

STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

AJI P., a minor child, by and through his guardian HELAINA PIPER; ADONIS W., a minor child, by and through his guardian HELAINA PIPER; WREN W., a minor child, by and through her guardian MIKE WAGENBACH; LARA F. & ATHENA F., minor children, by and through their guardian MONIQUE DINH; GABRIEL M., a minor child, by and through his guardians VALERY and RANDY MANDELL; JAMIE M., a minor child, by and through her guardians MARK and JANETH MARGOLIN; INDIA B., a minor child, by and through her guardians, JIM BRIGGS and MELISSA BATES; JAMES CHARLES D., a minor child, by and through his guardian DAWNEEN DELACRUZ; KYLIE JOANN D., a minor child, by and through her guardian DAWNEEN DELACRUZ; KAILANI S., a minor child, by and through her guardian, JOHN SIROIS; DANIEL M., a minor child, by and through his guardian FAWN SHARP; and BODHI K., a minor child, by and through his guardian MARIS ABELSON,

Plaintiffs,

v.

STATE OF WASHINGTON; JAY INSLEE,  
in his official capacity as Governor of

No. 18-2-04448-1 SEA

*AMICUS CURIAE* BRIEF OF LEAGUE OF  
WOMEN VOTERS OF WASHINGTON

1 Washington; WASHINGTON  
2 DEPARTMENT OF ECOLOGY; MAIA  
3 BELLON, in her official capacity as Director  
4 of the WASHINGTON DEPARTMENT OF  
5 ECOLOGY; WASHINGTON  
6 DEPARTMENT OF COMMERCE; BRIAN  
7 BONLENDER, in his official capacity as  
8 Director of the WASHINGTON  
9 DEPARTMENT OF COMMERCE;  
10 WASHINGTON STATE  
11 TRANSPORTATION COMMISSION;  
12 WASHINGTON DEPARTMENT OF  
13 TRANSPORTATION; and ROGER  
14 MILLER, in his official capacity as Secretary  
15 of the WASHINGTON DEPARTMENT OF  
16 TRANSPORTATION,

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Defendants.

### STATEMENT OF INTEREST

This brief is filed on behalf of *amicus curiae* League of Women Voters of Washington (“the League”). The League is a grassroots, nonpartisan, nonprofit organization, whose primary mission and focus is ensuring effective representative government through voter registration, education, and mobilization. The League works to ensure that the voices and interests of all individuals, particularly those underrepresented in government, are spoken and accounted for in political decision-making.

The League files this brief in opposition to Defendants’ 12(c) Motion for Judgment on the Pleadings to emphasize the proper role of the courts, in keeping with the separation of powers, to serve as a check and balance to the legislative and executive branches, particularly when their actions, as here, have infringed upon the fundamental rights of individuals.

1 **SUMMARY OF ARGUMENT**

2 *Amicus Curiae* respectfully request that this Court deny Defendants’ Motion. The Youth  
3 Plaintiffs’ fundamental rights arising under the Washington State Constitution and Public Trust  
4 Doctrine have been and are being infringed by Defendants’ historical and continuing creation  
5 and exacerbation of a dangerous climate system. Given their age, Plaintiffs cannot rely on the  
6 representational political process to safeguard their fundamental rights. Their only redress is  
7 through the judiciary. “The very essence of civil liberty certainly consists in the right of every  
8 individual to claim the protection of the laws, whenever he receives an injury.” *Marbury v.*  
9 *Madison*, 5 U.S. (1 Cranch) 137, 163 (1803). As a check on the legislative and executive  
10 branches, “[i]t is emphatically the province and duty of the judicial department to say what the  
11 law is.” *Id.* at 177. Given the advancing nature of climate change, the risks these Youth  
12 Plaintiffs face from its impacts, and the fundamental rights at issue in this case, the matter falls  
13 squarely within the core of the judiciary’s role.

