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**SUPREME COURT OF THE STATE OF WASHINGTON**

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**AJI P., *et al.*,**

Appellants,

v.

**STATE OF WASHINGTON, *et al.*,**

Respondents.

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**AMICUS BRIEF OF FAITH COMMUNITY IN SUPPORT OF  
APPELLANTS**

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## I. INTRODUCTION AND INTEREST OF *AMICI CURIAE*

*Amici curiae*, collectively referred to as the “Faith Community,” are Earth Ministry, Rev. Richard E. Jaech, the Rt. Rev’d Gretchen M. Rehberg, the Pacific Northwest Conference of the United Church of Christ, the University Temple United Methodist Church Council, the Faith Action Climate Team, Rabbi Olivier BenHaim, the Seattle Mennonite Church, JUJustice Washington, the Social and Environmental Justice Committee at BUF, Rev. Beth Chronister, and the Intercommunity Peace & Justice Center. The Faith Community have established sacred trusts based on deep covenants of obligation to environmental stewardship, justice for all generations, and to all Creation.

Specific interests of each of the Faith Community is set forth in its Motion to file *Amicus Curiae* filed concurrently with this *amicus curiae* brief.

Faith Community hereby submits the following *amicus curiae* brief in this matter. This *amicus* brief is designed to assist the Court in resolving the issues presented in this case. *Ochoa Ag. Unlimited, LLC v. Delanoy*, 128 Wn. App. 165, 172, 114 P.3d 692 (2005) (“The purpose of an amicus brief is to help the court with points of law.”). Specifically, this brief addresses the legal, moral, and religious elements of the Public Trust Doctrine.

The Faith Community believe the superior court should not have dismissed this case and that Appellants should have an opportunity to present evidence of the violation of their constitutional rights, including their rights under the Public Trust Doctrine. The foundational Public Trust Doctrine cases hold that government cannot substantially impair or alienate resources crucial to the public welfare. The

State's public trust over these resources is an attribute of sovereignty that Respondents (Defendants below) cannot shed. The Public Trust Doctrine prevents the government from depriving future legislatures and administrations of the natural resources necessary for the well-being and survival of its citizens. Not only is the Public Trust Doctrine firmly grounded in Washington legal precedent, it also reflects the shared reasoning underlying the moral values and religious teachings of many faiths.

The Public Trust Doctrine imposes sovereign duties on the State of Washington and its officials to protect, and at minimum refrain from affirmative actions which substantially impair, the climate system necessary for human survival. The State of Washington and its officials have taken affirmative actions, leading to excessive carbon dioxide emissions, jeopardizing the fundamental rights of the Youth Plaintiffs in this case and future generations. *See generally* Clerk's Papers ("CP") 50-56. If fossil fuel emissions are not rapidly abated, then Appellants and future generations will confront an inhospitable future.

Arguments contained in the Respondents' Motion for Judgment on the Pleadings should not outweigh the ability of the Appellants to have their day in court. Pope Francis, addressed a Vatican climate change conference, stating the importance of working together to combat climate change, "We will all have to make a radical change in our lifestyle: the use of energy, consumption, transport, industrial production, construction, agriculture, etc. Each of us is called to act. But,

we must also take action together, starting with governments and institutions, families, and people: we need all hands on deck.”<sup>1</sup>

## II. SUMMARY OF ARGUMENT

Appellants’ claims invoke the same moral imperative that motivates the Faith Community. The Public Trust Doctrine mirrors a *sacred trust* based on deep covenants of obligation to environmental stewardship, justice for all generations, and to all Creation. As the climate crisis threatens the future survival of civilization, the Public Trust Doctrine could hardly have a more compelling application.

## III. ARGUMENT

### A. THE PUBLIC TRUST DOCTRINE IMPOSES SOVEREIGN DUTIES ON THE STATE GOVERNMENT TO PROTECT THE CLIMATE NECESSARY FOR HUMAN SURVIVAL.

The term “public trust” broadly refers to a fundamental understanding that no government can legitimately abdicate its core sovereign powers, including its control over crucial natural resources.<sup>2</sup> In *Stone v. Mississippi*, the United States Supreme Court held:

No legislature can bargain away the public health or the public morals . . . . The supervision of both these subjects of governmental power is continuing in its nature . . . . [T]he power of governing is a trust committed by the people to the government, no part of which can be granted away.

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<sup>1</sup> Junno Arocho Esteves, ‘*Startling*’ inaction on climate change must end, pope says, National Catholic Reporter (May 28, 2019), Available at <https://www.ncronline.org/news/environment/startling-inaction-climate-change-must-end-pope-says>

<sup>2</sup> This broad trust principle is commonly referred to as the “reserved powers doctrine.” However, as used in this brief, the terms “public trust” and “public trust doctrine” refer to the application of the reserved powers doctrine to sovereign natural resources critical to the public welfare.

