manufacturing Industry and National
19 Emission Standards for Hazardous Air Pollutants for the Synthetic Organic
20 Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry”
21 used discount rates of 2%, 3%, and 7% “as directed by OMB’s Circular A-4.”

22 195. In April 2024, EPA’s RIA for the “New Source Performance Standards
23 for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-
24 Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas
25 Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of
26 the Affordable Clean Energy Rule” used discount rates of 2%, 3%, and 7%, “as
27 directed by OMB’s Circular A-4.”

28

1 carbon dioxide (“CO₂”), methane, nitrous oxide, and fluorinated gases. The gas in
2 our air that is primarily responsible for destabilizing the climate system is CO₂. CO₂
3 is the primary pollutant driving the climate crisis because of how much CO₂ is
4 entering the air, how long it stays in the air, and because it is efficient at absorbing
5 and emitting radiation, i.e., heat. About 80% of greenhouse gas climate pollution in
6 the United States is CO₂ and a significant portion of it stays in the air for millennia.

7 202. Methane is a more powerful gas at trapping heat, but it dissipates much
8 more quickly than CO₂.

9 203. Scientists have known since the mid- to late-1800s that CO₂ pollution
10 accumulating in the atmosphere, from burning fossil fuels, would heat the planet.

11 204. The United States government has known since at least the White
12 House’s 1965 Report of The Environmental Pollution Panel President’s Science
13 Advisory Committee that CO₂ pollution would alter Earth’s energy balance, heat the
14 planet, and thereby threaten “the health, longevity, livelihood, recreation, cleanliness
15 and happiness of citizens who have no direct stake in their production, but cannot
16 escape their influence.”

17 205. In 1970, EPA’s first Administrator, William Ruckelshaus, ordered
18 EPA’s Air Pollution Control Office to conduct national programs for the definition,
19 prevention, and control of air pollution to achieve wholesome air and sufficiently
20 define air quality to minimize and eliminate the harm from air pollution.

21 206. Early in its inception, recognizing that Earth’s climate is changing, EPA
22 commissioned a report published in 1974 from University of Wisconsin’s Center for
23 Climatic Research on *Changes in the Global Energy Balance*. In 1974, scientists
24 estimated that CO₂ was increasing at 1 ppm annually from human-caused pollution,
25 when CO₂ was 330 ppm. In this report, EPA was advised that by 2000, atmospheric
26 CO₂ would rise from 320 to 379 ppm due to fossil fuel use projections and could
27

1 increase the earth’s temperature by almost half a degree Celsius. Atmospheric CO₂
2 in 2000 reached about 370 ppm.

3 207. In 1978, EPA reaffirmed the warning of the National Academy of
4 Sciences (“NAS”) “that continued use of fossil fuels as a primary energy source for
5 more than 20 to 30 more years could result in increased atmospheric levels of carbon
6 dioxide. The greenhouse effect and associated global temperature increase and
7 resulting climate changes could, according to NAS be both ‘significant and
8 damaging.’” Atmospheric CO₂ in 1978 reached about 335 ppm.

9 208. In 1983, EPA knew that climate pollution was continuing to accumulate
10 in the air and would substantially raise global temperature. EPA projected a possible
11 2°C (3.6°F) increase by the middle of the 21st century, and a 5°C (9°F) increase by
12 2100. EPA said the increased heat would result in dramatic precipitation and storm
13 patterns and rising seas. EPA projected significant effects to agriculture and every
14 other natural and political system and institution. EPA knew that the human
15 habitability of certain regions would be threatened.

16 209. In 1983, EPA reaffirmed a 1979 National Academy of Sciences report
17 that warned against further delay in addressing CO₂ pollution. EPA summed up the
18 CO₂ pollution threat: “A wait and see attitude may mean waiting until it’s too late.
19 (Charney, 1979).”

20 210. In 1983, EPA recommended that a policy of banning fossil fuels could
21 significantly reduce temperature increases by 2100. EPA suggested banning coal and
22 oil shale.

23 211. The summary of EPA’s findings in 1983 were stated as follows: “our
24 findings call for an expeditious response. A 2°C increase in temperature by (or
25 perhaps well before) the middle of the next century leaves us only a few decades to
26 plan for and cope with a change in habitability in many geographic regions. Changes
27 by the end of the 21st century could be catastrophic taken in the context of today’s
28

1 world. A soberness and sense of urgency should underlie our response to a
2 greenhouse warming.”

3 212. By 1983, four decades ago, EPA knew it had only a few decades to
4 control climate pollution to avoid catastrophic changes to the habitability of the
5 Nation for generations of Children, including Plaintiffs today.

6 213. In the past 40 years, relying on the BCAs from its Discounting Policies
7 and practices, EPA has continued to allow through its regulatory programs even
8 more climate pollution to enter the Nation’s air than it allowed in 1983. Atmospheric
9 CO₂ in 1983 reached about 343 ppm.

10 214. In 1990, EPA published a report, *Policy Options for Stabilizing Global*
11 *Climate*, that called for a 50% reduction in total U.S. CO₂ emissions below 1990
12 levels by 2025 to correct climate destabilization. Atmospheric CO₂ in 1990 reached
13 about 354 ppm.

14 215. Over three decades ago, EPA said that climate pollution can be
15 effectively reduced thereby dramatically reducing the rate and ultimate magnitude
16 of climate change in the 21st century.

17 216. The recommendations in EPA’s 1990 Report were not followed by
18 EPA. U.S. climate pollution continued to increase thereafter under EPA’s control.

19 217. In 1992, the United States ratified the United Nations Framework
20 Convention on Climate Change (“UNFCCC”) renewing its sovereign commitment
21 to protect the climate system for present and future generations with the primary
22 commitment to “stabiliz[e] greenhouse gas concentrations in the atmosphere at a
23 level that would prevent dangerous anthropogenic interference with the climate
24 system.” EPA remained the U.S. agency with exclusive authority to protect the air
25 from U.S. climate pollution. Atmospheric CO₂ in 1992 reached about 356 ppm.

26 218. Ten years later, on December 7, 2009, then-Administrator of EPA, Lisa
27 Jackson, issued EPA’s formal Endangerment Finding for climate pollution under the
28

1 Clean Air Act: *Endangerment and Cause or Contribute Findings for Greenhouse*
2 *Gases Under Section 202(a) of the Clean Air Act*. EPA issued its Endangerment
3 Finding only after being sued and losing the case in the U.S. Supreme Court, in
4 *Massachusetts v. EPA*, 549 U.S. 497 (2007). The Endangerment Finding had been
5 in existence for many years prior to 2007 and was not published by EPA.
6 Atmospheric CO₂ in 2009 reached about 388 ppm.

7 219. EPA’s Endangerment Finding stated that current and projected
8 atmospheric concentrations of greenhouse gases, in particular CO₂, threatened the
9 public health and welfare of current and future generations.

10 220. EPA’s Endangerment Finding specifically named Children as a group
11 of people most vulnerable to these climate-related health harms. The Administrator
12 also specifically found that the threat to public health for current and future
13 generations would likely mount over time as climate pollution continues to
14 accumulate in the air, leading to worsening climate change.

15 221. EPA scientists have repeatedly recommended setting a national
16 pollution standard for CO₂. EPA has refused to set a national pollution standard for
17 CO₂. EPA is the only federal agency with Congressional authority to set a national
18 pollution standard for CO₂.

19 222. Since the 2009 Endangerment Finding, Defendants have repeatedly
20 stated that allowing “business as usual” climate pollution will imperil future
21 generations with dangerous risks, including to health and welfare, and that Children
22 were the most vulnerable to those dangers.

23 223. Since the 2009 Endangerment Finding, which is older than many of the
24 Plaintiffs, Defendants have continued their Discounting Policies and practices to
25 intentionally allow and systematically permit “business as usual” climate pollution
26 to enter the Nation’s air. Defendants have systematically allowed ongoing climate
27 pollution over which the U.S. Supreme Court has said EPA has exclusive control.

1 **EPA Knows Its Discounting Policies and Practices Discriminate Against**
2 **Children by Allowing Climate Pollution at Levels That Caused and Now**
3 **Worsen the Climate Crisis**

4 224. EPA has known for decades that the continued emission of greenhouse
5 gases into the atmosphere would be harmful to children, yet it continued its
6 systematic practice of Discounting Policies that favor allowing climate pollution,
7 and value the interests of adults over Children’s health and welfare.

8 225. EPA’s explicitly discriminatory Discounting Policies and practices
9 have resulted in regulatory analyses that have contributed to EPA’s ongoing
10 allowance of unsafe levels of climate pollution for Children.

11 226. Between 1751 and 2021 the United States emitted approximately 25%
12 of the world’s cumulative CO₂ pollution to the air, more than any other country to
13 date. Most of United States CO₂ pollution has been emitted since 1970, when EPA
14 was created. The United States is the nation most responsible for the climate crisis
15 and its cumulative greenhouse gas emissions far exceed those of other nations such
16 as India and China.

17 227. EPA provides a comprehensive accounting of U.S. greenhouse gas
18 emissions and sinks by source, economic sector, and greenhouse gas going back to
19 1990 in their annual report, *Inventory of U.S. Greenhouse Gas Emissions and Sinks*.
20 Since at least 1990, EPA has been aware of the relative contributions from different
21 sources of climate pollution, which are under its regulatory jurisdiction, in the United
22 States.

23 228. Despite fluctuations in the past three decades, U.S. climate pollution is
24 still close to what it was in 1990. Eighty percent of climate pollution in the U.S. is
25 CO₂, largely from the power generation and transportation sectors, sources directly
26 under EPA’s control. More than 90% of CO₂ pollution is from fossil fuels from
27 sources under EPA’s control.

229. With climate pollution already recognized by EPA to be at levels that threaten the public health and welfare of current and future generations, the U.S. Energy Information Administration (“EIA”) forecasts that energy-related CO₂ pollution from sources under EPA’s control will remain at 99% of 2023 levels in 2024, with total U.S. energy-related CO₂ emissions in 2050 projected to be only about 19% lower than the amount in 2022.

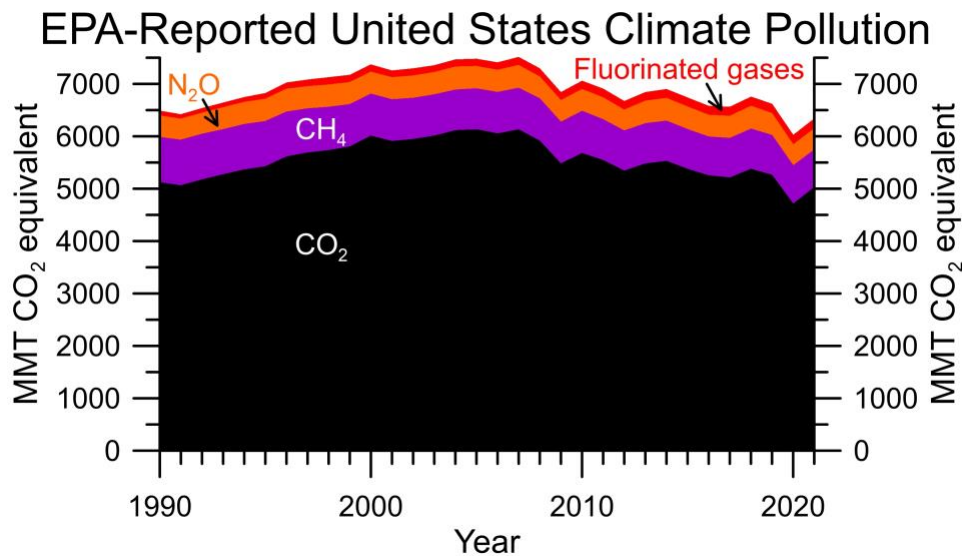
230. Between 1970 and 2021, the United States, under EPA’s regulatory control and permitting of climate pollution, has been responsible for intentionally allowing approximately 422,000 million metric tons (“MMT”) CO₂ pollution to enter the Nation’s air from within its territories as depicted in the graph and chart below.

		U.S. Annual CO ₂ Pollution Emissions (MMT)	Cumulative U.S. CO ₂ Pollution (MMT)	U.S. Annual Greenhouse Gas Pollution Emissions (MMT CO ₂ equivalent)
Year	Historical Moments	Total	Total	Total
1970	U.S. creates EPA to control air pollution	4,340	154,000	Data unavailable
1983	EPA Report: <i>Can We Delay A Greenhouse Warming?</i>	4,429	215,000	Data unavailable
1990	EPA Report: <i>Policy Options for Stabilizing Global Climate</i>	5,122	249,000	6,487
2009	EPA issues Endangerment Finding	5,483	358,000	6,841
2021	Most recent data on annual U.S. CO ₂ pollution	5,032	422,000 (274% increase since 1970)	6,340

231. Most of this pollution was allowed under regulatory programs that EPA arrived at through RIAs applying a positive discount rate in accordance with its Discounting Policies. The BCAs provided justification for EPA’s regulatory programs.

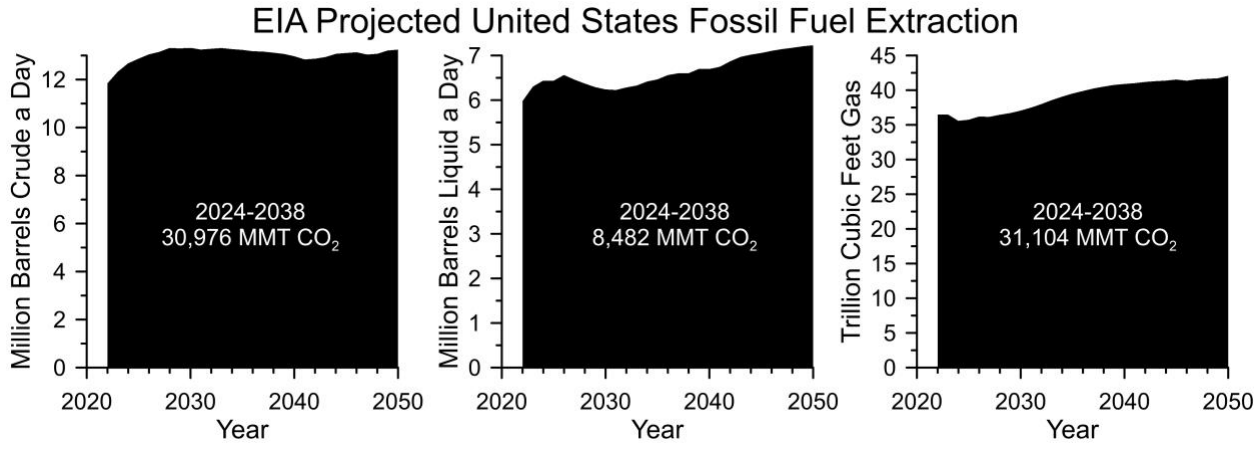
232. Based on its own data, EPA has continued to authorize high levels of climate pollution in the past thirty years, resulting in a sustained annual rate of climate pollution with some highs and lows that never drop below 6,350 MMT CO₂ equivalent a year until the 2020 pandemic that had 6,026 MMT CO₂ equivalent emitted and in 2021 when the country was still recovering from the pandemic and emitted 6,340 MMT CO₂ equivalent. The EPA regulatory programs that allowed these emissions were—and continue to be—developed through Defendants’ RIAs and Discounting Policies and practices.

