The Honorable Michael Scott
Department 9

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

AJI P., a minor child by and through his guardian HELAINA PIPER, et al., Plaintiffs, v. STATE OF WASHINGTON, et al., Defendants.	No. 18-2-04448-1 SEA PLAINTIFFS' OPPOSITION TO DEFENDANTS' 12(C) MOTION FOR JUDGMENT ON THE PLEADINGS

Law Offices of Andrea K. Rodgers
3026 NW Esplanade
Seattle, WA 98117

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I. INTRODUCTION

In their 12(c) Motion for Judgment on the Pleadings ("Motion"), Defendants fundamentally mischaracterize Plaintiffs' claims and completely ignore the severe constitutional injuries of these thirteen young Plaintiffs. This case is not about whether Defendants have "done enough" to mitigate climate change. Mot. at 4. Instead, Plaintiffs challenge Defendants' *systemic, affirmative acts* that continue to *actively cause and contribute* to dangerous climate change in violation of Plaintiffs' fundamental constitutional rights. **None** of the claims presented in this case has been dismissed or rejected in prior suits. In fact, similar claims have been allowed to move forward in federal district court[1] and King County Judge Hollis R. Hill previously rejected many of the same arguments Defendants raise. As Judge Hill recognized, "[i]t is time for these youth to have the opportunity to address their concerns in a court of law . . . ." *Foster, et al. v. Ecology*, No. 14-2-25295-1 SEA, (Wash. Super. Ct. April 18, 2017)[2] (Appendix A).

II. STATEMENT OF FACTS

Defendants do not question the grave harms being inflicted upon these youth, *see* Compl. ¶¶ 12-24, but seek to avoid accountability for their role in causing and contributing to the climate crisis through their creation, assertion of control over, and operation of a fossil fuel-based energy and transportation system under which they have and continue to systemically authorize dangerous levels of greenhouse gas emissions. This system severely endangers the Plaintiffs and their ability to grow to adulthood safely and to enjoy the rights,

[1] *Juliana v. United States*, 217 F. Supp. 3d 1224 (D. Or. 2016).
[2] The Court of Appeals denied formal entry of this order pursuant to RAP 7.2(e) on other grounds. *Foster, et al. v. Ecology*, No. 75374-6-I, 2017 WL 3868481 (Wash. Ct. App. 2017) (unpublished opinion); GR 14.1 (nonbinding authority may be accorded persuasive value as the court deems appropriate).

benefits, and privileges of past generations of Washingtonians. Defendants falsely state, with no reference to any supporting documentation, that the state has "reduced its greenhouse gas emissions through numerous actions." Mot. at 3. In fact, the contrary is true. During Governor Inslee's tenure for which data is available (2011-2015), total CO_2 emissions in Washington from fossil fuel consumption have *increased* 7.7% from 70.3 MMT to 75.7 MMT.[3] This continues the upward trend in GHG emissions, which have *increased* 8.7% between 1990 and 2010. Compl. ¶ 145(a); *see also Foster v. Wash. Dep't of Ecology*, 2015 WL 7721362, at *2 (Wash. Super. 2015) (Appendix B) ("The scientific evidence is clear that the current rates of reduction mandated by Washington law cannot achieve the GHG reductions necessary to protect our environment and ensure the survival of an environment in which [youth] Petitioners can grow to adulthood safely."). Government documents confirm the state is not even on track to meet the emissions reduction requirements established in state law and policy, which legalize dangerous levels of climate change in violation of Plaintiffs' fundamental rights. Comp. ¶¶ 44, 132, 142.

Defendants have vast knowledge, since at least the late 1980s, regarding how climate change will impair Washington's natural resources and endanger youth. *Id.* ¶¶ 115-145, 121. Defendants are also aware of feasible alternatives to protect the Plaintiffs. *Id.* ¶¶ 41, 112, 114, 148. In spite of this knowledge, Defendants continue to develop and implement policies and practices that cause dangerous levels of greenhouse gas emissions. *See, e.g., id.* ¶ 145. Plaintiffs cannot vote and have no means of redress other than this Court for the constitutional

[3] U.S. Energy Info. Admin., State Energy-Related Carbon Dioxide Emissions by Year (2000-2015) (January 2018), https://www.eia.gov/environment/emissions/state/analysis/pdf/stateanalysis.pdf (last visited June 19, 2018). While not contained in the Complaint as the information was not available, this government data from a public document can be judicially noticed. ER 201(b); *Rodriguez v. Loudeye Corp.*, 144 Wn.App. 709, 725-26, 189 P.3d 168 (2008).

and public trust violations caused by Defendants' actions. Without judicial recourse, Plaintiffs' health and personal security are at grave risk.

This case raises questions akin to those that the judiciary has considered throughout history. "The identification and protection of fundamental rights is an enduring part of the judicial duty to interpret the Constitution." *Obergefell v. Hodges*, 135 S. Ct. 2584, 2598 (2015). The fundamental right to marry is not explicit in the Constitution, but our judiciary has declared it integral to our liberties and democracy. Similarly here, the Washington Legislature has expressly acknowledged the right to a healthful environment is "fundamental and inalienable" even though the right is not explicit in the Constitution. RCW 43.21C.020(3); *Foster*, 2015 WL 7721362, at *4. When fundamental rights "are violated, 'the Constitution requires redress by the courts,' notwithstanding the more general value of democratic decisionmaking." *Obergefell*, 576 U.S. at 2605 (citation omitted). Plaintiffs seek, and are entitled to, their day in court.

III. STANDARD OF REVIEW

Defendants accurately represent the standard of review governing a Rule 12(c) motion. The Court "must take the facts alleged in the complaint, as well as hypothetical facts, in the light most favorable to the nonmoving party." *M.H. v. Corp. of Catholic Archbishop of Seattle*, 162 Wn.App. 183, 189, 252 P.3d 914 (2011). A 12(c) motion should be granted "'sparingly and with care' and 'only in the unusual case in which plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief.'" *Id*. (internal citations omitted).

IV. ARGUMENT

A. Plaintiffs Have Not Failed to Join an Indispensable Party

Defendants argue that Plaintiffs failed to join "the Legislature" as an indispensable party. However, the first-named Defendant in this case is the "State of Washington," which necessarily includes the Legislature. *See, e.g.*, *Island County v. State of Washington, et al.*, 135 Wn.2d 141, 955 P.2d 377 (1998). Indeed, Washington's Supreme Court held the Legislature in contempt of court for constitutional violations in *McCleary v. State* without the "Legislature" as a named Defendant. No. 84362-7, 2014 Wash. LEXIS 898 (Sep. 11, 2014).[4] Because Defendants' erroneous arguments regarding the Uniform Declaratory Judgments Act (UDJA), the Constitution, and the Public Trust Doctrine are directed only to the "Governor and agency defendants," (Mot. at 7, 20) and because Plaintiffs' challenge to RCW 70.235.020 does not implicate separation of powers concerns (as explained in Section I), all claims against the State should proceed to trial.[5] *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (argument waived when not presented in opening brief).

