No Ordinary Lawsuit - Juliana v. United States

Gabriela Steier
No Ordinary Lawsuit: Juliana v. United States is a Landmark Precedent for Climate Change Legislation

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JURIST Guest Columnist Gabriela Steier of the Duquesne University School of Law and Food Law International LLP discusses the possible effects of a landmark court decision in climate change litigation...

"This is no ordinary lawsuit," wrote Judge Ann Aiken of the US District Court for the District of Oregon, at the beginning of her opinion denying a motion to dismiss in Juliana v. United States, the breakthrough climate change case that might eventually raise carbon dioxide (CO2) regulation into the realm of nondiscretionary agency action. A hopeful reading of this case’s opinion, which enables the parties to proceed to trial, paints the picture where the children of the future can sue present day regulators for failure to mitigate climate change.

Climate change is one of the most universal threats of our time. The
burning of fossil fuels emits greenhouse gases into our warming atmosphere and accelerates the deterioration of our environment. Impacts of climate change range from floods, droughts, and storms, to socioeconomic instability and political unrest, which cause disruptions of physical, biological, and ecological systems and a host of negative public health effects.

Specifically, in what experts call a remarkable expansion of US common law, a group of 21 young plaintiffs (aged eight to nineteen), along with the environmental advocacy organization Earth Guardians, and Dr. James Hansen of Columbia University, acting as guardian for future generations, filed this action against defendants the United States, President Barack Obama, and numerous executive agencies, including the Environmental Protection Agency (EPA), alleging in their complaint that the defendants "deliberately allow[ed] atmospheric CO2 concentrations to escalate to levels unprecedented in human history."

The legal issue covered by the opinion was "whether defendants are responsible for some of the harm caused by climate change, whether plaintiffs may challenge defendants' climate change policy in court, and whether this Court can direct defendants to change their policy without running afoul of the separation of powers doctrine."

Acknowledging the fundamental premise that "air, running water, the sea, and consequently the seashore" are public trust assets imposing upon the trustee a fiduciary duty to "protect the trust property against damage or destruction," Judge Aiken held the defendants responsible for failing to mitigate climate change. Thus, Judge Aiken explained that "[t]his action is of a different order than the typical environmental case. It alleges that defendants' actions and inactions--whether or not they violate any specific statutory duty--have so profoundly damaged our home planet that they threaten plaintiffs' fundamental constitutional rights to life and liberty." The plaintiffs argued that the defendants have violated their obligation to hold certain natural resources in trust for the people and for future generations. Under the public trust doctrine, no government can legitimately abdicate certain powers and obligations.
trust doctrine, no government can legitimately abdicate certain powers and obligations without diminishing the power of future legislatures to promote the general welfare. Here, the resources vital to ensure public welfare are at stake because they are threatened by rising CO2 levels which contribute to climate change at threaten the general welfare.

This case could potentially eliminate the nonsensical denial of climate change and declare it ripe for judicial action. Judge Aiken found that "[t]his lawsuit is not about proving that climate change is happening or that human activity is driving it... those facts are undisputed." Climate change has been unequivocally established through scientific evidence summarized in 2013 [PDF] by the United Nation's Intergovernmental Panel on Climate Change (IPCC) and makes the pollutant carbon dioxide (CO2) responsible for contributing to sea-level rises, extreme weather events, species extinction, ecosystem threats, ocean acidification oceans, as well as threats to the natural and cultural heritage of the planet, as Yale Economics Professor William Nordhaus explained.

Despite recent progress through both the courts and diplomacy, US policy has yet to catch up to a climate change policy [PDF] that fully addresses the IPCC's warnings. The current patchwork of initiatives, encompassing a host of environmental statutes on different levels and with varying intensity, only address a selection of contributors to climate change. For instance, President Obama's Climate Action Plan [PDF] deals primarily with power plants by setting CO2 emissions standards from the plants accounting for roughly one-third of all domestic greenhouse gas emissions, and is designed to "protect the health of our children and put our nation on the path toward a 30 percent reduction in carbon pollution from the power sector by 2030." The White House further notes the Climate Action Plan's environmental and health benefits will be worth an estimated $55 billion to $93 billion per year in 2030, which puts climate change mitigation at the center of public debate. Later, in September 2016, the US submitted its ratification of the November 2015 United Nations Conference of the Parties in Paris global climate agreement. However, since no comprehensive federal US climate action policy exists to-date, Juliana v. United States gives the judiciary a chance to help US climate change policy to catch up and to establish a body of common law to fill in until Congress passes a comprehensive climate change framework. Juliana v. United States enforces the public trust doctrine and applies it to the federal government, establishing the right to a climate system capable of sustaining human life as a fundamental right protected by substantive due process.

Professor Patrick Parenteau, an expert in climate change law from the nation's leading
Professor Patrick Parenteau, an expert in climate change law from the nation's leading institution for environmental law, Vermont Law School, said that, "Judge Aiken wrote a blockbuster opinion in Juliana v. United States holding that there is a constitutional right to a safe climate for the youth of America and the world." He emphasizes that "[t]his has set the stage for the trial of the century in summer 2017 featuring some of the world's foremost climate scientists and putting the incoming Trump administration under scrutiny to justify its announced intentions to repeal the Obama administration's clean power plan and withdraw from the Paris climate treaty signed by nearly 200 nations."

Juliana v. United States is a case to remember as we go into the new year. It is the much-needed game changer that the environmental movement needs, that the children of the future count on, and that gives us, as stewards of the Earth, hope that Judge Aiken's opinion will be affirmed by the Supreme Court. As Professor Parenteau predicts, "[t]he whole world will be watching to see how this groundbreaking case turns out."

Professor Gabriela Steier is the co-founder of Food Law International LLP, co-editor of the textbooks International Food Law and Policy, International Farm Animal, Wildlife and Food Safety Law, and Agrobiodiversity and Agroecology: Environmental Resilience in International Food Law. She teaches Food Law and Policy, and Climate Change Law at the Duquesne University School of Law in Pittsburgh, Pennsylvania, and also teaches EU-US comparative food law as a visiting professor at the University of Perugia in Perugia, Italy. Her writings have been published in works ranging from peer-reviewed medical journals to law reviews, and she has received numerous awards for work in her field. She can be reached at g.steier@foodlawinternational.com.