233. This graph shows EPA-reported U.S. climate pollution between 1990 and 2021.

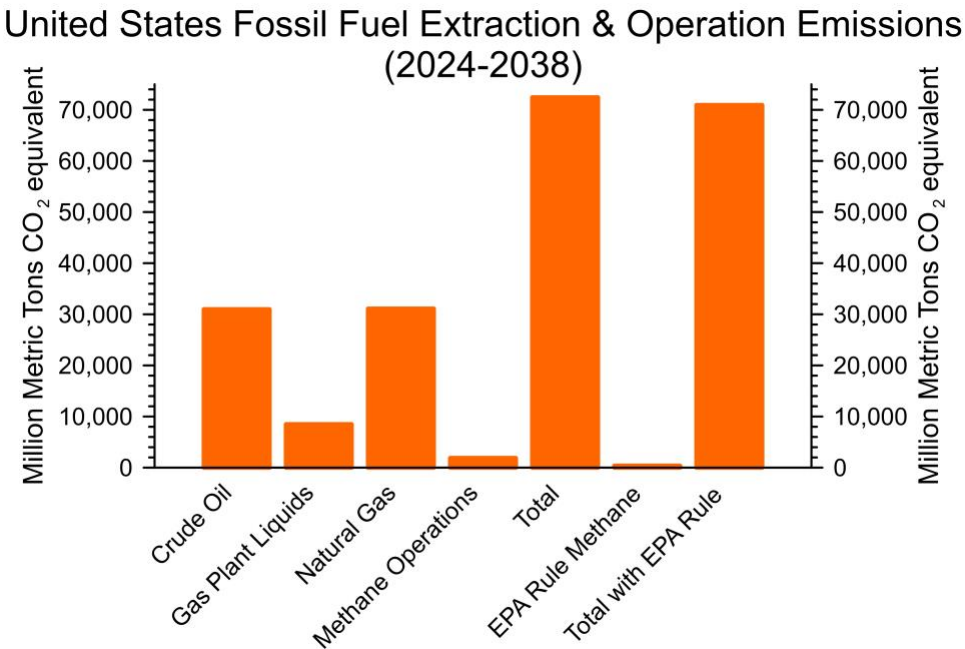


234. The graph below shows EIA’s reference case for extraction through 2050 of crude oil (left) natural gas plant liquids (middle) and natural gas (right) with their cumulative combusted emissions for 2024-2038 labeled.

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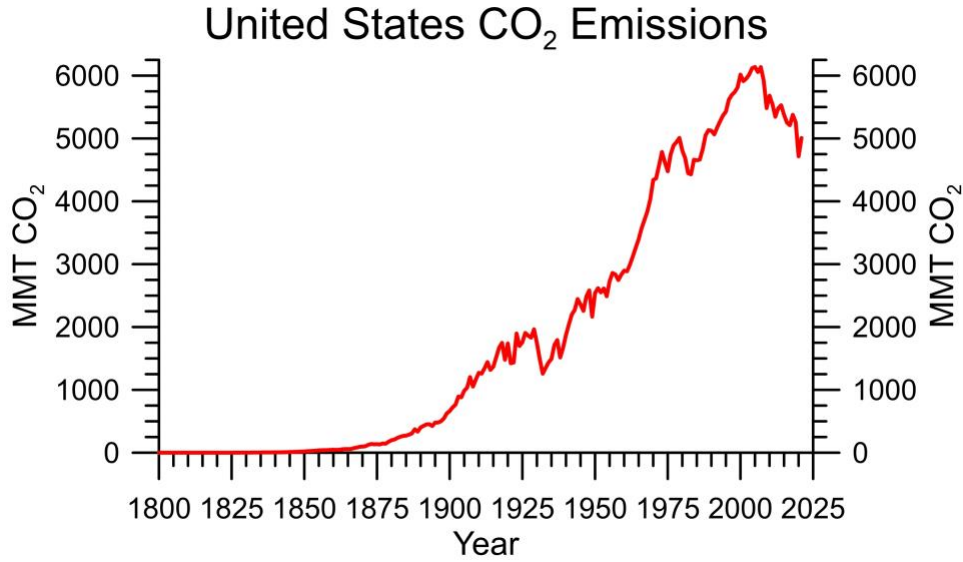


235. EIA’s 2024-2038 extraction emissions and EPA’s operational methane emissions with and without EPA’s new methane rule are illustrated in this graph below.



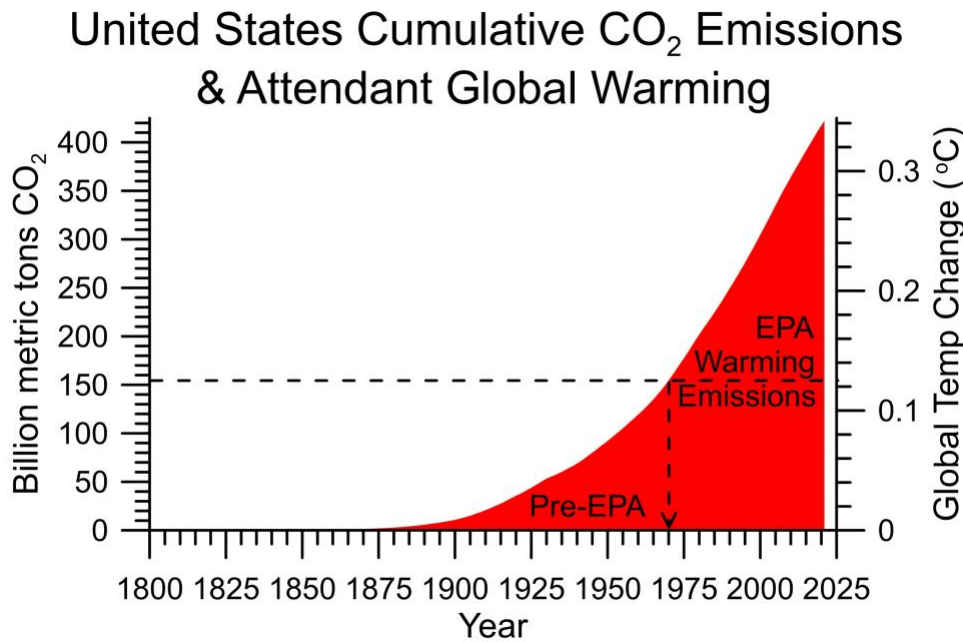
236. Since the EPA was founded in 1970, national CO₂ emissions increased to a peak in 2005 of 6,132 MMT CO₂. Since then, emissions decreased slowly, with the largest decline during the 2020 pandemic largely due to less travel, and have rebounded again to 5,586 MMT CO₂ in 2021.

237.



238. Cumulatively, under EPA’s control and authority and Discounting Policies, the United States has been responsible for about 271,922 MMT of CO₂ from 1970 to 2021, which is 1.85 times more CO₂ than the U.S. emitted cumulatively in the 169 years prior to the creation of the EPA (149,985 MMT of CO₂ from 1800 to 1969).

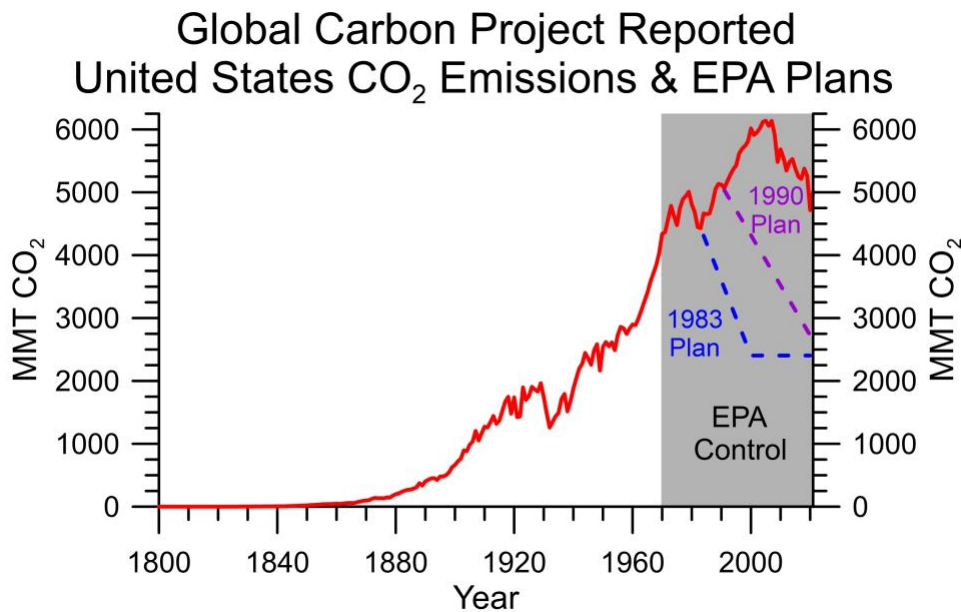
239.



1 240. International scientific consensus estimates that every 1,000,000 MMT
 2 CO₂ emitted causes 0.45°C (0.81°F) of global warming. Based on that calculation,
 3 the EPA has allowed about 0.22°F of global warming since 1970 from carbon
 4 dioxide emissions alone, which is about 10% of Earth’s global warming to date. For
 5 comparison, U.S. total CO₂ emissions to date have caused 0.34°F of global warming
 6 since the 1800s.

7 241. Relying on Discounting Policies and practices, EIA projects climate
 8 pollution will continue at current levels in the United States in 2024. The EIA also
 9 projects continued climate pollution through 2050, with 2050 pollution being about
 10 81% of 2022 pollution. This continued climate pollution would add another 0.18°F
 11 of global warming on top of the U.S.-CO₂-caused warming of 0.22°F since 1970.
 12 EPA intentionally allows that level of climate pollution.

13 242. Had Defendants banned climate pollution from coal and oil shale in
 14 1983 as was recommended in EPA’s 1983 Report, *Can We Delay A Greenhouse*
 15 *Warming?*, CO₂ pollution today could have been 47.2% less since 1983. The graph
 16 below depicts this with the blue-dotted line.



1 243. Had EPA heeded its own 1990 Report, CO₂ pollution today could have
2 been 30.5% less since 1990. The graph above depicts this with the purple-dotted
3 line.

4 244. Defendants' Discounting Policies and practices systematically ignored
5 climate science recommendations and led to regulatory programs that allowed
6 cumulatively increasing CO₂ pollution.

7 245. EPA ignores its own plans from three decades ago and continues to
8 intentionally allow levels of CO₂ pollution that it knows are harmful to Children's
9 health and welfare.

10 246. Instead of pursuing their own plans and recommendations to decrease
11 climate pollution, or responding to citizen petitions asking the agency to use its
12 authority to limit climate pollution, and consequently reduce the harm to Children's
13 health and welfare from climate change, Defendants' Discounting Policies and
14 practices artificially inflate the apparent value of pollution-permissive regulations
15 that exacerbate the climate crisis. Defendants exercise their discriminatory control
16 and dominion over the air in a systematic manner that caused, and continues to cause,
17 significant harm to Children, born and unborn, including these Plaintiffs.

18 247. Absent Discounting Policies and practices, there would be less climate
19 pollution today in the United States and the Plaintiffs' injuries would be reduced.

20 248. If EPA continues its Discounting Policies and practices, hiding the
21 actual costs of not controlling climate pollution and hiding the actual benefits to
22 Children, there will be more climate pollution in the future and Plaintiffs' injuries
23 will be made worse.

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1 **Children are Uniquely Vulnerable to and Disproportionately Harmed by the**
2 **Past, Present and Future Climate Pollution Allowed Through Defendants’**
3 **Discounting Policies and Practices**

4 249. Since the early 20th century, the United States has known that
5 environmental degradation would burden Children and future generations. In 1908,
6 President Theodore Roosevelt said that we should leave our natural national domain
7 to our children, increased in value and not worn out. In 1909, setting the stage to
8 launch an initiative to protect children, President Theodore Roosevelt said: “If we of
9 this generation destroy the resources from which our children would otherwise
10 derive their livelihood, we reduce the capacity of our land to support a population,
11 and so either degrade the standard of living or deprive the coming generations of
12 their right to life on this continent.”

13 250. Every president carried forward President Theodore Roosevelt’s
14 Conference on Children and Youth and the message to specially protect Children
15 until 1970. President Nixon was the last to host the conference.

16 251. Over 100 years after President Theodore Roosevelt implored the Nation
17 to preserve essential resources for future generations, President Joseph Biden, in his
18 March 2023 remarks at the White House Conservation in Action Summit, stated
19 “[o]ur country’s natural treasures define our identity as a nation. They’re a
20 birthright—they’re a birthright we have to pass down to generation after generation.
21 . . . [W]e owe to our children, our grandchildren, our great-great-grandchildren, and
22 all to come what we have and what we can preserve.”

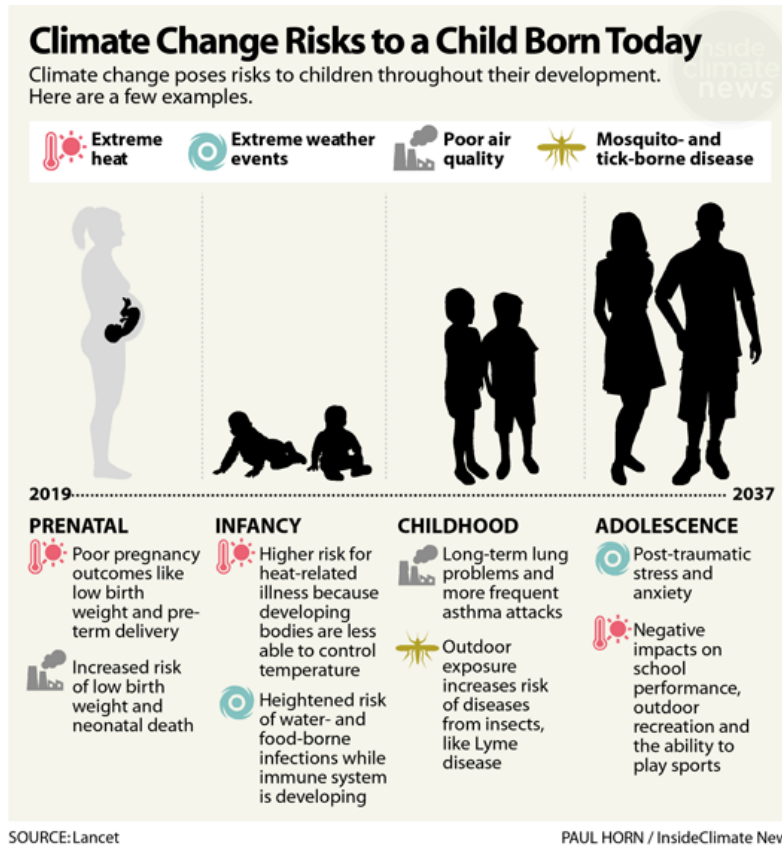
23 252. In the 1980s, the United States went on to lead the international effort
24 in drafting the United Nations Convention on the Rights of the Child and then never
25 ratified it. The United States is the only country on the planet that has not ratified
26 the Convention on the Rights of the Child.