B. Plaintiffs Have Properly Alleged A Substantive Due Process Claim

1. Plaintiffs Have a Fundamental Right to a Healthful and Pleasant Environment.[6]

As the Washington Legislature has *expressly* acknowledged, Plaintiffs have a fundamental, constitutional right to a healthful environment. RCW 43.21C.020(3) ("The

[4] As explained in Section I.1, even were the legislature not already a party to this case, Defendants' arguments are irrelevant as the Executive branch has adequate existing authority to implement a remedy and no new legislation is necessary for Defendants to cease and rectify their violations of Plaintiffs' constitutional rights.

[5] Defendants erroneously claim that Plaintiffs' "sole claim" against the legislature is the constitutional and public trust challenge to RCW 70.235. Mot. at 13 n.13. However, the legislature plays a key role in developing the fossil fuel-based energy and transportation systems that endanger Plaintiffs. Plaintiffs should be allowed to present evidence to prove how the state has violated their fundamental rights. *McCleary v. State*, 173 Wn.2d 477, 529–40, 269 P.3d 227 (2012). (describing the evidence the trial court considered in finding state breached its constitutional duty to amply fund education).

[6] Plaintiffs note that Defendant Governor Inslee did not dispute Plaintiffs' constitutional claims, and therefore this matter should also proceed against Defendant Inslee regardless of the Court's resolution as to the other Defendants. Mot. at 20 n.16.

legislature recognizes that each person has a fundamental and inalienable right to a healthful environment . . . ."); RCW 43.21A.010 ("[I]t is a fundamental and inalienable right of the people of the state of Washington to live in a healthful and pleasant environment. . . ."). This right was not statutorily created, but rather reflects an inherent aspect of Plaintiffs' substantive due process rights to be free from government actions that harm their life, liberty, and property.[7] Wash. Const. art. I, § 3; *Foster*, 2015 WL 7721362, at *4 (finding RCW 43.21A.010 "does evidence the legislature's view as to rights retained under Article I, Section 30.").

Regardless of the Legislature's express recognition of this fundamental right, "[i]f ever there were a time to recognize through action this right to preservation of a healthful and pleasant atmosphere, the time is now . . . ." *Foster*, 2015 WL 7721362 at *4. In evaluating a previously unrecognized fundamental right, courts must examine whether the asserted right is "'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Am. Legion Post #149 v. Washington State Dep't of Health*, 164 Wn.2d 570, 600, 192 P.3d 306 (2008) (citation omitted). The identification of fundamental rights "has not been reduced to any formula." *Obergefell*, 135 S.Ct. at 2598. The catalog of fundamental rights is intended to grow alongside our society: "When new insight reveals discord between the Constitution's central protections and a received legal stricture, a claim to liberty must be addressed." *Id.*

Important to the recognition of fundamental rights is whether a particular right is required "to enable the exercise of other rights, whether enumerated or unenumerated."

[7] The substantive due process rights set forth in Article I, Section 3 of the Washington Constitution are coextensive with the substantive due process rights of the Fifth and Fourteenth Amendments of the U.S. Constitution. *Nielsen v. Washington State Dep't of Licensing*, 177 Wn. App. 45, 53 n.5 (2013). Reliance on cases interpreting the U.S. Constitution's Due Process Clause is therefore appropriate.

Juliana, 217 F. Supp. 3d at 1249; *see also Obergefell*, 135 S. Ct. at 2599 (enumerated liberty right inherently encompasses the unenumerated right to marry). "[A] stable climate system is quite literally the foundation of society, without which there would be neither civilization nor progress." *Juliana*, 217 F. Supp. 3d at 1250. "[W]here a complaint alleges governmental action is affirmatively and substantially damaging the climate system in a way that will cause human deaths, shorten human lifespans, result in widespread damage to property, threaten human food sources, and dramatically alter the planet's ecosystem, it states a claim for a due process violation." *Id.* That is exactly what Plaintiffs allege in this case. Compl. ¶¶ 149–60. The right to a healthful environment, which includes the right to a stable climate system, has never been rejected as a fundamental right by a Washington court and warrants full consideration by this Court—particularly in light of the devastating current and future impacts of climate change on Plaintiffs' lives and the Legislature's express statement that such a right exists.

Defendants' causation of climate change, severely injuring Plaintiffs, is precisely the type of "new insight" that "reveals discord between the Constitution's central protections and a received legal stricture," mandating that "a claim to liberty must be addressed." *Obergefell*, 135 S.Ct. at 2598. Defendants' attempt to reframe Plaintiffs' asserted environmental right as one for mere "environmental protection" (Mot. at 22 n.17) was squarely rejected in *Juliana*:

> Plaintiffs do not object to the government's role in producing *any* pollution or in causing *any* climate change; rather, they assert the government has caused pollution and climate change on a catastrophic level, and that if the government's actions continue unchecked, they will permanently and irreversibly damage plaintiffs' property, their economic livelihood, their recreational opportunities, their health, and ultimately their (and their children's) ability to live long, healthy lives.

217 F. Supp. 3d at 1250. As such, Plaintiffs' claims should proceed to resolution on a fully developed factual record.

2. Plaintiffs Have Adequately Alleged Violations of Other Enumerated and Unenumerated Fundamental Rights.

Defendants ignore Plaintiffs' alleged violations of enumerated and unenumerated substantive due process rights beyond the right to a healthful environment. Specifically, Plaintiffs allege harm and endangerment of their rights to life, liberty and property, reasonable safety, personal security, the capacity to provide for their basic human needs, safely raise families, learn and practice their religious, spiritual, and cultural beliefs, and to maintain their bodily integrity. Compl. ¶¶ 154–55. For example, Plaintiffs James and Kylie risk losing their home, school and essential services because they live in a coastal village on the Quinault Indian Reservation that must be relocated due to climate change. *Id.* ¶¶ 1415, 97. Plaintiff India has been denied access to her school and regular activities because of the increased wildfires due to climate change, which along with climate-induced drought conditions also threaten India's personal security on her family farm in eastern Washington. *Id.* ¶ 13. The Anderson Glacier feeding the Quinault River on which Plaintiff Daniel depends to fish for King salmon and Blueback, an activity of great traditional cultural importance to him, has completely disappeared. *Id.* ¶ 23. The wildfires, drought and low river flows that have plagued the traditional lands of Plaintiff Kailani's Colville Indian Tribe are preventing her from exercising her traditional cultural and spiritual practices, such as fishing, digging for Camas and bitterroot, and berrypicking. *Id.* ¶ 16.