101 U.S. 814, 819-20 (1879); *see also Butchers' Union v. Crescent City*, 111 U.S. 746, 766 (1884) (Justice Field, concurring).

In addition, a government has a duty to manage its natural resources under the Public Trust Doctrine, and the beneficiaries of this duty include those who have not been born or cannot vote yet:

But the sovereign's duty to manage its natural resources recognized in the public trust doctrine is not limited, and the primary beneficiaries of the sovereign's exercise of its public trust are those who have not yet been born or are too young to vote. Thus, the sovereign authority to regulate natural resources is circumscribed by its duty to manage natural resources well for the benefit of future generations.

*Citizens for Responsible Wildlife Management v. State*, 124 Wn. App. 566, 577, 103 P.3d 203, 208 (2004) (C.J. Quinn-Brintall, concurring).

The Public Trust Doctrine prohibits the alienation of the public from crucial natural resources, which the State has the duty to control. *Caminiti v. Boyle*, 107 Wn.2d 662, 666, 732 P.2d 992 (1987). Also, the Public Trust Doctrine prohibits the State from substantially impairing the public's interest in crucial natural resources. *Id* at 670, 994 (quoting *Illinois Central R.R. Co v. Illinois*, 146 U.S. at 387, 453 (1892)).

The landmark public trust case is *Illinois Central R.R. Co.*, 146 U.S. at 453, where the Supreme Court applied the doctrine to crucial natural resources, holding such resources are held in trust and cannot be alienated. At issue was control of Chicago's Harbor, which the Illinois legislature had privatized. In an explanation

that extends beyond submerged lands, the Court explained the rationale of the Public Trust Doctrine:

The state can no more abdicate its trust over property in which the whole people are interested, *like* navigable waters and soils under them, so as to leave them entirely under the use and control of private parties . . . than it can abdicate its police powers in the administration of government and the preservation of the peace . . . . Any grant of the kind is necessarily revocable, and the exercise of the trust by which the property was held by the state can be resumed at any time . . . . The trust with which they are held, therefore, is *governmental*, and cannot be alienated . . . [.]

*Id.* at 453-55 (emphasis added).

*Illinois Central* made clear that alienating or substantially impairing essential resources would amount to relinquishing sovereign powers in violation of the Public Trust Doctrine. *Caminiti*, 107 Wn.2d at 666; *see also Chelan Basin Conservancy v. GBI Holding Co.*, 190 Wn.2d 249, 267, 413 P.3d 549, 558 (2018); *see also* Michael C. Blumm & Mary Christina Wood, *The Public Trust Doctrine in Environmental and Natural Resources Law* 72, 234 (2013); Mary Christina Wood, *Nature's Trust: Environmental Law for a New Ecological Age* at 131, Cambridge University Press (2013); *see also* Karl S. Coplan, *Public Trust Limits on Greenhouse Gas Trading Schemes: A Sustainable Middle Ground?*, 35 Colum. J. Envt'l L. 287, 311 (2010).

Subsequent decisions have applied the Public Trust Doctrine to other crucial resources. For instance, wild game is recognized as a trust resource in virtually all states. *Citizens for Responsible Wildlife Mgmt*, 124 Wn. App. at 569-700 (“Title to animals *ferae naturae* belongs to the state in its sovereign capacity and the state

holds this title in trust for the peoples' use and benefit," but declining to decide whether the Public Trust Doctrine applies to wildlife in Washington); Michael C. Blumm & Aurora Paulsen, *The Public Trust in Wildlife*, 2013 Utah L. Rev. 1437, 1439-40 (2013). The U.S. Supreme Court also recognized an interest associated with migratory birds in *Missouri v. Holland*, 252 U.S. 416, 435 (1920).

The application of the Public Trust Doctrine to the atmosphere and climate system is well supported. The Public Trust Doctrine can be traced to Roman and English law. *Caminiti*, 107 Wn.2d at 668-69; *Illinois Central*, 146 U.S. at 456 (citing *Arnold v. Mundy*, 6 N.J.L. 1, 78 (N.J. 1821)); *United States v. 1.58 Acres of Land*, 523 F. Supp. 120, 122-23 (D. Mass. 1981). English law stated that the title and dominion of land and waters within the jurisdiction of the crown of England, were ruled by the king, as the sovereign, and his duty was to allow these lands to be used for public benefit. *Shivley v. Bowlby*, 152 U.S. 1, 11 (1894). This basic idea of a sovereign's duty to allow the public to access lands and waters under its control was implemented in the United States. *Id.* Prior to the American Revolution, as subjects of the king, when land was discovered, possession was taken in the name of the king who held the land in trust for the nation. *Id.* Once the American Revolution concluded, rights of the king were surrendered to the United States government, through charters, constitutions, or laws, where the government was entrusted with allowing lands and waters, along with other natural resources for the public. *Id.*