1 253. For decades, EPA has recognized that Children are among the Nation’s
2 most fragile and vulnerable populations. EPA has determined:

3 Children can be at a greater risk to environmental hazards due to unique
4 activity patterns, behaviors and biology. They have unique behaviors
5 such as breast feeding, crawling and hand-to-mouth activity that may
6 contribute to increased exposure. Children eat more food, drink more
7 water and breathe more air in proportion to their body size as compared
8 to adults, and the variety of the foods they consume is more limited. As
9 children are still growing and developing, they do not respond to toxic
10 substances in the same way as adults. For instance, their blood-brain
11 barrier and metabolic processes are less mature. The timing of exposure
12 to chemicals and other contaminants is critical in protecting human
13 health. The same dose of a chemical during different periods of
14 development can have very different consequences. Children who live
15 in highly exposed or underserved communities may have reduced
16 biological resilience and ability to recover from exposure to
17 environmental hazards. With new threats and worsening conditions
18 resulting from climate change, the EPA has a greater responsibility to
19 provide children with heightened focus, assessment and safeguards to
20 protect their health.

21 254. EPA’s 2021 stated policy acknowledges that “Children’s
22 environmental health refers to the effect of environmental exposure during early life:
23 from conception, infancy, early childhood and through adolescence until 21 years of
24 age.” EPA states that they have a “scientific understanding that children may be at
25 greater risk to environmental contaminants than adults due to differences in behavior
26 and biology and that the effects of early life exposures may also arise in adulthood
27 or in later generations.”
28

255.



256. Nearly two decades ago, EPA’s Children’s Health Protection Advisory Committee advised the EPA Administrator that climate change will disproportionately affect Children’s health and that efforts to address climate change need to be substantially strengthened to protect Children.

257. EPA has known of the harm climate change causes Children and the increased risk of harm they face. EPA has issued reports over the last several decades and made findings about the dangers of climate change to Children especially.

258. Children are especially vulnerable to the dangers of climate change because they are still growing, they have unique behaviors different from adults, and they are dependent on their caregivers and their government, having no independent economic or political power.

1 259. As stated in EPA’s April 2023 *Climate Change and Children’s Health*
2 *and Well-Being in the United States*, “Children are uniquely vulnerable to climate
3 change” and “[c]limate impacts experienced during childhood can have lifelong
4 consequences.” The report also highlights that overburdened children, including
5 Black, Brown, Indigenous, and low-income children, may suffer the most severe
6 impacts.

7 260. Climate pollution causes higher temperatures and heat waves. Children
8 are especially endangered by heat because they need more fluid per pound of body
9 weight than adults and are less capable of controlling their environment and fluids.
10 Children’s bodies are also not as efficient at thermoregulation, or maintaining a
11 normal internal temperature as external temperatures change, as adults. Children,
12 especially the very young, are more vulnerable to heat-related illnesses and death.
13 Heat waves are worsening.

14 261. EPA knows that even small increases in extreme heat can result in
15 increased deaths and illnesses. According to EPA, heat is the leading weather-related
16 killer in the United States and Children are most vulnerable to heat. Black Children
17 are at even higher risk for heat related illness and death than other Children.

18 262. Increased heat exposure is particularly devastating for Children at
19 multiple stages of development as the brains and lungs of children are not fully
20 developed until around age 25.

21 263. Climate-induced extreme heat causes fetal death. Extreme weather
22 events can lead to low birthweight and preterm birth of babies. Infant mortality
23 increases 25% on extremely hot days with the first seven days of life representing a
24 period of critical vulnerability.

25 264. Extreme heat places young Children at higher risk of kidney and
26 respiratory disease as well as fever and electrolyte imbalance. Heat illness is also a
27 leading cause of death and illness in high school athletes with nearly 10,000 episodes
28

1 occurring annually. Plaintiffs Huck, Dean, and Emma have experienced physical
2 injury from heat exposure during athletics and risk further injury as temperatures
3 continue to rise. Plaintiff Emma's recent diagnosis of exercise-induced asthma is
4 exacerbated by heat.

5 265. Hotter temperatures lead to more emergency department visits for
6 Children with heat-related illnesses, bacterial enteritis, otitis media and externa,
7 infectious and parasitic diseases, nervous system diseases, and other medical issues.
8 Emergency department visits for Children in the West have been increasing with
9 higher ambient temperatures. Plaintiff Noah is extremely sensitive to heat, which
10 has caused severe discomfort and has led to hospitalization.

11 266. Heat experienced during the school year reduces learning through poor
12 cognitive function and reduced ability to concentrate or learn. Temperature increases
13 of 2°C and 4°C are associated with 4% and 7% reductions in academic achievement
14 per child and projected lost future income. Plaintiffs Genesis, Maryam D., Avroh,
15 Maya W., and Ariela have all already experienced harm to their educational
16 experiences due to excess heat.

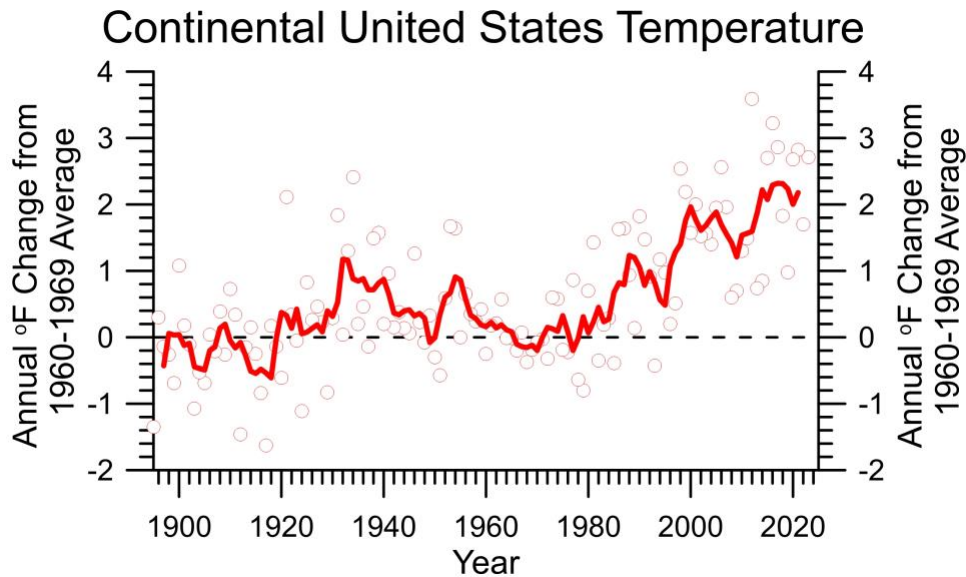
17 267. Increasing temperatures interfere with important religious practices like
18 Plaintiff Maryam D.'s ability to comfortably wear her hijab or fast during Ramadan,
19 and Plaintiff Maryam A.'s plan to do the pilgrimage to Mecca on foot, which may
20 be physically dangerous with increasing temperatures. The sacredness of Earth, and
21 protecting her, is central to several Plaintiffs' spiritual or religious beliefs and
22 practices.

23 268. Today's climate-induced heat, and increasing heat, presents substantial
24 risk to unborn and living Children.

25 269. All Plaintiffs have already altered or canceled their regular healthy
26 activities on account of rising temperatures.

1 270. The temperature trend in the United States since 1970 is increasing
 2 temperatures, due to increased climate pollution. Since the late 1970s, the United
 3 States has warmed faster than the global rate and the West, along with Alaska, has
 4 seen the greatest increase in temperatures.

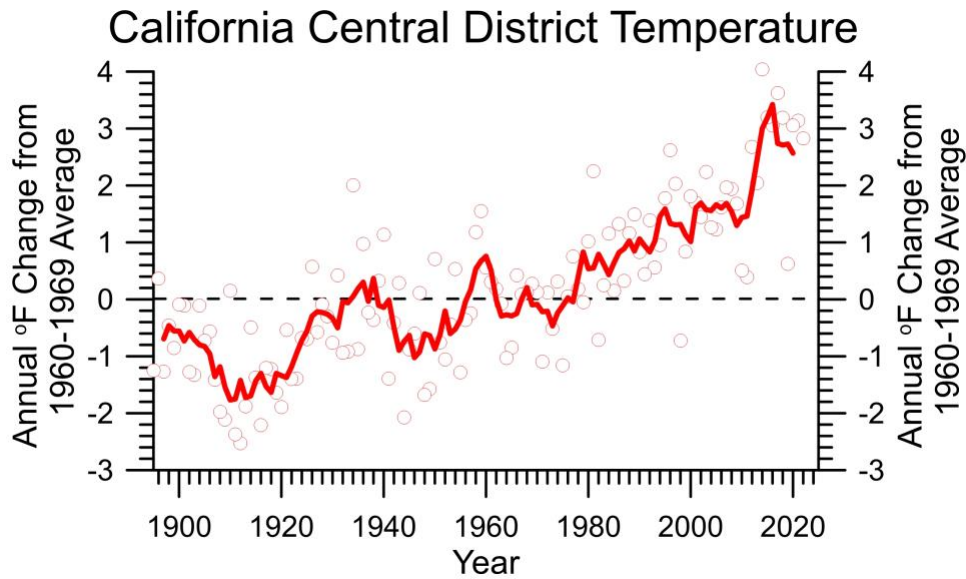
5 271. The graph depicts how the annual average temperatures in the
 6 contiguous 48 states have changed since 1895 relative to the 1960-1969 average
 7 based on National Oceanic and Atmospheric Administration (“NOAA”)
 8 observations.



19 272. The last nine years have been the hottest, globally, in recorded human
 20 history. Temperatures in locales in the western United States have broken all records.
 21 2023 was the hottest year in human history, with June 2023 the hottest June on record
 22 and July 2023 being the hottest month ever on record. Plaintiffs like Dean and Maya
 23 R. were exposed to temperatures over 100°F, which do not normally occur where
 24 they live.

25 273. Temperatures in the geographic area of the Central District of
 26 California have increased significantly since 1970 as depicted in the graph below.

1 Since 1970, the Central District has warmed at about 0.6°F per decade whereas the
 2 contiguous United States has warmed at about 0.5°F per decade.



13 274. Defendants’ ongoing Discounting Policies and regulatory practices
 14 over climate pollution will lead to more climate pollution and increasing
 15 temperatures, which will exacerbate Plaintiffs’ injuries.

16 275. Higher temperatures and climate changes to the water cycle will
 17 continue to lead to drier conditions, sharply increasing the risk of megadroughts
 18 lasting 10 or more years. Droughts lead to more climate-induced wildfires.

19 276. Prolonged droughts pose a special threat to Indigenous Children, like
 20 Plaintiff Dean, by degrading natural elements important to their culture and
 21 traditions, like water, food sources, and vegetation. Droughts and climate fire threats
 22 also impede important tribal and ceremonial practices. Indeed, the Mono Lake Basin,
 23 home of the Kutzadika’a Paiute people is experiencing increased warming since
 24 2011 in conjunction with declining snow cover (about 28 fewer days of snow cover
 25 over the last two decades), which is causing the lake level to fall and the lake to
 26 shrink. Mono Lake has decreased in length by about 0.8 miles and in width by about
 27 1.3 miles since the 1960s. The lake level protections set in 1994 pursuant to the

1 Public Trust Doctrine to prevent unhealthy water diversions have not protected the
2 lake at those levels because the hydrologic conditions since 1994 have significantly
3 changed due to the declining snowpack in the Sierra Nevada, lower direct
4 precipitation, and more evaporation from warmer temperatures and drought from
5 climate change. In fact, the 2000-2021 western United States drought exceeded in
6 severity any drought in the last 1,200 years, including the period of 900 to 1350
7 when droughts drove Mono Lake to extreme low levels. The continued decline of
8 Mono Lake (“lake of the fly”) will cause severe and costly impacts to human health
9 and ecosystems, including loss of ancient brine shrimp and flies that support
10 numerous water birds and are essential to the Kutzadika’a Paiute people.

11 277. This decline in Mono Lake comes in conjunction with glacier decline
12 in the adjacent Sierra Nevada. Over the 20th century, Sierra Nevada glaciers lost
13 about 56% of their area, 90-100% of which was due to human-caused climate change
14 since at least the 1960s. Such century scale retreat of glaciers is a consequence of
15 human-caused climate change. These glaciers have existed for more than 3,000
16 years, yet are projected to disappear in the coming decades with current global
17 warming, with the Sierra Nevada becoming like the Trinity Alps of California that
18 gained glacier-free status in 2015. Indeed, four glaciers in the Sierra Nevada recently
19 broke up into multiple smaller ice masses while another three glaciers are no longer
20 considered glaciers. Loss of Sierra Nevada glaciers will fundamentally alter stream
21 temperatures, water quality, and downstream ecosystems, with glacier-fed streams
22 running dry in late summer and some species becoming locally extinct.

23 278. Climate change-fueled wildfires are destroying the landscape upon
24 which Indigenous Children depend for game, fish, and berries. The 2020-2021
25 wildfire burn area in California was unprecedented in the modern record with nearly
26 4.7 million acres burned, which was 10 times greater than the historical average.
27 Fires in these two years burned 3% of the cold desert ecoregion east of the Sierra
28

1 Nevada that includes Mono Lake, removing vegetation that supplies food such as
2 berries. One-hundred vertebrate species had fire in more than 10% of their range,
3 impacting the ability to find game. Likewise, wildfire poses a high risk to the native
4 Lahontan Trout on the east side of the Sierra Nevada where only 3 of the 15 trout
5 populations were ranked as having a likelihood of persistence in the climate of more
6 than a decade ago.

7 279. Defendants’ ongoing Discounting Policies and regulatory practices
8 over climate pollution will lead to more harm to Indigenous people’s resources and
9 cultural practices, particularly affecting Plaintiff Dean.

10 280. Wildfire danger also has an elevation dependence where the higher
11 elevation regions of the Sierra Nevada and the high cold desert of California have
12 had a greater increase in fire danger days and burned area relative to lower elevation
13 regions in the state. In addition to fire, the eastern Sierra Nevada and adjacent cold
14 desert is experiencing the greatest increase in tree mortality from climate stress and
15 insects.

16 281. Wildfires are also impacting water resources in the Sierra Nevada.
17 Burned regions expose snow to direct solar radiation, increasing snowpack loss from
18 sublimation and mid-winter melt events that then reduce summer stream flow. Dark,
19 light absorbing particles supplied by wildfires cause snow to absorb more solar
20 radiation, reducing snow cover and causing earlier snow melting. This process also
21 reduces soil water content and vegetation, impacting the survival of bighorn sheep.
22 Such dark particles from wildfire induce faster melting on glaciers, speeding up their
23 demise.