All of these rights are threatened by Defendants' conduct in causing and contributing to climate change. *Id.* ¶¶ 143–48. Therefore, even without recognition of a fundamental right to a healthful environment, Plaintiffs have sufficiently pled violations of their other substantive due process rights.

C. Plaintiffs Have Adequately Alleged A State-Created Danger Claim

After placing Plaintiffs in danger by knowingly causing and allowing dangerous levels of GHG emissions Defendants' continuing failure to reduce emissions constitutes a separate and additional basis for liability in addition to Plaintiffs other due process claims. Ordinarily, government actors do not have an affirmative obligation to protect citizens' due process rights. *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989).[8] However, the government has an affirmative obligation to protect individuals when its conduct places them "in peril with deliberate indifference to their safety." *Penilla v. City of Huntington Park*, 115 F.3d 707, 709 (9th Cir. 1997). Culpability for substantive due process violations is judged by whether they "shock the conscience." *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 847 (1998).

The government acts with deliberate indifference when it has "actual knowledge of, or willfully ignore[s], impending harm" such that it "knows that something *is* going to happen but ignores the risk and exposes someone to it." *L.W. v. Grubbs*, 92 F.3d 894, 900 (9th Cir. 1996). Defendants are to be held liable if they in fact "did 'play a part' in the creation of a danger." *Pauluk v. Savage*, 836 F.3d 1117, 1122 (9th Cir. 2016). Plaintiffs have alleged exactly that: Defendants have long known of the serious risk of burning fossil fuels and the dangers to which it exposes Plaintiffs, yet they continued to authorize and enable activities that increase that danger, threatening Plaintiffs' rights. Compl. ¶ 10; *Juliana*, 217 F. Supp. 3d at 1251–52 (plaintiffs adequately pled danger creation claim by alleging defendants' role in and knowledge of climate crisis). Further, Defendants have had ample opportunity to reverse course and

[8] Contrary to Defendants' argument that no substantive due process duty to protect arises except "out of certain special relationships assumed or established by the state," Mot. at 23, *DeShaney* established two *separate* bases for a duty to protect: the "special relationship" exception and the "state-created" danger exception, which Plaintiffs' allege here. *See Triplett v. Washington State Dept. of Social and Health Servs.*, 193 Wn.App.2d 497, 514, 373 P.3d 279 (Wash. App. 2016).

reduce Washington's emissions at rates necessary to protect Plaintiffs, yet have persisted in their systemic affirmative actions that endanger Plaintiffs. Compl. ¶¶ 112, 114, 145, 148. As the U.S. Supreme Court noted: "When such extended opportunities to do better are teamed with protracted failure even to care, indifference is truly shocking." *Lewis*, 523 U.S. at 850, 853.

Plaintiffs allege particularized harm to themselves, not harm to the general public. Compl. ¶¶ 12-24. None of the cases Defendants cite limits state-created danger claims to state actions directed at particular individuals and no court has so limited such claims. Defendants have been intimately aware of the particular ways the dangers of climate change manifest themselves for individuals depending on a person's particular location, interests, and age, Compl. ¶¶ 10, 57, 115–42, and Plaintiffs' injuries correspondingly vary according to the same criteria. *Id.* ¶¶ 12–24. Further, case law interpreting the state-created danger doctrine establishes its applicability to claims involving exposure to environmental harms like those befalling Plaintiffs, notwithstanding the danger such conditions may pose to the general public. *See, e.g. Pauluk*, 836 F.3d at 1125 (toxic mold); *Munger v. City of Glasgow*, 227 F.3d 1082 (9th Cir. 2000) (freezing weather).

Equally erroneous is Defendants' contention that Plaintiffs would be in a worse position had Defendants not, through regulation and permitting, assumed control of the state's energy and transportation systems. Mot. at 24. Irrespective of whether emissions would be greater in the absence of Defendants' control (a speculative question), Defendants have employed their control in a manner harmful to Plaintiffs by systemically authorizing dangerous levels of emissions. *See, e.g.*, RCW 70.235.020 (authorizing high levels of GHG emissions through 2050); WAC 173-442 (permitting large emitters with annual emissions over 70,000

MT CO_{2e} to discharge pollution unfettered through 2035); Compl. ¶ 145. The very essence and purpose of fundamental constitutional rights prevents the government, having assumed such control, from participating and affirmatively authorizing the destruction of the resources on which Plaintiffs' lives and liberties depend. Plaintiffs have properly pled a state-created danger claim.

D. Plaintiffs Have Adequately Alleged An Equal Protection Claim

Plaintiffs adequately alleged equal protection violations on several grounds. Defendants' systemic conduct: (1) discriminates against Plaintiffs as members of a protected or semi-protected class; (2) discriminates against Plaintiffs with respect to their fundamental, rights; (3) constitutes unlawful special interest favoritism;[9] and (4) otherwise fails rational basis review.

As young people without voting rights, Plaintiffs are a suspect or quasi-suspect class owed extraordinary protection. Although courts have previously declined to recognize minors as a quasi-suspect class under other scenarios, such decisions have been justified on bases not applicable here. In *Schroeder v. Weighall*, Washington's Supreme Court recognized that "a group of minors . . . may well constitute the type of discrete and insular minority whose interests are a central concern in our state equal protection cases," and noted that it had previously declined to recognize minors as a quasi-suspect class only "because [the Court then]

[9] Washington's Privileges and Immunities Clause, Wash. Const. art. I, s. 12, is "substantially similar" to but "more protective" than the federal equal protection clause. *Schroeder v. Weighall*, 179 Wn.2d 566, 571–72 (2014). In circumstances where, as here, government conduct evinces "special interest favoritism," Washington Courts first ask whether "a challenged law grants a 'privilege' or 'immunity'" that implicates a fundamental right of state citizenship and then "whether there is a 'reasonable ground' for granting" it. *Id.* at 572–73. The "reasonable ground test is more exacting than rational basis review." *Id.* The court is to "scrutinize" the government conduct to "determine whether it in fact serves the [government's] stated goal." *Id.* at 574. Defendants' systemic conduct, and RCW 70.235, constitutes an unlawful special privilege and immunity allowing the fossil fuel industry to treat the atmosphere as a dumping ground for dangerous levels of emissions to Plaintiffs' detriment.

concluded that children in general were more socially integrated—and thus better represented in the democratic process—than the discrete and insular minorities considered suspect classes for purposes of federal equal protection analysis." 179 Wn.2d 566, 578, 316 P.3d 482 (2014) (internal quotation marks omitted); *see also City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 472 (1985) (Minors "tend to be treated in legislative arenas with full concern and respect, despite their formal and complete exclusion from the electoral process.").