14 **ARGUMENT**

15 **1. Youth Plaintiffs and Others of Their Generation will Suffer**  
16 **Disproportionate Impacts of Climate Change.**

17 Climate change disproportionately threatens children for at least two reasons. First, the  
18 progressive nature of the impacts of climate change means that today’s youth and future  
19 generations will see greater warming and associated impacts, including more frequent and  
20 severe extreme weather events like drought and flooding. “Warming and associated climate  
21 effects from CO<sub>2</sub> emissions persist for decades to millennia.”<sup>1</sup>

22 <sup>1</sup> U.S. Global Change Research Program, *2017: Climate Science Special Report: Fourth National*  
23 *Climate Assessment, Volume I* 31 (D.J. Wuebbles et al. eds. 2017)  
[https://science2017.globalchange.gov/downloads/CSSR2017\\_FullReport.pdf](https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf) [hereinafter *Fourth*  
24 *National Climate Assessment*].

1           Second, the unique life phase of childhood leaves children especially vulnerable to the  
2 impacts of climate change. According to the U.S. Environmental Protection Agency (“EPA”),  
3 “[c]hildren are especially vulnerable to the impacts of climate change because of (1) their  
4 growing bodies; (2) their unique behaviors and interactions with the world around them; and (3)  
5 their dependency on caregivers.”<sup>2</sup> Children suffer directly from longer and more severe heat  
6 waves. Children are more vulnerable than adults to pollution from burning fossil fuels,  
7 exacerbated by climate change.<sup>3</sup> Childhood asthma and allergies result from changes in  
8 distribution and seasonality of plants and increased frequency of severe wildfires. Children will  
9 also suffer most from displacement due to rising sea levels and extreme weather events as  
10 access to education, health care, and nutrition are disrupted.<sup>4</sup>

11           Although the children of Washington, including the young Plaintiffs here, will  
12 experience disproportionate harm from climate change impacts, they have no direct  
13 representation in our government. The choices Defendants make today will determine the  
14 magnitude of climate change risks beyond the next few decades.<sup>5</sup> By continuing to utilize and  
15 enable technologies that they know are the primary drivers of climate change, Defendants are  
16 jeopardizing our children’s future existence. As Governor Inslee has stated, “If we don’t act, our  
17 children and grandchildren will inherit these problems on a scale that’s hard to imagine. Vibrant  
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19 <sup>2</sup> EPA, *Fact Sheet: Climate Change and the Health of Children 1* (May 2016),  
20 [https://19january2017snapshot.epa.gov/sites/production/files/2016-10/documents/children-health-climate-change-print-version\\_0.pdf](https://19january2017snapshot.epa.gov/sites/production/files/2016-10/documents/children-health-climate-change-print-version_0.pdf).

21 <sup>3</sup> See American Academy of Pediatrics Council on Environmental Health, *Policy Statement on Global Climate Change and Children’s Health*, 136 *Pediatrics*, no. 5, 994 (2015),  
22 <http://pediatrics.aappublications.org/content/pediatrics/early/2015/10/21/peds.2015-3233.full.pdf>.

23 <sup>4</sup> *Id.*; see also A.K. Snover et al., *Climate Change Impacts and Adaptation in Washington State*,  
24 University of Washington Climate Impacts Group, Ch. 12 (Dec. 2013),  
<https://www.doh.wa.gov/CommunityandEnvironment/ClimateandHealth/ClimateImpactsGroupInformation>.

1 forests, farms, salmon and shellfish are their birthright—part of what it is to be a  
2 Washingtonian.”<sup>6</sup> Yet children do not have rights of participation in our political process where  
3 the decisions are being made that will determine whether our State will continue to sustain  
4 them.