24 282. Increasing temperatures and declining rainfall has reduced the flow of
25 water in the Colorado River, which is a key source of water in southern California,
26 exacerbating water shortages and drought conditions. For the first time in history,
27 the federal government is considering shutting down diversions from the Colorado
28

1 River, which will harm California Children’s access to water, like Plaintiffs Genesis,
2 Maya W., Maya R., and Maryam A.

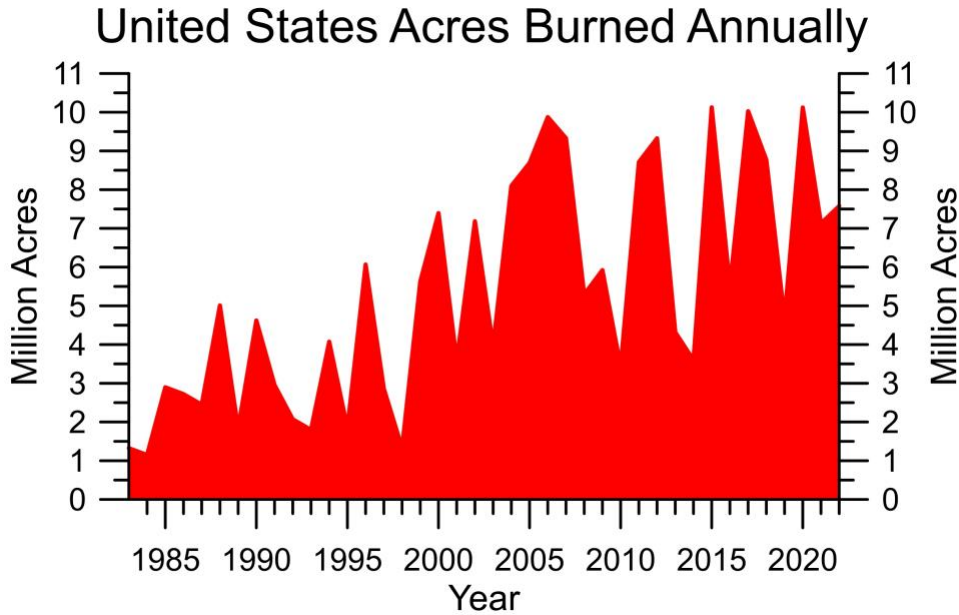
3 283. Even in arid regions, increased precipitation is causing flash flooding,
4 followed by drought. The recent 22-year-long drought from 2000 to 2021 in the
5 western United States was the driest 22-year drought in at least the last 1,200 years.
6 Climate pollution is responsible for at least 42% of this drought. If climate pollution
7 had not occurred, the drought during Plaintiffs’ lives would either not have been as
8 severe or as long. The climate pollution acted as an additional heating and drying
9 force to maintain the naturally drier years over an extended period of time when the
10 dry years would have otherwise been interrupted by wet years, ending the drought.
11 California’s 2012-2014 drought years are also unprecedented in the last 1,200 years
12 and are caused by climate pollution.

13 284. Climate pollution causes warmer springs, longer summer dry seasons,
14 and drier soils and vegetation which increase wildfire season length, frequency,
15 severity, and burned area in the West. The incidence of large climate fires in the
16 western United States has increased since the early 1980s and is continuing to
17 increase, cause profound changes to the West, and harming each of these young
18 Plaintiffs in particularly personal ways. Climate pollution doubled the area burned
19 by wildfire in the western United States from 1984 to 2015. Half of the burned area
20 would not have burned without climate pollution and climate change.

21 285. The largest number of acres burned annually from climate fires have all
22 occurred since 2004, which coincides with the hottest years in the Nation’s recorded
23 history. EPA predicts that with more climate pollution and more frequent and longer
24 droughts, longer climate fire seasons and larger climate fire size will continue,
25 increasingly exposing Plaintiffs to even more severe injuries from wildfires.

26 286. This figure shows area burned in the United States between 1983 and
27 2022 based on National Interagency Fire Center data. In the case of California, the
28

1 increase in burn area for 1996 to 2021 relative to 1971 to 1995 is nearly all, if not
 2 entirely, due to anthropogenic climate change, with the best estimate being 172% of
 3 the burn-area increase being due to human-caused climate change.



14 287. The wildfire season is longer than it ever has been. In 1970, the wildfire
 15 season in the West was from June to September. Now, the climate fire season in the
 16 West begins in March and goes well into fall. In Pacific U.S. (i.e., CA, OR, WA)
 17 forests, the fire season has increased by >40% (37 more days) from 1979 to 2019,
 18 with extreme fire weather increasing by 166%, the largest increase in any region
 19 analyzed in the world.

20 288. In the Sierra Nevada Mountains of California, where Plaintiff Huck
 21 resides, the fire season has increased from less than 100 days per year on average
 22 (1981-1990) to close to 150 days (2011-2020). For the Central District of California,
 23 where Plaintiffs Genesis, Maya R., Maya W., Maryam D., Maryam A., Dani,
 24 Muaawiyah, and Zubayr live, since the early 1970s the interior portion of the district
 25 has experienced at least a 63 day increase in fire season length.

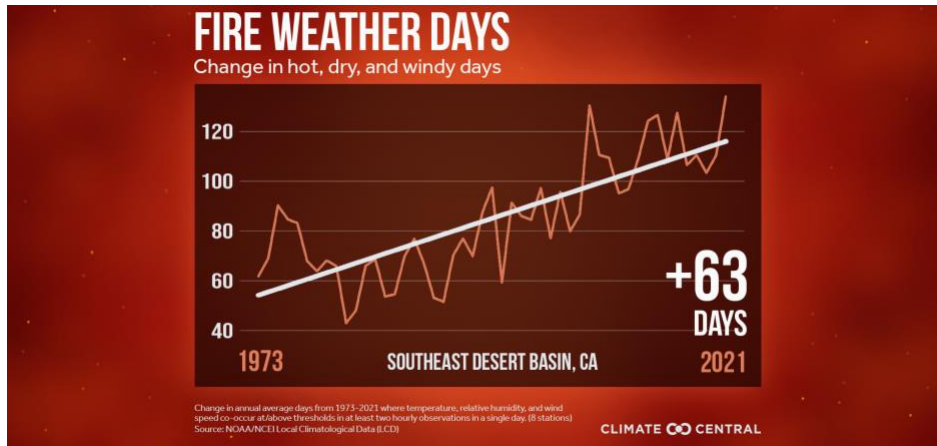
26 289. Sonoma County, where Plaintiff Ione lost her home and where
 27

1 Plaintiffs Ione and Noah have evacuated multiple times, has experienced numerous
2 recent destructive climate-fueled fires including, the Nuns (55,565 acres), Tubbs
3 (36,810 acres, 5,636 structures, and 22 deaths) and Pocket (17,000 acres) fires in
4 2017; the Kincade Fire (77,758 acres) in 2019; and the Walbridge (55,000 acres) and
5 Glass (67,000 acres) fires in 2020. In the case of the Tubbs Fire, human-caused
6 climate change increased the rate that the fire rapidly spread by 23%.

7 290. Indeed, the increase in California’s annual burn area over the last 50
8 years, including Sonoma County and the Tahoe Basin, is entirely attributable to
9 human-caused climate change with a best estimate of 172% from anthropogenic
10 greenhouse gas emissions.

11 291. Since 2001 there is no evidence for any other forcing for the rising burn
12 area besides human-caused climate change. The Tubbs, Kincade, and Mosquito fires
13 all occurred in the autumn, which is a season where human-caused climate change
14 has increased the likelihood of extreme fire weather by 40% through drying of fuels
15 and warmer temperatures.

16 292. The graph from Climate Central shows the change in the number of fire
17 weather days from 1973 to 2021 for southeast California desert basin within the
18 Central District of California. Over this time period, the number of hot, dry, and
19 windy days conducive for fire increased by 63 days.



1 293. The increase in aridity between 1984 and 2017 exposed an additional
2 31,500 square miles of western montane forests to climate fires. The greatest rise in
3 fire elevation due to dry air is in the Sierra Nevada, where Plaintiffs Huck and Dean
4 are threatened with increasing fire. There is greater than 99% certainty that 65% of
5 California’s drying trend, also called vapor pressure deficit or VPD, is due to human-
6 caused climate change. The increase in severity and frequency of fires is also a result
7 of climate change.

8 294. EPA says the “wildfire crisis is a public health crisis, including
9 significant impacts on air quality.”

10 295. The smoke from those climate fires includes fine particulate matter.
11 Inhaling or ingesting even small amounts of these pollutants causes many adverse
12 health conditions. Children are susceptible to health harms from climate fires even
13 in utero. Wildfire smoke may cause 7,700 premature births (< 37 weeks) at 2°C of
14 global warming. At 4°C of global warming, wildfire smoke may cause 13,600
15 premature births, a 92% increase in premature births attributable to wildfire smoke
16 from 1986-2005.

17 296. Children exposed to smoke and particulate matter also have higher risks
18 of respiratory symptoms, decreased lung function, substantial eye symptoms,
19 worsening asthma, increased sinus issues, development of chronic bronchitis, heart
20 failure and premature death. The rate of childhood hospitalizations and emergency
21 department visits is increasing due to climate fire smoke. Plaintiff Avroh’s sinuses
22 have been injured by repeated and prolonged exposure to smoke and heat, leading
23 to a hospital visit and medical procedure. Plaintiffs Ariela, Arishka, Avroh, Dani,
24 Dean, Emma, Genesis, Huck, Ione, Lali, Maryam A., Maryam D., Maya R., Maya
25 W., Muaawiyah, Neela, Noah, and Zubayr have each experienced respiratory
26 symptoms, sore throats, headaches, eye irritations, panic attacks, and/or other
27 physical symptoms of smoke exposure. Plaintiffs will experience worsening
28

1 symptoms as they face increasing smoke and heat from more pollution resulting
2 from EPA’s discriminatory programs.

3 297. Exposure to PM_{2.5}, a pollutant emitted from wildfires, can aggravate the
4 occurrence and development of bronchial asthma. Since the worsening wildfire and
5 smoke seasons in California, Maya W., Noah, and Emma have each been diagnosed
6 with bronchial asthma or exercise-induced asthma. They will experience more
7 asthma attacks with more heat and more smoke.

8 298. Even among Children who do not suffer from asthma, climate fire
9 smoke exposures lead to decline in Children’s lung functioning. California is the
10 least healthy state in terms of air pollution in the nation. Pollution exposure to
11 wildfire smoke in California has risen four-fold in the past decade. Current levels of
12 air pollution in southern California have chronic, adverse effects of lung
13 development in Children, which leads to important deficits in lung function in
14 adulthood. Air pollution harms Children’s lungs for life. Air pollution in the western
15 United States is also shown to shorten human life through premature death and other
16 medical harms.

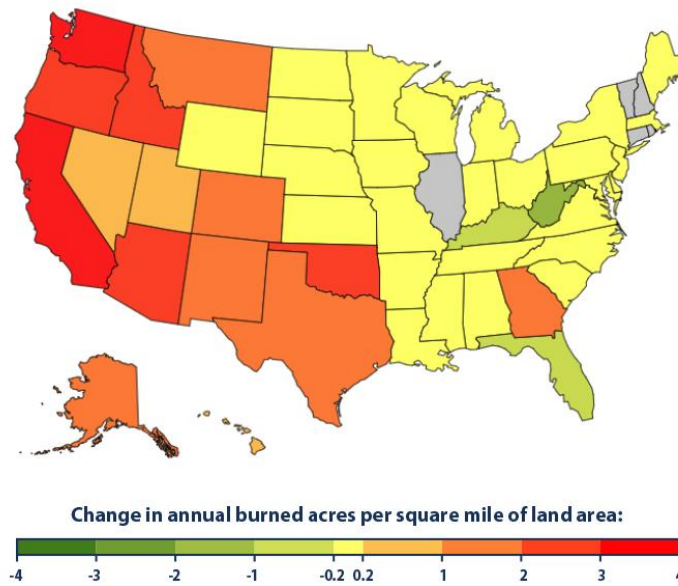
17 299. School closures caused by wildfires have significant negative impacts
18 on academic performance, primarily among elementary school students. Such
19 closures are likely to become more common in California in future years. In the
20 2018-19 school year, wildfires impacted 1,138,463 students across 1,911 California
21 schools. Plaintiffs Arishka, Ione, Huck, Neela, Lali, Noah, Maryam D., Dani, Dean,
22 and Avroh have each faced school closures from wildfire smoke that interfere with
23 their learning and educational opportunities. Plaintiffs Ariela and Huck have had to
24 attend school during unsafe air quality conditions, making it harder to focus or
25 requiring N-95 masks. Plaintiff Maya W. has had PE class in a gym covered in ash.

26
27
28

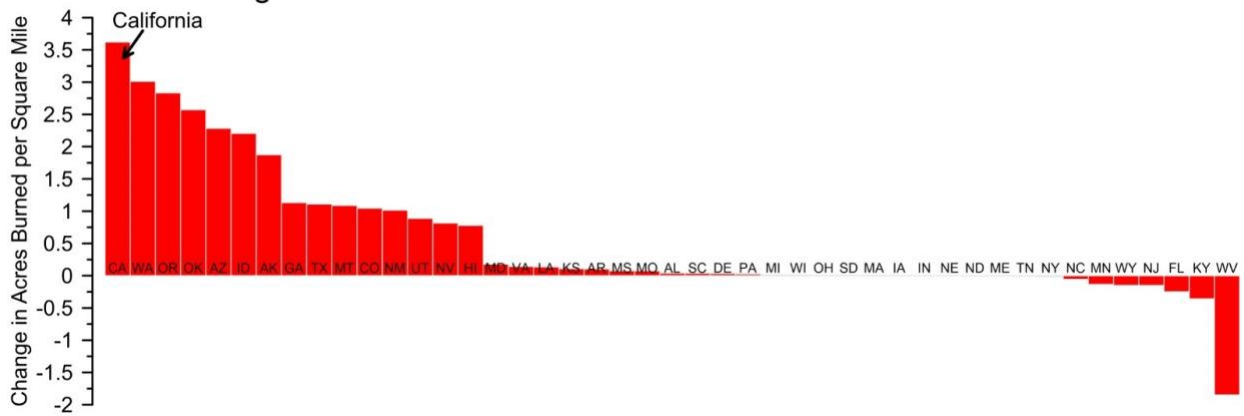
1 300. Climate fires and smoke in the West are worsening with greater smoke
 2 production and chronic exposures for Children. Exposure to wildfire smoke
 3 increases depression among some Children, including certain Plaintiffs.

4 301. The map below is from the EPA and shows the change in annual burned
 5 acreage per square mile of land from 1984-2001 average to 2002-2020 average. The
 6 bar graph below is the same data but expressed in a graphic format.

7 **Change in Annual Burned Acreage by State Between 1984-2001 and 2002-2020**



18 **Change in State Burn Area Between 1984-2001 and 2002-2020**



1 302. According to EPA, California has experienced on average 3.62 more
2 acres burned per year per square mile of land for the period 2002-2020 relative to
3 the period 1984-2001. This is the largest increase of anywhere in the United States.