But that is not the case here where the legislative and executive branches are aware of the dangers of climate change, but continue to implement policies that exacerbate that danger. Compl. ¶ 134 (Ecology report acknowledging "[w]e are imposing risks on future generations (causing intergenerational inequities) and liability for the harm that will be caused by climate change that we are unable or unwilling to avoid."); *id.* ¶ 107 (Ecology statement in 2008 that "[f]ailure to act now will make future Washingtonians vulnerable to the fluctuations in energy prices, political instability, and the effects of climate change resulting from reliance on carbon-based fuels. We must challenge ourselves to find the political will to look ahead, work together and act on their behalf."). *Schroeder* left the door open for minors as a suspect or quasi-suspect class in circumstances where their exclusion from the political process and governmental discrimination against them is particularly harmful. 179 Wn.2d at 579. Climate change presents an unprecedented vulnerability for these minor citizens. Plaintiffs have little recourse in the political process due to their age, and by the time they can participate as voters it will be too late. Disparate treatment cannot be justified by any compelling state interest as any interest furthered in the short term is ultimately undermined by Defendants' commensurate furthering of climate change. Plaintiffs have set forth a sufficient claim as a suspect class whose rights have not been considered equally under the law.

E. Defendants' Actions Cannot Survive Any Level of Scrutiny

Outside of the grant of a special privilege or immunity, in analyzing governmental discriminatory conduct, Washington follows the federal approach of applying different levels of scrutiny depending on whether a fundamental right, an important right, or a protected or semi-protected class is affected. Governmental actions implicating fundamental rights or discriminating against a suspect class are subject to a strict scrutiny analysis, *City of Seattle v. Evans*, 184 Wn.2d 856, 888, 366 P.3d 906 (2015), under which the challenged government conduct must be "narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993); *Bernal v. Fainter*, 467 U.S. 216, 219 (1984). Government conduct that implicates an important right discriminates against a semi-suspect class is subject to intermediate scrutiny. *Schroeder*, 179 Wn.2d at 577–78. Courts apply rational basis review to rights that are not fundamental, requiring that challenged government conduct "must be rationally related to a legitimate state interest." *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 222, 143 P.3d 571 (2006). As Plaintiffs have alleged, Defendants cannot justify their actions under any level of scrutiny and they should be entitled to prove their case. Comp. ¶¶ 159, 173, 192, 202.

State actions have failed strict scrutiny where the state has attempted to excuse constitutional violations based on practicality, fiscal expediency, and minimal reforms. *See Trueblood v. Washington State Dep't of Soc. & Health Servs.*, 822 F.3d 1037, 1046 (9th Cir. 2016) ("Washington has thus far failed to comply with its own target goals, which is why a permanent injunction remains an appropriate vehicle for monitoring and ensuring that class members' constitutional rights are protected."); *McCleary*, 173 Wn.2d at 545 ("This court cannot idly stand by as the legislature makes unfulfilled promises for reform."). Here,

Defendants' unmet emissions reductions targets and policies themselves legalize dangerous and unconstitutional government-sanctioned climate change. Compl. ¶ 145. Furthermore, there are feasible alternatives available to Defendants that can be implemented without causing similar harm to the Plaintiffs. *Id.* ¶ 114 ("Experts have already concluded the feasibility of, and prepared a roadmap for, the transition of all of Washington's energy use (for electricity, transportation, heating/cooling, and industry) to a 100 percent renewable energy system by 2050. In addition to the direct benefits of avoiding a destabilized climate system, this transition will reduce air pollution and save lives and costs associated with air pollution."). Any interests Defendants seek to advance by promoting fossil fuels and causing dangerous amounts of GHG emissions are entirely undermined by the harmful impacts of burning fossil fuels, which Plaintiffs will prove on the merits.

F. Plaintiffs Properly Allege a Claim Under the UDJA[10]

Defendants admit that "[t]he UDJA can . . . be used to determine statutory and constitutional rights in an appropriate case." Mot. at 7. This is an appropriate case. The UDJA "is to be liberally construed and administered." RCW 7.24.120. Defendants' arguments that Plaintiffs cannot establish the second and fourth elements required for a justiciable controversy under the UDJA are unfounded and unsupported by legal authority.

1. Plaintiffs and Defendants Have Genuine and Opposing Interests

Plaintiffs seek to compel Defendants to cease and rectify their systemic affirmative actions that have caused and are causing dangerous levels of GHG emissions in violation of

[10] As Defendant State impliedly concedes, the UDJA clearly provides this Court with jurisdiction to hear Plaintiffs' sixth claim for relief, which challenges the constitutionality of RCW 70.235. *Acme Finance Co. v. Huse*, 192 Wn. 96, 107, 73 P.2d 341 (1937) (stating that the [UDJA] may be used to invoke the court's jurisdiction to declare "whether or not a statute is unconstitutional.").

Plaintiffs' fundamental constitutional rights. Not only do Defendants dispute that Plaintiffs possess such rights, Defendants dispute their creation, operation, and maintenance of a fossil fuel-based energy and transportation system and their knowledge that the system creates an unreasonable risk of present and future harm to Plaintiffs. Answer ¶¶ 2, 3, 145, 151, 154. In fact, Defendants deny all allegations contained in ¶¶ 55-114 of the Complaint. *Id.* ¶ 11. The parties have genuine and opposing interests. *Kitsap County v. Kitsap County Correctional Officers Guild, Inc.*, 179 Wn. App. 987, 994–95, 320 P.3d 70 (2014) (genuine and opposing interests exist when parties dispute existence of legal right or duty).[11]

Regardless of Defendants' purported "fundamental interest" in reducing Washington's greenhouse gas emissions (a promise made hollow by the documented GHG emissions being generated in this state), the facts alleged in the Complaint demonstrate Defendants' fidelity to a course of conduct that is causing dangerous climate change. Compl. ¶¶ 144–45. Defendants' unsupported and false claim that they are "ambitiously" using their authority to reduce GHG emissions is completely contradicted by their own documents, Washington's massive GHG emissions, and the devastating harms being inflicted upon Plaintiffs. *See, e.g.*, Compl. ¶ 145(a)-(h) (citing and explaining how Defendants' own data shows Washington's GHG emissions increasing). Plaintiffs seek the Court's protection from Defendants' ongoing conduct and thus have established genuinely opposing interests.[12]

[11] As discussed in Section I.1, Defendants already possess authority to implement the requested relief. Further, whether they possess such authority is irrelevant to whether the parties have opposing interests because Defendants are not even meeting their own emissions reduction requirements and Defendants' own data shows that Washington's emissions are increasing. Compl. ¶ 145(a)-(h). In any case, no new statutory authority is needed for Defendants to cease violating Plaintiffs' constitutional rights.