5 **2. It is the Duty of Courts to Protect Individual Rights.**

6 Youth Plaintiffs ask the Court to determine whether Defendants’ systemic actions  
7 violate Plaintiffs’ constitutional rights. That question lies squarely within the core role of the  
8 judiciary to decide. The Washington Supreme Court long ago explained the role of courts to  
9 protect individual rights:

10 “Of course, when it comes to considering individual rights such as are protected  
11 by the guaranties, . . . that no law shall grant to any citizen or class of citizens  
12 privileges or immunities upon which the same terms shall not equally belong to  
13 all citizens, and many other constitutional guaranties that look to protection of  
14 personal rights, the courts have ample power, and will go to any length, within the  
15 limits of judicial procedure, to protect such constitutional guaranties.”

16 *Gottstein v. Lister*, 88 Wash. 462, 493, 153 P. 595 (1915).

17 More than 60 years later, the Washington Supreme Court re-affirmed “the need to  
18 protect those constitutional guaranties of a personal nature.” *Seattle Sch. Dist. No. 1 v. State*, 90  
19 Wn.2d 476, 502, 585 P.2d 71 (1978); *see also McCleary v. State*, 173 Wn.2d 447, 269 P.3d 227  
20 (2012). The *Seattle School District* case declared that children have a constitutional right to an  
21 adequately funded education program pursuant to Const. art. IX, §§ 1, 2. *McCleary*, 173 Wn.2d  
22 at 482. The State defendants in that case argued that the challenge violated the separation of  
23 powers doctrine. The court disagreed, finding that the Washington judiciary has “the ultimate  
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22 <sup>5</sup> Fourth National Climate Assessment, *supra* note 1, at 31.

23 <sup>6</sup> *Climate Impacts in Washington State*, Governor Jay Inslee | Washington State,  
24 <https://www.governor.wa.gov/issues/issues/energy-environment/climate-impacts-washington-state> (last  
visited June 19, 2018).

1 power and the duty to interpret, construe and give meaning to words, sections and articles of the  
2 constitution.” *Id.* at 503; *see also Leonard v. Spokane*, 127 Wn.2d 194, 897 P.2d 358 (1995);  
3 *Plummer v. Gaines*, 70 Wn.2d 53, 422 P.2d 17 (1966).

4 Here the Washington legislative and executive branches have actively infringed upon the  
5 fundamental liberties of the Youth Plaintiffs, and so the judiciary must fulfill its role to serve as  
6 a check and balance to protect the rights of these individuals. *Bowsher v. Synar*, 478 U.S. 714,  
7 721 (1986) (“The declared purpose of separating and dividing the powers of government, of  
8 course, was to diffuse power the better to secure liberty.”). “[P]olicing the enduring structure of  
9 constitutional government when the political branches fail to do so is one of the most vital  
10 functions of this Court.” *Nat’l Labor Relations Board v. Canning*, 134 S. Ct. 2550, 2593 (2014)  
11 (Scalia, J., concurring) (internal quotations omitted).

12 Courts have historically exercised jurisdiction to determine the constitutional rights of  
13 children. “A child, merely on account of his minority, is not beyond the protection of the  
14 Constitution.” *Bellotti v. Baird*, 443 U.S. 622, 633 (1979) (plurality opinion). For example, the  
15 Supreme Court has found that children have the right to notice and counsel under the Equal  
16 Protection Clause of the Fourteenth Amendment. *See In re Gault*, 387 U.S. 1 (1967). Students,  
17 both in and out of school, have First Amendment rights. *Tinker v. Des Moines Indep. Cmty. Sch.*  
18 *Dist.*, 393 U.S. 503, 511 (1969). Children may not be deprived of certain property interests  
19 without due process. *See Goss v. Lopez*, 419 U.S. 565, 574 (1975) (finding right to a public  
20 education a property interest protected by the Due Process Clause). Children are entitled to  
21 protections under the Eighth Amendment, which “reaffirms the duty of the government to  
22 respect the dignity of all persons.” *Roper v. Simmons*, 543 U.S. 551, 560 (2005) (ruling that  
23 execution of persons under the age of eighteen would be cruel and unusual punishment). And,  
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1 as discussed above, Washington courts have determined the rights of children under the State  
2 Constitution. *See generally Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d at 476; *McCleary v.*  
3 *State*, 173 Wn.2d 447 (2012).