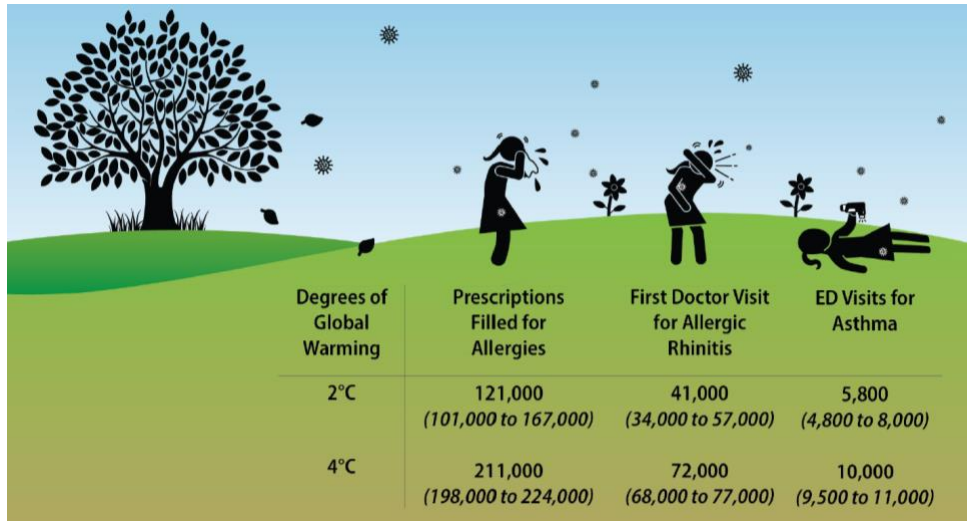
4 303. Defendants’ ongoing Discounting Policies and regulatory practices
5 over climate pollution will lead to more fires, more smoke, and greater injuries to
6 Plaintiffs.

7 304. Climate change also worsens other air pollution, like ozone levels. Air
8 pollution preferentially targets Children because of their immature lungs, narrow
9 airways, high respiratory rates, lower body weights, their outdoor activities, higher
10 level of physical activity, and a high prevalence of asthma. Children’s respiratory
11 tracts are not fully developed, and air pollution permanently reduces lung
12 development. Air pollution exacerbated by climate change is continuing to worsen.

13 305. In 2023, EPA said climate change will increase the annual cases of
14 asthma in Children by 4% at 2°C of global warming and 11% at 4°C of global
15 warming especially in the Southwest, with low-income and Black, Brown and
16 Indigenous children being more likely than others to develop new asthma because
17 of particulate matter exposure.

18 306. Over 8% of Children suffer from allergic rhinitis, and the ragweed
19 pollen season in North America has grown 13-27 days longer since 1995 due to
20 higher temperatures and greater CO₂ levels. Longer pollen seasons lead to more
21 asthma episodes, doctor visits, and prescriptions for allergies for Children. Plaintiffs
22 Genesis and Dani struggle with the combination of worsening allergies, smoke, and
23 heat that significantly limit their activities both outdoors and indoors. Dani has
24 resorted to medical treatment to manage her rhinitis.

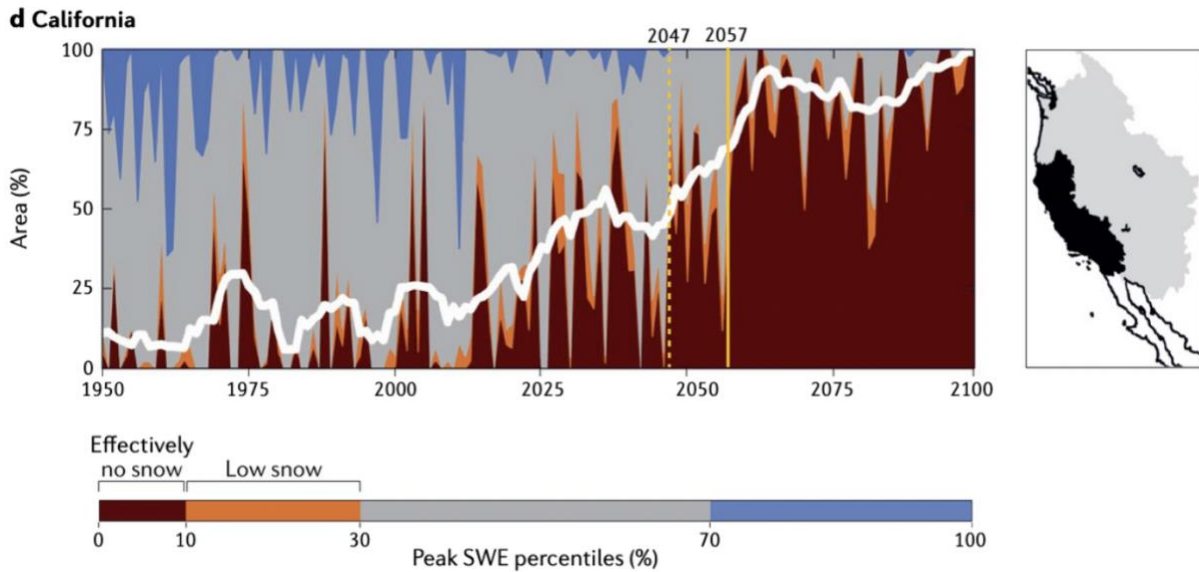
25 307. This graphic depicts projected impacts per year for Children due to
26 increasing pollen exposure at 2°C and 4°C of global warming.
27



308. Defendants’ ongoing Discounting Policies and regulatory practices over climate pollution will lead to longer pollen seasons, which will exacerbate injuries to Plaintiffs.

309. The overall trend is that snowpack declines will continue. Until early 2022, of the area of California that historically has winter snowpack, 20-25% of the area experienced low-to-no snowpack since 2000. Low-to-no snowpack will increase with half of California’s historically snowy regions having low-to-no snow winters for five years in a row by 2047 and 10 years in a row by 2057. Climate change causes extremes in terms of drought, but also unusually high precipitation years that cause flooding. The winter of 2023, which had historically high snowpack, is an example of the climate extremes caused by high CO₂ levels in a La Niña year. Plaintiff Huck experienced 30 days of school closures due to the extreme snowpack near his home, but in many winters of his childhood Huck has not been able to participate in his winter snow activities because of lack of snow. The consequence of unusually high snowpack combined with earlier warm temperatures and rain on snow causes extreme flood events that harm lower elevation areas in California. The flooding of Mono Lake affected Plaintiff Dean.

1 310. As illustrated in the figure below, the area of snowpack and the
 2 thickness of snowpack in California is significantly decreasing.



12 311. Under the climate conditions in which human civilization developed, a
 13 large snowpack or glacier acts as a supplemental reservoir or water tower, holding a
 14 great deal of water in the form of ice and snow through the winter and spring and
 15 releasing it in the summer when rainfall is lower or absent. The water systems of the
 16 western U.S., particularly in California and Oregon, heavily rely on this natural
 17 water storage. Yet as temperatures increase, not only will these areas lose this
 18 supplemental form of water storage, but severe flooding is also likely to increase as
 19 rainfall accelerates the melting of glaciers and snowpack.

20 312. Scientists predict a coming water supply crisis for the western United
 21 States. Indeed, all glaciers within the California Trinity Alps disappeared after the
 22 2015 warm summer and extremely low snowpack. The glaciers on Mount Shasta are
 23 rapidly receding as are all glaciers in the western United States. The Sierra Nevada
 24 are projected to be glacier-free by 2050, where glaciers have existed for more than
 25 3,000 years. California will soon be a glacier-free state, especially if climate
 26 pollution continues.

1 313. During droughts in the West, groundwater pumping increases and
2 results in dramatic groundwater-level declines that lead to worsening groundwater
3 quality. Plaintiff Noah relies on groundwater, which is diminishing.

4 314. Defendants’ ongoing Discounting Policies and regulatory practices
5 over climate pollution will lead to more extreme snow and flooding events on one
6 end and more drought conditions on the other, each of which will exacerbate injuries
7 to Plaintiffs.

8 315. Changes in water supply and water quality are also harming agriculture
9 and farming in the West. Increased heat, water shortages, and associated issues such
10 as pests, crop diseases, and weather extremes including fires, hurt crop and livestock
11 production and quality. Climate pollution is threatening food security and will
12 decrease crop yields, increase crop prices, decrease nationwide calorie availability,
13 and increase malnutrition.

14 316. Defendants’ ongoing Discounting Policies and regulatory practices
15 over climate pollution will lead to more food and water insecurity, which will
16 exacerbate injuries to Plaintiffs.

17 317. As precipitation increases, in urban areas in particular, climate-driven
18 flooding is destroying infrastructure Children depend upon, increasing pollutant
19 exposures, and increasing drowning dangers. The EPA has found 200,000 additional
20 Children may need to evacuate their homes due to inland flooding at 2°C of global
21 warming, and 550,000 at 4°C of global warming. Further, coastal flooding is
22 expected to destroy the homes of 185,000 children at a sea level rise of 50 cm above
23 current levels, and the homes of 1.13 million children at sea level rise of 100 cm
24 above current levels. Coastal flooding will also raise groundwater levels. In the San
25 Francisco Bay, 5,282 contaminated sites will be inundated by groundwater at 1 m of
26 sea-level rise (3,964 sites at 0.5 m of sea-level rise) while 24% of California’s
27 superfund site area is at risk from sea-level driven groundwater inundation. Fifty-

1 five percent of the residents near these contaminated sites are Black, Brown, and
2 Indigenous.

3 318. The increase in temperatures along with extreme precipitation and
4 flooding is increasing the prevalence of mosquitos and infectious diseases. Children,
5 who spend more time outside and have more open skin wounds are more susceptible
6 to mosquito bites and contracting water-borne diseases. Zubayr and Emma have
7 experienced these harms and are vulnerable to more harms in the future.

8 319. Defendants’ ongoing Discounting Policies and regulatory practices
9 over climate pollution will lead to more flooding and extreme weather events, which
10 will exacerbate injuries to Plaintiffs.

11 320. Climate pollution is causing a mental health crisis for Children.
12 Extreme events caused by climate change are traumatic for Children and cause
13 depression, anxiety, and post-traumatic stress. The chronic worry about climate
14 change also harms the mental health of Children. Children experience anxiety from
15 the betrayal of their government in causing climate crisis and not protecting the air
16 and climate system. The toxic stress from these mental health harms can last into
17 adulthood and diminish a child’s prospects for healthy adulthood. EPA has
18 acknowledged that climate change puts Children at particular risk for distress,
19 anxiety, and other adversities to their mental health. Every one of these young
20 Plaintiffs lives with some level of climate anxiety, chronic worry, post-traumatic
21 stress, and or depression. Some have diagnoses and seek treatment from therapy
22 where they spend time talking about climate change.

23 321. EPA and mental health experts have identified “climate anxiety”
24 among Children as a chronic stressor that will have adverse effects on Children’s
25 lives. Experts opine that the mental health harms of climate change to Children are
26 akin to cruel, inhuman, and degrading treatment (i.e., the equivalent of torture)
27 because of the mental suffering Children are already experiencing at existing levels

1 of climate pollution. EPA has acknowledged that Children that understand the
2 likelihood of experiencing climate change effects throughout their lives are more
3 predisposed to experiencing climate anxiety and feel hopelessness and trauma.
4 Government betrayal, by continuing to allow the crisis to unfold unabated is also
5 highly linked to the climate anxiety Children are uniquely experiencing.

6 322. EPA knows that climate change causes harm to Children’s mental
7 health. EPA’s ongoing Discounting Policies and regulatory practices over climate
8 pollution will lead to more climate anxiety among Children, which will exacerbate
9 injuries to Plaintiffs.

10 323. Childhood is a condition of life when a person is most susceptible to
11 psychological damage. Childhood trauma can have long-term mental health impacts
12 because Children are more likely to maintain those traumatic memories with greater
13 clarity. The disturbances in childhood from climate crisis can also harm brain
14 development and permanently and adversely affect the prefrontal cortex, with
15 lifelong adverse consequences that impact learning.

16 324. Children will also suffer disproportionate harm from the increased
17 financial burdens climate crisis poses, including lost property values and increasing
18 costs from catastrophic events and harm.

19 325. Black, Brown, and Indigenous Children (referred to by EPA as “BIPOC
20 Children” and “Children of Color”) are the most vulnerable because their families
21 and communities often lack the resources for adequate shelter, air conditioning, air
22 purifiers, and other ways of escaping from heat, climate fires, and air pollution.
23 Black, Brown, and Indigenous Children disproportionately live proximate to fossil
24 fuel infrastructure and the source of climate pollution, which further exacerbates
25 their immediate exposure to dangerous air and water pollution, harming their
26 developing bodies. Climate change also threatens the lives and health of Children by
27

1 reducing food availability and increased prices, leading to food insecurity within
2 households with fewer resources.

3 326. Black, Brown and Indigenous Children’s injuries from climate
4 pollution are compounded by the historic racism and discrimination experienced by
5 their ancestors and parents as well as the ongoing systemic racism they have been
6 born into. These Children, including many of these Plaintiffs, are the most
7 vulnerable of the Children class.

8 327. Black and Brown Children in California are exposed to more air
9 pollution in general than white persons. California’s average disparities between
10 racial minority populations and non-Hispanic white populations are notably larger
11 than other states (on average, 6 times larger). In general, Black and Brown
12 communities bear a “pollution burden” of 56% and 63% excess exposure relative to
13 their consumption of goods and services resulting in pollution.

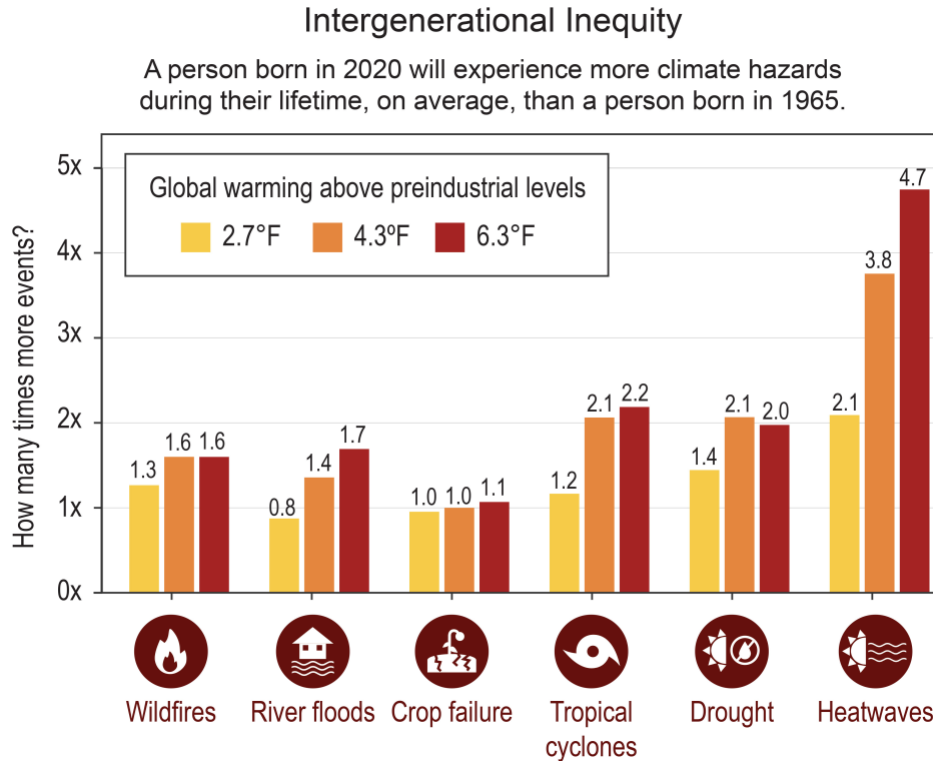
14 328. Black and African American Children are 34% more likely to live in
15 areas highly impacted by climate change. And they are at higher risk of childhood
16 asthma diagnoses compared to other Children.