[12] The only case Defendants cite in support of their argument, *Fink v. Fruitland Irr. Dist.*, 196 Wn. 11, 81 P.2d 844 (1938), is completely irrelevant, merely states the test for justiciability and holds that the claim in the case was barred by the statute of limitations.

2. The Court Has Authority to Provide a Final and Conclusive Remedy

Defendants admit the UDJA allows a "declaration of rights" but ignore that Plaintiffs seek declaratory relief in this case. Compl. Request for Relief (A)-(E). Further, Defendants mischaracterize the injunctive relief Plaintiffs seek under RCW 7.24.080 and 7.40. *Id.* ¶¶ 52, 71–72(F)-(H). Plaintiffs ask this Court to determine whether Defendants' actions violate Plaintiffs' constitutional rights and to order Defendants to prepare and implement a plan of their own devising to reduce Washington's greenhouse gas emissions by rates necessary to safeguard Plaintiffs' rights and rectify Defendants' violations thereof.

Arguments about the appropriate relief to protect Plaintiffs' interests are entirely speculative prior to this Court's delineation of the scope of Defendants' liability. Plaintiffs' requested injunctive relief is consistent with the judiciary's broad authority to "fashion practical remedies when confronted with complex and intractable constitutional violations." *Brown v. Plata*, 563 U.S. 493, 526 (2011) (approving court order requiring California to reduce prison overcrowding and leaving it to State to formulate and implement policy to reach compliance). Washington's Supreme Court has issued similar injunctive relief to remedy unconstitutional government action. *See, e.g.*, *McCleary*, 173 Wn.2d at 541 ("What we have learned from experience is that this court cannot stand on the sidelines and hope the State meets its constitutional mandate to amply fund education.").[13] The Court can provide a remedy in this case.[14] *Nurse v. U.S.*, 226 F.3d 996, 1002 (9th Cir. 2000).

G. Dismissal of the Agency Defendants is Not Required by the APA

[13] Plaintiffs are not asking the Court "to force every Washingtonian to surrender their natural gas furnace and petroleum-fueled vehicle." Def. Mot. at 9. Nothing in Plaintiffs' Request for Relief requests such an order.

[14] Defendants' contention that they lack authority to implement Plaintiffs' requested relief is without merit for the reasons set forth in section (H)(1), below. Notably, Defendants have not challenged the Court's authority to issue Plaintiffs' other requested injunctive relief, specifically paragraphs (F) and (G) of Plaintiffs' Request for Relief.

As an initial matter, Defendants implicitly concede that their Administrative Procedure Act (APA) arguments do not apply to the State and Governor. Def. Mot. at 9. The State and Governor are explicitly excluded from the APA; constitutional claims against them can only proceed under the UDJA. RCW 34.05.010(2). Further, agency conduct that does not constitute "agency action" under RCW 34.05.010 does not fall within the APA's general statement that it provides the "exclusive means of judicial review of agency action." RCW 34.05.510.

Plaintiffs are not seeking review of individual agency actions under the APA. Plaintiffs challenge the fossil fuel-based energy and transportation system created and operated by the Defendants that does not, and with current systems and resources, cannot meet constitutional requirements. No case holds that such a challenge must be brought under the APA. To the contrary, constitutional challenges of this nature to systemic government conduct have rightfully proceeded outside of the APA in other contexts. *See, e.g.*, *Braam ex rel. v.* State, 150 Wn.2d 689, 81 P.3d 851 (2003) (broad-based, non-APA case against Washington agency by foster children to protect their constitutional rights); *Trueblood*, 2016 WL 4268933 (D. WA. August 15, 2016) (ordering injunctive relief in broad-based non-APA action and declaring that Washington agency was "violating the constitutional due process rights of class members"). In *Wash. State Coal. for the Homeless v. Wash. State Dep't of Social & Health Serv.*, the Washington Supreme Court ruled that "[w]here . . . the plaintiffs are a class of children who are or will be affected . . . the most efficient and consistent resolution on the question is

through a declaratory action, rather than a case-by-case, appeal-by-appeal, basis in individual . . . proceedings."[15] 133 Wn.2d 894, 916–17, 949 P.2d 1291 (1997).

Given the circumstances of this case, where Defendants' systemic actions continuing over several decades threaten the fundamental rights of these young children, limiting Plaintiffs' claims to the strictures of the APA would violate Plaintiffs' procedural due process right to meaningful review of their constitutional claims. *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479, 496 (1991) (limited judicial review procedures established by statute did not apply where they would foreclose "meaningful judicial review" of challenge to agency's pattern of unconstitutional conduct).

Determining whether procedural limitations, like those governing review of agency conduct in the APA, effectuate a violation of due process, requires consideration of three factors: "(1) the potentially affected interest; (2) the risk of erroneous deprivation of that interest through the challenged procedures, and probable value of additional safeguards; and (3) the government's interest, including the potential burden of additional procedures." *City of Redmond v. Moore*, 151 Wn.2d 664, 670, 91 P.3d 875 (2004). Each of these factors favors Plaintiffs.