4 In recognizing the rights of children, courts have relied on both the autonomy rights of  
5 children and their special vulnerability to deprivations of liberty or property interests by the  
6 State. In *Bellotti*, the Court noted that the “Court’s concern for the vulnerability of children is  
7 demonstrated in its decisions dealing with minors’ claims to constitutional protection against  
8 deprivations of liberty or property interests by the State.” 443 U.S. at 634. These Youth  
9 Plaintiffs are vulnerable to deprivations of liberty by the government because they must rely on  
10 others to advocate for them, and at the same time are directly impacted by Defendants’  
11 decisions and actions in furthering and responding to climate change. “The nature of injustice is  
12 that we may not always see it in our own times.” *Obergefell v. Hodges*, 135 S. Ct. 2584, 2598  
13 (2015). Climate change presents one of those injustices, and the Youth Plaintiffs assert “a claim  
14 to liberty [that] must be addressed.” *Id.*

### 15 **3. Plaintiffs Lack Available Redress through the Political Process.**

16 These Youth Plaintiffs are minors who cannot vote and must depend on others to protect  
17 their political interests. In the 1962 case *Baker v. Carr*, 369 U.S. 186, 187-88 (1962), plaintiffs  
18 alleged that the Tennessee Secretary of State had violated their equal protection rights under the  
19 Fourteenth Amendment by failing to reapportion legislative districts in response to significant  
20 population migrations. The *Baker* plaintiffs alleged that the malapportionment scheme resulted  
21 in a “debasement of their votes” and accompanying diminishment of their voice in  
22 representational government. *Id.* The Court acknowledged that the claims had political aspects  
23 and ramifications, but nonetheless concluded that the case was justiciable. *Id.* at 209.

1 Plaintiffs in voting rights cases like *Baker* must rely on the courts for redress because, by  
2 the nature of their claims, they cannot effectively preserve their fundamental rights through the  
3 political process. Youth Plaintiffs share that characteristic. Youth Plaintiffs, whose fundamental  
4 rights arising under Article I, Sections 3, 12, and 30 of the Washington State Constitution and  
5 the Public Trust Doctrine have been and are being infringed by Defendants’ historical and  
6 continuing creation and exacerbation of a dangerous climate system, cannot rely on the normal  
7 representational political process to safeguard their fundamental rights; their only redress is  
8 through the judiciary. If this Court declines to exercise jurisdiction over Plaintiffs’ claims, they  
9 will have lost the constitutionally protected right to preserve their liberties.

10 By the time they are able to participate in the political process to preserve their rights,  
11 the stable climate system on which their rights depend will have already sustained irreparable  
12 damage. Those rights have already been violated by the dangerous climatic conditions created  
13 and exacerbated by Defendants. Youth Plaintiffs’ claims, like those of plaintiffs in voting rights  
14 cases, do not implicate the separation of powers nor any nonjusticiable political question.  
15 Rather, the separation of powers principle calls upon this Court to fulfill its duty to serve as a  
16 check and balance to the other branches and safeguard the Plaintiffs’ rights.

### 17 CONCLUSION

18 In *Seattle Sch. Dist. v. State*, the Washington Supreme Court noted “[w]e must *interpret*  
19 the constitution in accordance with the demands of modern society or it will be in constant  
20 danger of becoming atrophied and, in fact, may even lose its original meaning.” 90 Wn.2d at  
21 516 (emphasis in original). Just as Washington courts have found that the requirements of  
22 “ample” provision for education under Const. Art XI, § 1 are different today than in 1889, the  
23 challenges of climate change were unknown to the Constitutional Convention. Yet the