17 329. Adverse childhood experiences (“ACEs”) increase the likelihood of
18 cumulative trauma that leads to mental and physical illness, as well as an increased
19 risk of early death. The more ACEs children experience, the greater the risk of
20 lasting effects on health (increased risk of obesity, diabetes, heart disease,
21 depression, strokes, chronic pulmonary disease), behaviors, and life potential.
22 Exposure to climate pollution and climate change increases the ACEs for these
23 Plaintiffs and Children.

24 330. Experts agree that “[a] child born today will experience a world that is
25 more than four degrees warmer than the pre-industrial average, with climate change
26 impacting human health from infancy and adolescence to adulthood and old age.
27 Across the world, children are among the worst affected by climate change.”

1 331. The U.S. 2023 Fifth National Climate Assessment Summary confirms
2 that Children born in 2020 will suffer disproportionate harm from climate pollution
3 than an adult who was born in 1960.

4 332.

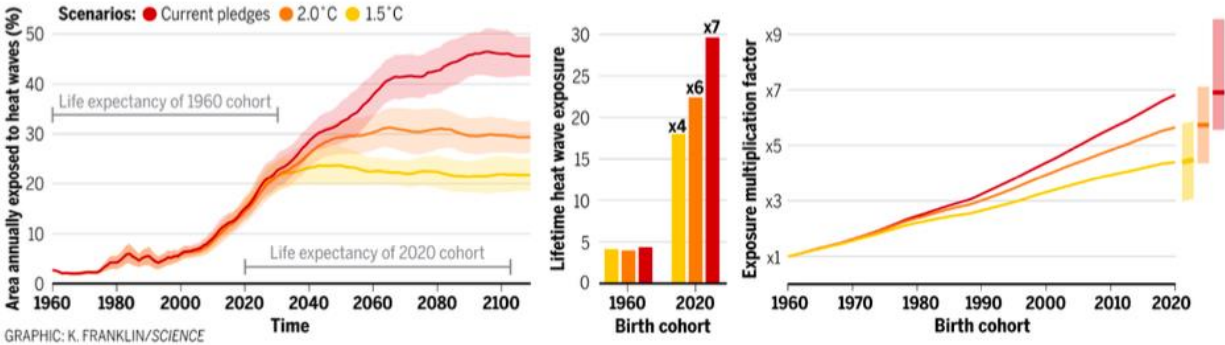


333. Experts agree with EPA and have documented the disparity in harm
that Children born today will experience as compared to adults as depicted in the
graphic below. Specifically, Children will experience vastly more severe weather
events than living adults and prior generations.

334.

From a period to a cohort perspective on extreme event exposure

(Left) Global land area annually exposed to heat waves under three scenarios. Lines represent multimodel means of a heat wave metric calculated from four global climate models. Lines were smoothed by using a 10-point moving average. Uncertainty bands span 1 standard deviation across the model ensemble. (Middle) Lifetime heat wave exposure for the 1960 and 2020 birth cohorts under the three scenarios. Numbers above bars indicate exposure multiplication factors relative to the 1960 cohort. (Right) Multiplication factors for lifetime heat wave exposure across birth cohorts relative to the 1960 cohort. Uncertainty bands represent the interquartile range for the 2020 cohort exposure relative to the multi-model mean exposure of the 1960 cohort.



EPA’s Discounting Policies and Regulatory Practices Disregard the Best Science on Climate Pollution and Earth’s Energy Imbalance

335. Based on the best scientific information, CO₂ concentrations greater than 350 ppm cause an Earth Energy Imbalance (“EEI”). EEI is increasing and amounted to 0.76 ± 0.2 watts per square meter (W/m²) during 2006–2020. That energy imbalance is also measured cumulatively as 381 ± 61 zeta joules (ZJ, 1,021 joules) between 1971 and 2020.

336. Between 2005 and 2019, the EEI doubled, representing an unprecedented and rapid heating of our planet. Earth Energy Imbalance is the physical fact that climate pollution is trapping more heat that Earth normally reflects back out to space and it is heating the oceans, the land surface, and the air. It is like wearing extra layers of sweaters in the summer and not being able to take them off.

337. Restoring Earth’s energy balance is key to abating or alleviating the climate crisis. Scientists say that to restore energy balance, we must swiftly reduce climate pollution by eliminating fossil fuel combustion and protecting and enhancing carbon sinks to sequester already accumulated CO₂ in our air. Earth’s energy balance will only be restored when atmospheric CO₂ is returned to concentrations less than

1 350 ppm, which will restore a stable climate system. Science-based, Children-centric
2 reductions in climate pollution will help keep open the possibility of restoring
3 Earth's energy balance in Plaintiffs' lifetimes. Conversely, EPA's current regulatory
4 trajectory carried out through its Discounting Policies, will foreclose the possibility
5 of restoring Earth's energy balance in Plaintiffs' lifetimes.

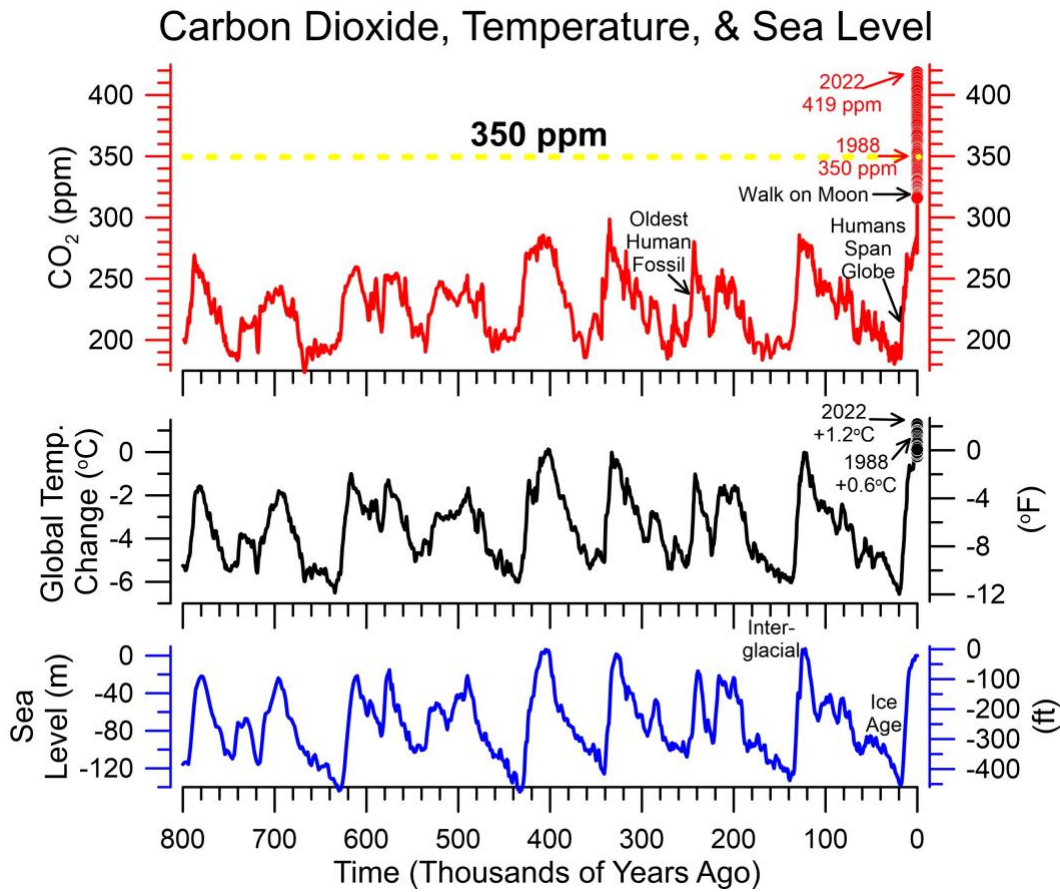
6 338. To illustrate the enormous amount of extra energy that climate pollution
7 traps on Earth, 381 ZJ could power the City of Los Angeles for more than 4.8 million
8 years. The oceans are absorbing most of that extra energy (heat), which is why the
9 surface temperature of the Earth has not heated as quickly, and also why the ocean's
10 ice sheets are melting and the coral reefs are dying.

11 339. The current annual mean concentration of atmospheric CO₂ is 419 ppm
12 as of 2022, far above scientists' proposed safe planetary boundary of 350 ppm. The
13 climate pollution concentration in our air is already dangerous for Children. It has
14 already caused an energy imbalance and climate destabilization. More climate
15 pollution will exacerbate the dangerous situation.

16 340. For comparison, the historical scientific record shows the last time CO₂
17 was over 400 ppm, about three million years ago, the global average sea level was
18 at least 20 feet and up to 65 feet higher than today, with best estimate of 55 feet
19 higher than today, and the planet was about 5°F (~2.8°C) warmer than the pre-
20 industrial era. No humans lived on Earth at those greenhouse gas concentrations,
21 which were elevated from a time of enhanced volcanic activity on Earth, which
22 naturally increased carbon dioxide emissions. The reason the seas have not yet risen
23 that much today is because it takes time for the ocean's ice sheets to collapse and
24 melt, which they are in the process of doing faster than any scientists predicted.

25 341. This graph depicts the correlation between atmospheric carbon dioxide
26 levels, global temperature levels, and global sea level, as well as the unprecedented
27

1 rise of CO₂ caused by human activity in an unprecedented short time span on historic
 2 scales.



17 342. Importantly, even during prior natural cycles of climatic change, the
 18 increase or decrease in greenhouse gases in the air happened much more gradually
 19 over thousands to millions of years and there was no human-caused climate pollution
 20 increasing to such extremes as they are now, in such a relatively short time frame of
 21 less than 200 years, as depicted in the graph above.

22 343. There is an established scientific prescription to return to below 350
 23 ppm this century that requires climate pollution reduction consistent with steadily
 24 eliminating nearly all fossil fuel burning by 2050. That prescription was developed
 25 by one of the United States’ top climate scientists, and former head of NASA’s
 26 Global Institute for Space Studies, with scientists around the world. Similarly, a
 27

1 growing body of science confirms that atmospheric CO₂ concentrations below 350
2 ppm is also a planetary boundary for a safe climate system. The 350 ppm global
3 prescription cannot be achieved without Defendants ceasing their allowance of
4 nearly all U.S. climate pollution from fossil fuel burning by 2050, with steady
5 reductions each year between now and 2050. In addition, natural carbon sinks,
6 located in lands and waters, need to be protected so they can naturally absorb excess
7 carbon in the air and not become sources of climate pollution themselves.

8 344. EPA finds that the current changes from accumulated climate pollution,
9 and future projected changes, “endanger the physical survival, health, economic
10 well-being, and quality of life of people living in the United States (U.S.), especially
11 those in the most vulnerable communities.” Defendants know that ongoing climate
12 pollution, especially from fossil fuels, is actively causing serious and life-threatening
13 environmental and health impacts, yet they continue their Discounting Policies and
14 practices in allowing climate pollution and discriminating against Children.

15 345. Due to climate pollution, the surface temperature of Earth has heated
16 by 1.1-1.2°C on average (2018-2022 or 2013-2022 average) above pre-industrial
17 temperatures (1880-1920 average). That temperature exceeds the maximum
18 temperatures of the Holocene era, the period of climate stability over the last 10,000
19 years that enabled human civilization to develop.

20 346. Politically-set temperature targets of 1.5 to 2°C, which allow the Earth
21 to heat more than it already has, are not in conformance with the accepted best
22 science, are life-threatening for Children, and are not based on peer-reviewed
23 science publications or the opinions of qualified experts. There is still time for
24 Defendants to avert these increasing temperatures.

25 347. EPA has no research, scientific evidence, or reports that say a 1.5°C
26 increase in temperatures from the preindustrial era is safe for Children. In fact, the
27 research, scientific evidence, and reports relied upon by EPA state that a 1.5°C
28

1 increase in temperatures from the preindustrial era is hazardous for Children and
2 future generations.

3 348. We are already in the danger zone. Every added ton of climate pollution
4 to the air today exacerbates the harm to Children.

5 349. Defendants know that 350 ppm CO₂ is the uppermost level of climate
6 pollution that will protect human health and welfare. By design, Defendants'
7 Discounting Policies and practices ignore this best science.

8 350. This climate pollution crisis is urgent beyond measure, in part because
9 of feedback loops. Feedback loops work like this: More climate pollution in the air
10 means more heat. More heat means less ice. Melting ice means less white reflectivity
11 on Earth and more heat is absorbed by dark water. Melting ice means methane
12 trapped in frozen permafrost can escape. Methane escaping from frozen land means
13 even more dangerous climate pollution. More heat also means more drought and
14 more climate fires. More climate fires mean more climate pollution. And the cycle
15 continues. Climate pollution begets more climate pollution. Sooner than later, if
16 more and more methane is released from frozen tundra due to feedback loops,
17 Children will experience runaway, unstoppable climate change as has happened on
18 other planets. Defendants' Discounting Policies and practices by design ignore these
19 costs to Children.

20 351. If Defendants' allowance of climate pollution through the exercise of
21 their Discounting Policies and practices continue unabated, it is significantly likely
22 that Earth's Energy Imbalance will trigger additional amplifying feedbacks and the
23 climate system and biological system will pass critical tipping points. Such changes
24 would be irreversible on any time scale relevant to Children and future generations,
25 threatening their survival and wellbeing.

26 352. With Defendants' allowance of climate pollution through the exercise
27 of their Discounting Policies and practices, they project that by 2050, when these
28

1 Plaintiffs might be starting their own families and bringing children into the world:
2 climate fire activity will double in the West, increasing burned areas by more than
3 50%; snowpack will be substantially reduced even from today's levels and snowmelt
4 will shift about four weeks earlier, resulting in warmer and shallower rivers and
5 streams; parasites and diseases will increase; the frequency of high ozone pollution
6 events will increase 50%-100%; more fetuses and Children will prematurely die
7 from climate change; and Children's health will decline further. Each of the injuries
8 detailed above will worsen substantially as our Nation bakes.