First, the private interest at stake is unquestionably of the highest constitutional importance because Plaintiffs allege infringement of their fundamental constitutional rights. *Second*, there is an absolute risk of erroneous deprivation of Plaintiffs' fundamental rights if Plaintiffs must plead their claims under and subject to the strictures of the APA. It is the systemic nature of Defendants' conduct and affirmative aggregate actions that are causing the

[15] The majority rejected the dissenting opinion that "the APA provides the exclusive means of judicial review." *Id.* at 947 (Durham, C.J., dissenting).

profound harms and constitutional violations befalling Plaintiffs and some of Defendants' unconstitutional acts are not "agency actions" subject to the APA. To force Plaintiffs to individually challenge each of the myriad agency actions that have contributed to Plaintiffs' injuries, including those dating from before Plaintiffs were born, would be a herculean, if not impossible, task. Further, the limitation of review to the agency record in such challenges would foreclose consideration, review, and redress of the systemic nature of the constitutional violations at issue here as well as the severity of the harm. *See McNary*, 498 U.S. at 496 (limiting review of agency's pattern of unconstitutional violations to administrative records would preclude meaningful review). Moreover, many of the discriminatory agency actions comprising Defendants' systemic constitutional violations were committed decades ago, before these young Plaintiffs could even attempt to comply with the APA's 30-day appeal deadline referenced by Defendants. Motion at 11. *Amunrud*, 158 Wn.2d at 217 (procedural safeguards must be offered "at a meaningful time and in a meaningful manner."). To preclude review of Plaintiffs' constitutional claims under the UDJA would not only risk erroneous deprivation of Plaintiffs' rights; it would render such deprivation inevitable. *Downey v. Pierce County*, 165 Wn. App. 152, n.9, 267 P.3d 445 (2011) (case properly under UDJA because Plaintiff "does not appear to have any other adequate remedy available to her . . . ."). *Third*, the government's interest in administrative efficiency favors litigating Plaintiffs' claims as a single systemic challenge rather than a myriad of challenges to a multitude of individual agency actions, which would undoubtedly prove costly, inefficient, and unduly burdensome for all parties involved.

Every factor strongly favors proceeding with Plaintiffs' claims as pled. It is unimaginable in our divided structure of government that Defendants' systemic and catastrophic constitutional violations could be placed beyond the Court's basic power and duty

to safeguard fundamental rights. As Chief Justice Marshall famously stated, "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." *Marbury*, 5 (U.S. 1 Cranch) at 163.[16]

H. Plaintiffs' Claims Against the Governor Are Not an Improper Collateral Attack on Agency Action

Defendants take the unfounded position that the Governor should be dismissed as a Defendant because the claims against him are a collateral attack on agency action or inaction. Again this mischaracterizes the nature of Plaintiffs' claims and ignores the allegations in the Complaint regarding the Governor's unconstitutional conduct. Compl. ¶¶ 33–34, 121, 128, 131, 137, 138. Defendants are essentially arguing that the Governor is beyond all constitutional command; such a position is contrary to law. *Cf. Clinton v. Jones*, 520 U.S. 681, 683 (1997) ("when the President takes official action, the Court has the authority to determine whether he has acted within the law."). Above and beyond his authority as head of the executive branch, the Governor plays a key role in formulating the state's energy and transportation policy that is injuring Plaintiffs. *See, e.g.*, RCW 43.21F.045(d); Wash. Exec. Order No. 14-04; Wash. Exec. Order 13-04. Defendant Inslee's unconstitutional actions can and should be subject to judicial review.

I. Courts Have the Authority and Obligation to Review the Constitutionality of the Political Branches' Conduct.

Plaintiffs' claims do not implicate separation of powers concerns and should not be prematurely dismissed. Plaintiffs ask this Court to exercise its constitutional duty to give

[16] Defendants' arguments that the APA presents the exclusive means for challenging agency conduct is further undermined by their intervention in support of plaintiffs in *Karnoski v. Trump*, a non-APA challenge to the allegedly unconstitutional conduct of the U.S. Department of Defense, a federal agency. *See* State of Washington's Mot. to Intervene, *Karnoski v. Trump*, No. 2:17-cv-1297-MJP (W.D. Wash. Sept. 25, 2017).

meaning and legal effect to constitutional provisions. *See McCleary*, 173 Wn.2d at 515. Courts have the obligation to remedy other governmental branches' infringements of constitutional and public trust rights. *Id.* at 545. "[W]here the acts of public officers are arbitrary, tyrannical, or predicated upon a fundamentally wrong basis, then the courts may interfere to protect the rights of individuals." *Wash. State Coalition for the Homeless*, 133 Wn.2d at 914.

1. Given Defendants' Decades of Violations, This Court Can and Should Mandate and Oversee the Defendants' Path to Constitutional Compliance.

This Court's obligation to interpret the constitutional provisions underlying Plaintiffs' claims applies "even when that interpretation serves as a check on the activities of another branch or is contrary to the view of the constitution taken by another branch." *Matter of Salary of Juvenile Dir.*, 87 Wn.2d 232, 241, 552 P.2d 163 (1976); *Marbury*, 5 U.S. at 177. Contrary to Defendants' assertions, courts have repeatedly ordered state defendants, including the Legislature, to come into constitutional compliance. *See, e.g.*, *McCleary*, 173 Wn.2d 477 (ordering legislature into compliance for constitutional provision requiring "ample" education); *Trueblood*, 822 F.3d 1037 (affirming permanent injunction on Washington agency for failure to protect class members' substantive due process constitutional rights); *Braam ex rel. Braam*, 150 Wn.2d at 694 (leaving in place injunction governing State's entire foster care system in due process case). These cases demonstrate the judiciary's obligation to ensure governmental compliance with the constitution.

Defendants postulate that remedying Plaintiffs' legal claims would necessarily require the legislature to pass new laws. Mot. at 14. Defendants have ample power and discretion under existing constitutional and statutory authority to come into constitutional compliance. Even if new legislation were necessary, Washington's Supreme Court has ordered Legislative

constitutional compliance, provided it does not dictate "the precise means for discharging its" constitutional duty. *See, e.g., McCleary*, 173 Wn.2d at 546. Defendants can remedy their constitutional violations with the same statutory authorities they have discretionarily interpreted and employed to systemically infringe the rights of these young Plaintiffs. *See, e.g.*, RCW 70.94.331(2) (Ecology "shall [a]dopt rules establishing air quality objectives and air quality standards" and "emission standards which shall constitute minimum emission standards throughout the state."); Compl. ¶¶ 29–45. Defendants have discretion regarding *how* to achieve constitutional compliance, but *whether* they are infringing fundamental rights and whether they must come into compliance are issues that must be tried upon a fully developed factual record. *Nurse*, 226 F.3d at 1002. Plaintiffs request this Court to oversee the process towards constitutional compliance, a pathway firmly within the permissible bounds of separation of powers. *See McCleary*, 173 Wn.2d at 547; *Trueblood*, 822 F.3d at 1046.[17] No additional statutory authority is needed for Defendants to cease their unconstitutional conduct as necessary to preserve Plaintiffs' fundamental rights.

Similarly, with regards to Governor Inslee, Plaintiffs do not "want this Court to order the Governor to propose different laws to the Legislature or to issue different executive orders." Motion to Dismiss at 17. Plaintiffs simply ask this Court to examine Governor Inslee's actions in contributing to the climate crisis and oversee the executive's path to constitutional compliance. *See Walker v. Munro*, 124 Wn.2d 402, 412, 879 P.2d 920 (1994) (recognizing that declaratory relief against executive is possible). Contrary to Defendants' argument, the Governor's compliance with the constitution is not discretionary. *See Nurse*, 226 F.3d at 1002.