9 353. Just in terms of avoiding localized air pollution harm in California,
10 separate from climate change, if all fossil fuel pollution were phased out by 2050,
11 about 10,200 premature deaths per year would be avoided in California alone. The
12 cleaner air from eliminating fossil-fuel pollution will save California about \$134.1
13 billion per year in 2050 in avoided health costs. The national savings of eliminating
14 fossil fuel and climate pollution are far greater. Plaintiffs, who will inherit the
15 economic consequences of the climate crisis, will benefit from the cost savings of
16 lowering the number of extreme climate events and fossil fuel pollution in the
17 coming years by ending the discriminatory Discounting Policies and practices that
18 keep high levels of climate pollution in place.

19 **Defendants Have Available Non-Discriminatory Alternatives to Undertake**
20 **Cost-Benefit Analysis of Regulatory Proposals Involving Climate Pollution**

21 354. Economists working for and with Defendants have advised for decades
22 that the discount rate be lowered when government makes decisions affecting
23 climate pollution.

24 355. Experts, both inside and outside of government, have advised
25 Defendants that the long-term catastrophic dangers posed by climate pollution
26 warrant a much lower discount rate of zero percent or even a negative discount rate,
27 if any.

1 356. EPA’s own guidance documents indicate that the discount rates could
2 and should be lower than the Discounting Policies when evaluating programs
3 implicating climate pollution, climate change, and Children. Yet EPA continues its
4 Discounting Policies and practices that intentionally discriminate against Children.

5 357. In other contexts, EPA has considered applying a zero discount rate.
6 For example, in 1987, EPA contemplated adopting a zero or negative discount rate
7 when analyzing controlling pollution that caused the hole in the stratospheric ozone
8 layer. EPA understood that a discount rate “may be positive, negative, or zero
9 From a social perspective, the value of this . . . discount factor reflects one’s
10 resolution of some of the ethical considerations discussed above. A zero utility
11 discount factor weighs current and future utilities equally. A positive (negative)
12 value weights future utilities lower (higher) than current utility.” The “ethical
13 considerations” that EPA stated were relevant to choosing a discount rate were that
14 “the parties who will bear the costs or enjoy benefits may not yet exist”; “the
15 unregulated market will probably not result in the optimal level of saving for the
16 future”; “[i]rreversibility of the consequences of some policies is . . . a reason for
17 adopting a more cautious attitude toward imposing burdens on future generations”;
18 it is only justified to “borrow[] from future generations to benefit the present” only
19 if “[f]uture generations may be richer than existing ones”; “[t]he current generation
20 should treat future generations as they treat themselves”; “[t]he current generation
21 should treat future generations so as to improve their life from current conditions”;
22 and “[t]he current generation should not discount future lives, since human life is
23 not fungible.”

24 358. By using a discount rate of zero or a negative discount rate, Children
25 will be valued equally and their livable future will be treated as equally worth
26 protecting from the catastrophic harm of more climate pollution in Defendants’
27

1 exercise of their regulatory authority. The resulting BCA would then show the clear
2 irrationality of allowing ongoing levels of climate pollution.

3 359. Eliminating Defendants’ Discounting Policies and practices and
4 pursuing a non-discriminatory alternative will alleviate the substantial harm these
5 discriminatory Policies cause to these Plaintiffs, Children, and society as a whole.

6 360. Defendants can conform their conduct to control climate pollution
7 while still enabling a viable and more economical energy system in the United
8 States. An energy system that does not result in dangerous amounts of climate
9 pollution has been feasible since before Children were born. Defendants’ policies
10 and practices since 1970 have impeded the development of a non-fossil fuel-based
11 energy system in part by making it cheap and permissible to pollute the air,
12 artificially lowering the social cost of carbon, and thereby requiring Children to
13 subsidize climate pollution.

14 361. Clean renewable energy is the most affordable and reliable form of
15 energy today. Plans exist to transition the United States to 100% clean renewable
16 energy in all energy sectors by 2050 at the latest. It is technically and economically
17 feasible to eliminate nearly all fossil fuel climate pollution by 2050. All mobile and
18 stationary sources of climate pollution over which EPA has control can be powered
19 without fossil fuels.

20 **CLAIMS**

21 **COUNT I: EQUAL PROTECTION VIOLATION—CHILDREN AS *SUI***
22 ***GENERIS***

23 362. Plaintiffs hereby incorporate the above paragraphs by reference as
24 though fully set forth herein.

25 363. Through incorporation of the Equal Protection Clause of the Fourteenth
26 Amendment, the Fifth Amendment constitutionally guarantees that Defendants shall
27

1 not deny to Plaintiffs or Children within its jurisdiction the equal protection of the
2 laws that has been enjoyed by similarly situated groups of people.

3 364. The Supreme Court has also long recognized Children’s constitutional
4 rights and liberties and protected Children from government action that harms them
5 under the Equal Protection Clause by affording less deference and applying
6 heightened scrutiny to government action that imposes lifetime hardships on
7 children for matters beyond their control.

8 365. Equal protection claims involving Children are *sui generis*.
9 Specifically, the Equal Protection Clause prohibits Defendants from imposing
10 significant risks and injury to Children’s well-being for matters beyond their control.
11 Under such circumstances, courts do not apply a traditional tier of scrutiny, but rather
12 analyze the extent to which Defendants’ conduct burdens Children’s ability to live
13 and enjoy their lives by imposing on them a lifetime of hardship.

14 366. Defendants have violated the Equal Protection Clause by knowingly
15 adopting Discounting Policies and practices that favor allowing climate pollution
16 from sources under EPA’s control (including all stationary sources of pollution, all
17 mobile sources of pollution, fuels, locomotives, ocean-going vessels, and aircraft),
18 which imposes significant risks and injury to Children, including each Plaintiff, in a
19 manner that burdens them with lifetimes of hardship for matters beyond their
20 control.

21 367. Defendants’ control of the air and climate pollution, through the
22 exercise of their Discounting Policies and practices described herein, burdens
23 Children’s lives by imposing a lifetime of harms and hardship on Children, including
24 Plaintiffs, from birth into their adulthood. The economic method of discounting is a
25 weapon of intergenerational oppression that harms Children.

26 368. The harms and hardships to Children’s lives that are ongoing and will
27 worsen if Defendants’ Discounting Policies and practices continue, include
28

1 economic harms, displacement, psychological harms, barriers to family formation,
2 health impacts, educational deprivation, cultural and religious deprivation, harm to
3 dignity, and a diminished ability to seek happiness and an open future, all while
4 being deprived of a meaningful vote and voice on the matter most important to their
5 lives—climate crisis. Plaintiffs, as Children, will face an insurmountable burden in
6 securing their rights.

7 369. Plaintiffs are entitled to a declaratory judgment, pursuant to 28 U.S.C.
8 § 2201, and a permanent injunction because there is no plain, adequate, or speedy
9 remedy at law to prevent Defendants from continuing to use their Discounting
10 Policies and practices that discriminate against Children in their systematic
11 management of the air and climate pollution because the harm Plaintiffs will suffer
12 is irreparable. Plaintiffs are also entitled to such further relief as necessary to enforce
13 the judgment.

14 **COUNT II: EQUAL PROTECTION VIOLATION—CHILDREN AS A**
15 **PROTECTED CLASS**

16 370. Plaintiffs hereby incorporate the above paragraphs by reference as
17 though fully set forth herein.

18 371. Defendants’ systematic control and management of the air and climate
19 pollution through its Discounting Policies and practices violates Plaintiffs’ rights
20 secured to them by the Fifth Amendment, which incorporates the Fourteenth
21 Amendment right of Equal Protection.

22 372. The Discounting Policies and practices act as intentional and explicit
23 discrimination against Children because they devalue the rights and interests of
24 Children and all future generations of Children. Children are a protected class.

25 373. Defendants’ systematic control of the air and climate pollution through
26 their Discounting Policies and practices amounts to unconstitutional differential
27

1 treatment of Children from the treatment of adults. Children already suffer
2 disproportionate harm from Defendants’ allowance of climate pollution. The
3 unfairness of the treatment of Children and the higher burden of harm they will bear
4 than adults results in unjustified inequality and violates any notion of fairness.

5 374. Under the adult-centric traditional equal protection tiers of scrutiny
6 analysis, Children as a class are a prime example of a “discrete and insular” minority
7 requiring close judicial scrutiny of invidious discrimination because Children have
8 characteristics that are different from adults and are entitled to consideration on their
9 own terms as growing young people. Specifically, Children:

- 10 a. Are in early phases of human development and physiologically and
11 psychologically vulnerable.
- 12 b. Have developing lungs, brains, and immune systems that are
13 particularly sensitive to climate harms, and exposure to these harms can
14 subject Children to a lifetime of hardship.
- 15 c. Are dependent on their caregivers and are politically and economically
16 powerless until at least age 18. It takes decades for Children born today
17 to have enough political and economic power to become a political
18 majority capable of protecting their air and climate system. Even upon
19 growing to voting age, Plaintiffs and all Children, will remain
20 politically burdened by the First Amendment political speech rights the
21 U.S. Supreme Court has afforded corporations, which have outsize
22 influence in campaigns, elections, and political processes. *Citizens*
23 *United v. Fed. Election Comm’n*, 558 U.S. 310 (2010).
- 24 d. Have life expectancy many decades beyond living adults. In the case of
25 the average age of federal policymakers today, Children will live
26 approximately 60 years beyond the federal policymakers and bear the
27 consequences of the decisions of those federal policymakers, especially
28

1 as to the discriminatory systemic management and control of climate
2 pollution by Defendants at issue in this litigation.

3 e. Have faced a long history of discrimination where they have been
4 continuously subjected to unequal treatment. Like women, Children
5 were once considered property and many children were treated as
6 indentured servants or were enslaved.

7 375. Being a member of the class of Children is thus more than a
8 chronological fact. Plaintiffs, ages 8 to 17 years old, all fall within the protected class
9 of Children.

10 376. All human beings, living adults and living Children alike are similarly
11 situated with respect to their need for air, water, and a stable climate system for life.
12 Our ancestors, including the Framers, also depended on air, water, and a stable
13 climate system for life and were thus also similarly situated to living adults and
14 children with respect to their need for air, water, and a stable climate system for life.

15 377. Through their Discounting Policies and practices in Defendants’
16 exercise of sovereign control over the air and the life-threatening amounts of climate
17 pollution they allow to enter the air, Defendants have denied and continue to deny
18 Children equal protection of the laws.

19 378. Defendants intentionally discriminate against Children through
20 Discounting Policies and practices that are designed to suppress the value of
21 Children’s lives and their future when making decisions about climate pollution.
22 Such explicit classification of Children born and unborn generations as less valuable
23 than living adults demonstrates a discriminatory purpose as a matter of law.
24 Defendants’ policies and practices overtly and expressly single out Children for
25 disparate treatment from adults in their benefit-cost analyses.

26 379. Plaintiffs’ physical and mental health is being harmed by Defendants’
27 conduct. Defendants’ systematic control of the air and climate pollution through
28

1 their Discounting Policies and practices has caused and contributed to Plaintiffs’
2 homes being threatened with heat, fires, smoke, and floods; Plaintiffs’ education
3 being regularly and increasingly disrupted; Plaintiffs not being able to go outside
4 daily because it is not safe and curtailing of their recreational and physical activities;
5 Plaintiffs’ religious, spiritual, and cultural practices being disrupted; and Plaintiffs
6 facing long-term water and food insecurity. Defendants’ policies and practices are
7 ongoing and will cause Plaintiffs’ injuries to worsen.

8 380. Defendants have infringed Children’s rights of equal protection by
9 subjugating Children’s vital interests in air quality and a stable climate system to the
10 special financial interests of adult persons living today, and non-human persons, like
11 fossil fuel companies, in violation of Children’s equal protection of the law.
12 Defendants’ subjugation of Children’s vital interests in favor of the financial
13 interests of other adults and corporations is ongoing.

14 381. There is no justification by which Defendants can satisfy their burden
15 under rational basis, intermediate scrutiny, or strict scrutiny at trial. The
16 discrimination and profound harms attributable to Defendants’ Discounting Policies
17 and practices, which are already occurring and will only continue to increase absent
18 judicial intervention, are of such magnitude as to “outrun and belie any legitimate
19 justifications” that may possibly be claimed.

20 382. Defendants’ Discounting Policies and practices in carrying out their
21 regulatory programs are neither necessary to achieve a compelling government
22 interest nor is it substantially related to achieving any important government interest.

23 383. Defendants’ discriminatory conduct in allowing dangerous levels of
24 climate pollution into the sovereign air space and in discounting the value of
25 Children’s lives is not rationally related to any legitimate government interest.

26 384. There is no rational basis for Defendants’ Discounting Policies and
27 practices. Because of the enormous cost of climate pollution on Children and the

1 Nation, there is no rational calculus that supports any decision not to immediately
2 and swiftly control climate pollution to abate the climate crisis. Despite their lack of
3 a rational calculus, Defendants’ Discounting Policies and practices give EPA’s
4 regulatory programs—to permit climate pollution—an economic facade of
5 rationality.

6 385. There are other non-discriminatory alternatives that if implemented can
7 achieve any purpose Defendants could assert for their Discounting Policies and
8 practices.

9 386. Absent declaratory relief that Defendants’ Discounting Policies and
10 practices in their systematic management of the air and climate pollution violate
11 Children’s rights of Equal Protection, Plaintiffs will continue to be harmed in
12 worsening ways over the course of their young lives, depriving them of equal
13 protection of the law.

14 387. Plaintiffs are entitled to a declaratory judgment, pursuant to 28 U.S.C.
15 § 2201, and a permanent injunction because there is no plain, adequate, or speedy
16 remedy at law to prevent Defendants from continuing to use their Discounting
17 Policies and practices that discriminate against Children in their systematic
18 management of the air and climate pollution because the harm Plaintiffs will suffer
19 is irreparable. Plaintiffs are also entitled to such further relief as necessary to enforce
20 the judgment.

21 **COUNT III: EQUAL PROTECTION VIOLATION: BURDEN ON**
22 **FUNDAMENTAL RIGHTS - RIGHT TO LIFE, PERSONAL SECURITY,**
23 **BODILY INTEGRITY, DIGNITY, FAMILY AUTONOMY, CULTURAL/**
24 **SPIRITUAL TRADITIONS, AND LIFE-SUSTAINING CLIMATE SYSTEM**

25 388. Plaintiffs hereby incorporate the above paragraphs by reference as
26 though fully set forth herein.

1 389. Defendants’ systematic control and management of the air and climate
2 pollution, through their Discounting Policies and practices, discriminates against
3 Children, including Plaintiffs, with respect to their fundamental rights to life,
4 personal security, bodily integrity, dignity, family autonomy, the right to learn,
5 practice, and transmit one’s cultural and spiritual traditions, and a life-sustaining
6 climate system, in violation of the Fourteenth Amendment’s Equal Protection
7 Clause, as incorporated into the Fifth Amendment.