[17] "In any event, speculation about the difficulty of crafting a remedy could not support dismissal at this early stage." *Juliana*, 217 F. Supp. 3d at 1242 (D. Or. 2016).

2. Plaintiffs' Challenge to RCW 70.235.020 and .050 Does Not Raise Separation of Powers Concerns.

Defendants assert that RCW 70.235.050 "requires state agencies to meet those limits," but the State *is not* meeting the limits and there is no statutory mechanism to ensure compliance with the limits. Mot. at 16; Compl. ¶ 142; *see, e.g., Cascade Bicycle Club v. Puget Sound Regional Council*, 175 Wn.App. 494, 306 P.3d 1031 (2013) (declining to hold state's largest transportation planning agency accountable for complying with GHG emission reduction targets in RCW 70.235); Washington Attorney General Opinion (Sept. 1, 2015) (Appendix C) (finding RCW 70.235 "imposes no requirement on the legislature to create a [GHG reduction] program" and "does not create an express or implied cause of action for requiring the state to enforce the emission reductions."). Furthermore, the targets legalize dangerous levels of cumulative GHG emissions and lock in climate harms the Plaintiffs must suffer through 2050. Comp. ¶¶ 196–207.

In *Pasado's Safe Haven v. State*, the court refused to partially invalidate a statute because it would "effect a result that the legislature never contemplated nor intended to accomplish." 162 Wn. App. 746, 754, 259 P.3d 280 (2011). That is not what Plaintiffs seek to do here. The legislature's intent is to "(a) Limit and reduce emissions of greenhouse gas consistent with the emission reductions established in RCW 70.235.020; (b) minimize the potential to export pollution, jobs, and economic opportunities; and (c) reduce emissions at the lowest cost to Washington's economy, consumers, and businesses." RCW 70.235.005(3). But the targets do just the opposite, as is now clear ten years after the GHG emission targets were enacted into law and GHG emissions continue to grow. Compl. ¶¶ 196–207. If the court believes that the sections Plaintiffs seek to invalidate are not severable, then Plaintiffs seek full

invalidation of the statute as it legalizes dangerous levels of emissions and exacerbates the constitutional harms to the Plaintiffs.

3. Plaintiffs' Remaining Claims Do Not Implicate the Political Question Doctrine or Separation of Powers Concerns.

Our tripartite structure of government "allows each branch to exercise some control over the others in the form of checks and balances." *Brown v. Owen*, 165 Wn.2d 706, 720, 206 P.3d 310 (2009); *Matter of Salary of Juvenile Dir.*, 87 Wn.2d at 242 ("[C]omplete separation was never intended and overlapping functions were created deliberately."). The political question doctrine is a "narrow exception to the judiciary's responsibility to decide cases properly before it." *Ctr. for Biological Diversity v. Mattis*, 868 F.3d 803, 821 (9th Cir. 2017).

Defendants' reliance on inapposite cases is misplaced. In *Nw. Greyhound Kennel Ass'n v. State*, the court ruled that the legality of professional animal race gambling is "an area of almost complete legislative discretion and in an area vitally affecting public safety and morals" and therefore "does not raise a controversy involving the equal protection of the law, but instead raises a legislative policy question concerning how wide the door should be opened to professional gambling." 8 Wn. App. 314, 321, 506 P.2d 878 (1973). This holding followed from the court's conclusion that "appellant has no right or interest" warranting a judicial remedy. *Id.* at 318–19. Similarly, in *Nw. Animal Rights Network v. State*, the court declined to second guess the legislature's policy balancing as to which acts to criminalize as animal cruelty. 158 Wn. App. 237, 245, 242 P.3d 891 (2010).

In contrast, Plaintiffs claim that the state has affirmatively infringed their fundamental constitutional and public trust rights. As the District of Oregon found in a case raising identical claims:

> There is no need to step outside the core role of the judiciary to decide this case. At its heart, this lawsuit asks this Court to determine whether defendants have violated plaintiffs' constitutional rights. That question is squarely within the purview of the judiciary.

Juliana, 217 F. Supp. 3d at 1241. The preservation of these rights is not within the legislature's discretion; their protection is nonnegotiable. *See McCleary*, 173 Wn.2d at 518.

The *Svitak* case is an unpublished opinion and thus has no precedential value. *Svitak ex rel. Svitak v. State*, No. 69710-2-I, 2013 WL 6632124 (Wash. Ct. App. 2013); GR 14.1(a). Also, the *Svitak* court premised its ruling on the fact that plaintiffs did "not contend that the State violated a specific state law or constitutional provision . . . ."). *Id.* at *1. Following the direction of the *Svitak* court, Plaintiffs' here specifically identify the "constitutional provision[s] violated" and "challenge [a] state statute as unconstitutional . . . ." *Id.* at *2. Finally, as Judge Hill recognized in the *Foster* case, "[t]ime has marched on since March, 2013" and "considering the alleged emergent and accelerating need for science based response to climate change and the governmental actions and inactions since Division I decided the *Svitak* case, this Court does not find that case persuasive." Appendix A at 5.

J. Plaintiffs State Valid Claims Under the Public Trust Doctrine[18]

1. Plaintiffs Allege Impairment to Navigable Waters, Tidelands and Shorelands

Contrary to Defendants' erroneous statements, Plaintiffs clearly allege impairment to traditionally recognized public trust resources, Compl. *passim* (detailing acidification and warming of navigable waters, erosion of shorelands, rising seas and altered tidelands, storm-surge flooding of tidelands, declines of fisheries, and restrictions to access and use of the

[18] In the Complaint, Plaintiffs have one stand-alone public trust claim (4th Claim for Relief) and also allege that RCW 70.235 is unconstitutional as violative of the public trust doctrine (6th Claim for Relief). Defendants' argument does not distinguish between the two claims.

resources).[19] These allegations undoubtedly suffice to plead a public trust violation. *Chelan Basin Conservancy v. GBI Holdiing Co.*, 190 Wn.2d 249, 267, 413 P.3d 549 (2018) ("[W]e have always embraced our constitutional responsibility to review challenged legislation . . . to determine whether that legislation comports with the State's public trust obligations."); *Caminiti v. Boyle*, 107 Wn.2d 662, 669, 732 P.2d 989 (1987).

2. The PTD Applies to All Common Natural Resources, Including the Atmosphere.

Defendants' claim that the Public Trust Doctrine only applies to navigable waters, shorelands, and tidelands is incorrect. Although Washington courts have not yet applied the doctrine to natural resources other than water, shorelands, tidelands, and shellfish, the Supreme Court has not limited the doctrine to these resources. In *Rettkowski v. Dep't of Ecology*, the Supreme Court intentionally avoided delineating the scope of the Doctrine. 122 Wn. 2d 219, 232, n.5, 858 P.2d 232 (1993). The Court instead held that the doctrine was not "germane" to resolving the issue at hand. *Id*. at 239. Indeed, in his dissent, Justice Guy compellingly advocated that the "navigability requirement is not inherent in the doctrine and should be abandoned." *Id.* (Guy, J., dissenting). Similarly, in the other cases cited by Defendants, the Court expressly chose to not address the scope of the doctrine. *R.D. Merrill Co. v. State, Pollution Control Hearings Bd.*, 137 Wn. 2d 118, 134, 969 P.2d 458 (1999); *Citizens for Responsible Wildlife Mgmt. v. State*, 124 Wn. App. 566, 570, 103 P.3d 203 (2004). Again, in *Chelan Basin*, the Court found that a savings clause exempted the area in question from the protection of the doctrine and did not discuss its scope. 190 Wn.2d at 258–61. Further, as Judge Hill found in *Foster*:

[19] The Washington Supreme Court has interpreted Article XVII, Section 1, stating: "the sovereignty and dominion over this state's tidelands and shorelands, as distinguished from title, always remains in the state and the state holds such dominion in trust for the public. It is this principle which is referred to as the 'public trust doctrine.'" *Caminiti v. Boyle*, 107 Wn.2d 662, 669-70 (1987).

> Ecology argues that since the Public Trust Doctrine has not been expanded by the courts beyond protection of navigable waters it cannot be applied to protection of the 'atmosphere.' But this misses the point since current science makes clear that global warming is impacting the acidification of the oceans to alarming and dangerous levels, thus endangering the bounty of our navigable waters.
> ***
> The navigable waters and the atmosphere are intertwined and to argue a separation of the two, or to argue that GHG emissions do not affect navigable waters is nonsensical. Therefore, the Public Trust Doctrine mandates that the State act through its designated agency to protect what it holds in trust.

Foster, 2015 WL 7721362, at *4; *see also Juliana*, 217 F.Supp.3d at 1255 n.10.

3. Defendants Must Protect Public Trust Resources

As trustees, all government actors—including agencies to whom the Legislature delegates authority—have a legal obligation to manage and prevent substantial impairment to public trust resources under their regulatory jurisdiction pursuant to the Doctrine. Indeed, clear precedent establishes that agencies managing public trust resources, whether shellfish, water, or air, "ha[ve] a continuing obligation under the public trust doctrine to manage the use of the resources on the land for the public interest." *Wash. State Geoduck Harvest Ass'n v. Washington State Dep't of Nat. Res.*, 124 Wn. App. 441, 450, 101 P.3d 891 (2004). Judge Hill recognized that the doctrine imposes an affirmative duty on the state and its agencies, as managers of public trust resources, "to protect what it holds in trust." *Foster*, 2015 WL 7721362, at *4.

Defendants incorrectly rely on *Fischer-McReynolds* to assert that the Governor's powers do not include the authority to carry out the public trust responsibilities of the state. However, as the *Fischer-McReynolds* Court explained, the Governor can issue directives, "which serve to communicate to state agencies what the Governor would like them to accomplish [and] agency heads risk removal from office if they do not comply with the

order."[20] There is no question that the Governor must comply with the constitution and the doctrine (which Defendants admit is encapsulated in the constitution) when implementing his authority. Def. Mot. at 18.

Further, irrespective of whether the Public Trust Doctrine imposes *affirmative* obligations, Plaintiffs clearly allege that Defendants' historic and continuing affirmative actions have *alienated* and *substantially impaired* protected Public Trust resources in violation of their duties. Compl. ¶¶ 174–84. Plaintiffs' claims clearly allege valid causes of action under the Public Trust Doctrine.

V. CONCLUSION

Plaintiffs respectfully request that the Court deny Defendants' Motion for Judgment on the Pleadings.

I certify that this memorandum contains 8,385 words, in compliance with the local Civil Rules.

s/ Andrea K. Rodgers
Andrea K. Rodgers, WSBA #38683
Law Offices of Andrea K. Rodgers
3026 NW Esplanade
Seattle, WA 98117
T: (206) 696-2851
Email: andrearodgers42@gmail.com
Attorney for Plaintiffs

Andrew L. Welle
Andrew L. Welle (Admitted Pro Hac Vice)
Law Offices of Andrew L. Welle
1216 Lincoln Street
Eugene, OR 97401

[20] *Fischer-McReynolds v. Quasim*, 101 Wash. App. 801, 813, 6 P.3d 30, 37 (2000), *as amended* (Aug. 11, 2000). "Our state constitution provides that the governor may require information in writing from the officers of the state upon any subject relating to the duties of their respective offices, and shall see that the laws are faithfully executed. Const. art. 3, § 5; *see also Young v. State*, 19 Wash. 634, 637, 54 P. 36, 37 (1898).

T: (574)315-5565
Email: andrew.welle@gmail.com
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of June, 2018, I served one true and correct copy of the foregoing on the following individuals using electronic mail in accordance with the parties' electronic service agreement:

ECYOLYEF@ATG.WA.GOV
AHDOLYEF@ATG.WA.GOV
TPCEF@ATG.WA.GOV

Katherine G. Shirey
Christopher Reitz
Laura J. Watson
Assistant Attorneys General
Attorney for Defendant State of Washington, Department of Ecology
(360) 586-6769
chris.reitz@atg.wa.gov
laura.watson@atg.wa.gov
kay.shirey@atg.wa.gov
danielle.french@atg.wa.gov
meaghan.kohler@atg.wa.gov
leslieh2@atg.wa.gov

Matthew D. Huot
Assistant Attorney General
Attorney for Defendant Wash. State Dep't of Transportation, Wash. Transportation Comm'n, WSDOT Sec. Roger Millar
matth4@atg.wa.gov
roberth3@atg.wa.gov
sarahs7@atg.wa.gov

Sandra C. Adix
Assistant Attorney General
Attorney for the State of Washington Department of Commerce
(360) 664-4965
sandraa@atg.wa.gov
amyp4@atg.wa.gov
myrnap@atg.wa.gov
shirleyb1@atg.wa.gov

s/ Andrea K. Rodgers
Andrea K. Rodgers
Attorney for Plaintiffs