8 390. The Supreme Court has long recognized unenumerated fundamental
9 rights to personal security, bodily integrity, family autonomy, dignity, the right to
10 free movement, and the right to transmit religion and culture to children, as
11 fundamental rights that both adults and Children hold.

12 391. Plaintiffs’ fundamental right to life means more than not being put to
13 death. The fundamental right to life, as the Framers intended, includes the right of
14 current and future generations of living persons to enjoy this terrestrial existence and
15 pursue happiness in living. The right to life includes vitality (health) and a person’s
16 lifespan. At the time of the Nation’s founding, “life” was defined as “enjoyment, or
17 possession of terrestrial existence;” “condition; manner of living with respect to
18 happiness;” “continuance of our present state;” and “living person.”⁷ The
19 Declaration of Independence also specified the “pursuit of happiness” as a self-
20 evident equal right central to human existence.

21 392. The Nation was founded on a balanced atmosphere and a life-sustaining
22 climate system. Children cannot exercise their equal rights to life without a stable
23 climate system.

24 393. James Madison, drafter of the Fifth Amendment, said: “Animals,
25 including man, and plants may be regarded as the most important part of the
26

27 ⁷ Samuel Johnson Dictionary (1755).

1 terrestrial creation. They are pre-eminent in their attributes; and all nature teems with
2 their varieties and their multitudes, visible and invisible. To all of them, the
3 atmosphere is the breath of life. Deprived of it, they all equally perish. But it answers
4 this purpose by virtue of its appropriate constitution and character.” Framer Madison
5 explained in 1818 that the balanced composition of the atmosphere and the climate
6 system in its natural state formed the ingredients, “which fits it for its destined
7 purpose, of supporting the life and health of organized beings.”⁸

8 394. A stable climate system that sustains human life is fundamental to
9 ordered liberty and every single one of Plaintiffs’ fundamental rights to life, liberty,
10 and property.

11 395. The beneficiaries of the U.S. Constitution included the founding
12 generation as well as “Posterity,” meaning all future generations of Americans,
13 including Children.⁹ Our Constitution begins with intergenerational fairness and
14 justice as a basis for forming our “more perfect Union.” Our Constitution explicitly
15 foreclosed the English rule that children, or remote generations, should be punished
16 for the actions of their parents or ancestors, in order to preserve opportunity for
17 liberty and happiness for each new generation. Art. III, § 3, cl. 2.

18 396. Governmental policies and practices that knowingly classify children
19 as worth less than adults or fossil fuel corporations and result in a significant
20 diminishment in a child’s health, safety, and wellbeing with a lifetime of

21 _____
22 ⁸ James Madison, Address to the Agricultural Society of Albemarle (May 12, 1818).

23 ⁹ The Fifth and Fourteenth Amendments should be interpreted through the lens of
24 the Posterity Clause in the Preamble of the Constitution, which articulates
25 intergenerational concern: “We the People of the United States, in Order to form a
26 more perfect Union, establish Justice, insure domestic Tranquility, provide for the
27 common defence, promote the general Welfare, and secure the Blessings of Liberty
28 to ourselves *and our Posterity*, do ordain and establish this Constitution for the
United States of America.”

1 consequences, such as a reduced lifespan and increased exposure to risk of death,
2 burdens the right to life and infringes the Equal Protection Clause, unless it is
3 necessary to achieve a compelling governmental interest.

4 397. Defendants' Discounting Policies and practices have already deprived
5 Plaintiffs of essential aspects of life, including their bodily integrity and health, their
6 opportunity to pursue happiness, and risks depriving them of their full lifespan and
7 a livable future.

8 398. Defendants' Discounting Policies and practices have already deprived
9 Plaintiffs of the liberty to be safely outside and safely inside, and the very sanctity
10 of their homes.

11 399. Defendants' systematic control over and management of sources of
12 climate pollution through their Discounting Policies and practices are actively
13 discriminating against Plaintiffs' fundamental rights, enumerated and
14 unenumerated. The longer the Discounting Policies and practices remain, the more
15 Plaintiffs' rights will be diminished.

16 400. Defendants' Discounting Policies and practices have already deprived
17 Plaintiffs of essential aspects of their fundamental rights to a life-sustaining climate
18 system, and their continuation risks depriving Plaintiffs of the opportunity to repair
19 the destabilized climate system that is causing irreversible harm to them and their
20 home planet.

21 401. Any compelling government interest that could possibly be asserted for
22 Defendants' Discounting Policies and practices that have led to EPA systemically
23 allowing dangerous amounts of climate pollution from sources under its authority to
24 control is wholly unnecessary. A secure, jobs-producing, thriving national energy
25 system can be powered with non-fossil fuel energy at low costs that are more stable
26 than the costs of a fossil fuel-based energy system. Falsely discounting the actual
27 climate costs to Children and valuing Children less than others serves no compelling
28

1 government interest. There is no necessary and compelling government interest in
2 allowing Defendants' Discounting Policies and practices, which endanger the
3 Earth's life support systems and Children's right to life.

4 402. There are other less discriminatory alternatives that if implemented can
5 achieve any purpose Defendants could assert for their Discounting Policies and
6 practices.

7 403. Plaintiffs are entitled to a declaratory judgment, pursuant to 28 U.S.C.
8 § 2201, and a permanent injunction because there is no plain, adequate, or speedy
9 remedy at law to prevent Defendants from continuing to use their Discounting
10 Policies and practices that discriminate against Children in their systematic
11 management of the air and climate pollution because the harm Plaintiffs will suffer
12 is irreparable. Plaintiffs are also entitled to such further relief as necessary to enforce
13 the judgment.

14 **COUNT IV: VIOLATION OF ARTICLE II TAKE CARE CLAUSE and**
15 **SEPARATION OF POWER**

16 404. Plaintiffs hereby incorporate the above paragraphs by reference as
17 though fully set forth herein.

18 405. The President has a constitutional duty to "take care that the laws be
19 faithfully executed." U.S. Const., art. II, § 3. The Take Care Clause is violated where
20 executive action undermines statutes enacted by Congress and signed into law.

21 406. The United States has asserted sovereignty of, and exercised dominion
22 and control over, the air above the Nation's territory. The United States has also
23 exercised dominion and control over the pollution that enters the Nation's air space.
24 The Supreme Court has long affirmed that except for the immediate airshed above
25 private property, air is in the public domain. *United States v. Causby*, 328 U.S. 256,
26 266 (1946).

1 407. In 1970, President Nixon proposed to Congress a consolidation of
2 authority over pollution into one federal agency—EPA. Nixon’s proposal found that
3 “for pollution control purposes the environment must be perceived as a single,
4 interrelated system” to coordinate an “attack on the pollutants which debase the air
5 we breathe, the water we drink, and the land that grows our food,” and “Because
6 environmental protection cuts across so many jurisdictions, and because arresting
7 environmental deterioration is of great importance to the quality of life in our country
8 and the world, I believe that in this case a strong, independent agency is needed.”

9 408. Pursuant to Article I, Congress enacted laws consolidating and
10 delegating federal authority to EPA to manage the protection of the Nation’s air and
11 prevent pollution that endangers human health and welfare from entering or
12 accumulating in the air. In delegating authority to EPA, Congress understood that
13 setting national air quality standards to protect public health from hazardous
14 pollution agents would require major action throughout the Nation.

15 409. Pursuant to Article II, OMB and EPA are agencies of the Executive
16 branch with authority delegated from Congress. As such, they are required to take
17 care to faithfully execute the law’s explicit language and effectuate Congress’ intent
18 to protect the sovereign air from pollution that endangers human health and welfare.

19 410. The U.S. Supreme Court ruled that any “federal common-law claim for
20 curtailment of greenhouse gas emissions . . . would be displaced by the federal
21 legislation authorizing EPA to regulate carbon-dioxide emissions”; “Congress
22 designated an expert agency, here, EPA, as best suited to serve as primary regulator
23 of greenhouse gas emissions.” *American Electric Power Co. v. Connecticut*, 564
24 U.S. 410, 423, 428 (2011). Because other remedies at law have been curtailed, EPA’s
25 faithful execution of the law is vital.

26 411. EPA must conduct its programs to protect the quality of the air and
27 water for the benefit of human health and welfare, including for present and future
28

1 generations, pursuant to the authorities under which EPA operates. EPA can only
2 exercise its authority within the power granted to it by the Clean Air Act or other
3 statutory authority.

4 412. “Agencies have only those powers given to them by Congress,” and
5 Congress does not “typically use oblique or elliptical language to empower an
6 agency to make a ‘radical or fundamental change’ to a statutory scheme.” *West*
7 *Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022). “The agency . . . must point to ‘clear
8 congressional authorization’ for the power it claims.” *Id.*

9 413. Congress did not delegate to EPA authority or power to discount the
10 lives of Children, or to execute the law in a manner that would degrade the Nation’s
11 air, harm Children’s health, endanger Children’s welfare, or treat Children or future
12 generations of Children differently from adults. Congress could not have intended
13 to delegate such sweeping authority as EPA has assumed to allow for the significant
14 degradation of air quality and thus, the endangerment of the Nation’s climate system,
15 and harm to Children’s lives. By exercising control of the air and systemically
16 managing climate pollution through Defendants’ Discounting Policies and practices
17 in a manner that endangers human health and welfare, EPA has acted far in excess
18 of the legal authority granted it by Congress.

19 414. Defendants’ Discounting Policies make a “radical or fundamental
20 change” to the statutory scheme, for which Defendants have no congressional
21 authorization for this discriminatory power they claim.

22 415. Even if Congress wanted to bestow authority to EPA to allow life-
23 threatening levels of climate pollution and harm Children, including Plaintiffs,
24 Congress has not delegated and cannot delegate to EPA the power to infringe any
25 fundamental right to life or liberty or equal protection of the law. EPA must point to
26 “clear congressional authorization” for the power it claims to adopt the Discounting
27 Policies and practices, which allow unhealthy levels of climate pollution for
28

1 Children. Defendants' Discounting Policies and practices are highly consequential
2 and beyond what authority Congress could reasonably be understood to have granted
3 to EPA.

4 416. The Clean Air Act does not expressly, nor implicitly, authorize EPA to
5 systematically allow amounts of climate pollution, through Discounting Policies and
6 practices, that destabilize the climate system, endangering Children's health and
7 welfare, including the health and welfare of Plaintiffs. Congress cannot delegate
8 authority that it does not possess, including engaging in unconstitutional conduct,
9 and has made no clear statement that it intended such delegation in the Clean Air
10 Act or any other statute delegating authority to EPA.

11 417. Whether to discriminate against Children through Defendants'
12 Discounting Policies and practices and damage the Nation's climate system and
13 permit dangerous levels of CO₂ and other climate pollution is certainly a question
14 with vast economic and political significance, which would have to be expressly
15 stated in any legislation passed by Congress. Congress' constitutional mandate is to
16 enact laws that preserve the perpetuity of the Nation based on the sovereignty of the
17 People, including future generations of Children who will one day exercise the
18 political franchise and their own sovereign power.

19 418. As a result of EPA's Discounting policies and practices that exceed its
20 delegated authority, Plaintiffs are being injured with no other remedy at law.

21 419. EPA's Discounting policies and practices that exceeds its authority as
22 delegated by Congress under Article I, and does not faithfully execute the law under
23 Article II, thus violates the Take Care Clause.

24 420. As a result of EPA's Discounting policies and practices that exceeds its
25 authority as delegated by Congress under Article I, and does not faithfully execute
26 the law under Article II, Plaintiffs are entitled to declaratory relief and further relief
27 to enforce the judgment.

1 421. Plaintiffs are irreparably harmed by Defendants’ violation of the Take
2 Care Clause insofar as Defendants’ Discounting Policies and practices exceeds their
3 authority as delegated by Congress under Article I, and does not faithfully execute
4 the law under Article II, discriminates against Children, causes damage to the
5 Nation’s climate system and permits dangerous levels of CO₂ and other climate
6 pollution, as alleged above, rather than safeguard the health and well-being of
7 Children, including Plaintiffs.

8 422. This Court is authorized to enjoin any action by EPA that “is
9 unauthorized by statute, exceeds the scope of constitutional authority, or is pursuant
10 to unconstitutional enactment.” *Youngstown Sheet & Tube Co. v. Sawyer*, 103
11 F.Supp. 569 (D.D.C. 1952), *aff’d*, 343 U.S. 579 (1952).

12 423. Plaintiffs are entitled to a declaratory judgment, pursuant to 28 U.S.C.
13 § 2201, and a permanent injunction because there is no plain, adequate, or speedy
14 remedy at law to prevent Defendants from continuing to use their Discounting
15 Policies and practices that discriminate against Children in their systematic
16 management of the air and climate pollution because the harm Plaintiffs will suffer
17 is irreparable. Plaintiffs are also entitled to such further relief as necessary to enforce
18 the judgment.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiffs, and each of them, pray for relief as set forth below:

1. For a declaration that Defendants’ Discounting Policies explicitly discriminate against Children, including these Plaintiffs, and violate the Equal Protection Clause, as incorporated into the Fifth Amendment of the U.S. Constitution through the Fourteenth Amendment, and the Due Process Clause.
2. For a declaration that Defendants’ Discounting Policies and practices, in controlling the climate pollution that enters the Nation’s air, discriminate against Children, including these Plaintiffs, and violate the Equal Protection Clause, as incorporated into the Fifth Amendment of the U.S. Constitution through the Fourteenth Amendment, and the Due Process Clause.
3. For a declaration that Defendants’ Discounting Policies and practices in controlling the climate pollution that enters the Nation’s air, discriminate against Children and Plaintiffs with respect to their fundamental rights.
4. For a declaration that the fundamental right to a life-sustaining climate system is encompassed within the Fifth Amendment substantive due process fundamental right to life and is also inseparable from fundamental rights to liberty and property.
5. For a declaration that EPA has exceeded its delegated authority by its Discounting Policies and practices that allow unsafe levels of climate pollution that endanger Children, including Plaintiffs, to enter and accumulate in the Nation’s air, in violation of the Take Care Clause.
6. For a permanent injunction preventing EPA from using the Discriminatory Policies and practices in its regulatory programs.

- 1 7. For a permanent injunction preventing EPA from using a discount rate
- 2 higher than zero in its Regulatory Impact Analyses and benefit-cost
- 3 analyses to quantify the future social, economic, health, or environmental
- 4 benefits of reducing climate pollution, or the future social, economic,
- 5 health, or environmental costs of emitting climate pollution.
- 6 8. For a permanent injunction requiring Defendants to conduct their
- 7 Regulatory Impact Analyses, benefit-cost analyses, and regulatory
- 8 programs in a manner that does not discriminate against Children.
- 9 9. Pursuant to 28 U.S.C. § 2202 and this Court’s Article III authority, grant
- 10 such other and further relief as the Court deems just and proper to redress
- 11 the constitutional violations so declared and adjudged.
- 12 10. Award Plaintiffs their costs and reasonable attorneys’ fees in this action.
- 13

14 Respectfully submitted this 20th day of May, 2024,

15
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