This historical premise of the Public Trust Doctrine is present in the United States, and has been expanded to include other resources, in addition to land and

water. *Foster v. Washington Department of Ecology* and *Juliana v. United States*, both recognize that the atmosphere and other Public Trust Doctrine resources are intertwined, and that the atmosphere can be recognized as a Public Trust Doctrine asset. 2015 WL 13729180 (2015); *Juliana v. United States*, 217 F.Supp.3d 1224 (D. Or. 2016). In *Foster v. Washington Department of Ecology*, King County Superior Court ruled that the Public Trust Doctrine requires protection of the atmosphere in the context of climate change. 2015 WL 13729180 (2015). Further, *Robinson Township v. Commonwealth*, also supports the recognition of the atmosphere as a Public Trust Doctrine, by stating that the right to an environment of quality, specifically clean air, is an obligation on the government's behalf to refrain from alienating or substantially interfering with the right. 623 Pa. 564, 647, 83 A.3d 901, 952 (2013). Also, *Bosner-Lain v. Texas Commission on Environmental Quality*, recognizes that the atmosphere is a trust asset protected by the Public Trust Doctrine. 2012 WL 3164561 (2012), *vacated on other grounds*, 438 S.W. 3d 887 (TX Ct. App 2014). Like the trust arising as to navigable waters and migratory wildlife, climate protection is a trust that is inherently governmental.

**B. DEFENDANTS HAVE A DUTY TO PRESERVE THE PUBLIC TRUST.**

The Public Trust Doctrine imposes not only a State duty to refrain from actively causing substantial impairment to public trust resources, but also a sovereign fiduciary duty to protect the public's crucial assets from irrevocable damage. *City of Milwaukee v. State*, 214 N.W. 820, 830 (Wis. 1927); *see also* George G. Bogert, et al., *Bogert Trusts and Trustees*, § 582 (2011). Under well-established core principles of trust law, trustees have a basic duty not to sit idle and

allow damage to the trust property. Appellants are calling on this Court to ensure that the State of Washington and its officials refrain from further destruction and exacerbation of irreparable harm to an asset that must be sustained for generations of citizens to come.

**C. THE MORAL FOUNDATIONS OF THE PUBLIC TRUST DOCTRINE AKIN TO THE FOUNDATIONS OF RELIGIOUS TRADITIONS.**

Courts in the United States have traced the origins of the Public Trust Doctrine back through the English legal system to Roman law and natural law, identifying it as one of the pillars of ordered civilization. *Caminiti*, 107 Wn.2d at 668-69; *see also Illinois Central*, 146 U.S. at 456 (*citing Arnold v. Mundy*, 6 N.J.L. at 78 (N.J. 1821)); *see also U.S. v. 1.58 Acres of Land*, 523 F. Supp. at 122-23. Not surprisingly, the public trust is also a central principle in legal systems of many other countries throughout the world. Law professor and public trust scholar Michael Blumm concludes that the doctrine is “close to becoming considered customary law” of an international scale. Michael C. Blumm & Rachel D. Guthrie, *Internationalization of the Public Trust Doctrine: Natural Law and Constitutional and Statutory Approaches to Fulfilling the Saxion Vision*, 45 U.C. Davis L. Rev. 741 (2012); *see also* Mary Turnipseed, et al., *Reinvigorating the Public Trust Doctrine: Expert Opinion on the Potential of a Public Trust Mandate in U.S. and International Environmental Law*, *Environment Magazine*, Vol. 52, No. 5 at 12 (2010); David Takacs, *The Public Trust Doctrine, Environmental Human Rights and the Future of Private Property*, 16 N.Y.U. Env'tl. L. J. 711, 746 (2008).

This enduring nature and universality of the Public Trust Doctrine is based on multiple moral understandings including: (1) an ethic toward future generations;

(2) an affirmation of public rights to natural assets; and (3) a condemnation of waste. These values are deeply reflected in and rooted in this nation and state's history and tradition<sup>3</sup> and are mirrored in the religious teachings of many faiths, including Christian, Jewish, Islamic, Hindu, and Buddhist.<sup>4</sup>

**1. Principle of Creation.**

The Faith Community believe that this earth and its natural resources were a gift created by God:

But ask the animals, and they will teach you, or the birds in the sky, and they will tell you; or speak to the earth, and it will teach you, or let the fish in the sea inform you. Which of these does not know that the hand of the LORD has done this? In his hand is the life of every creature and the breath of all mankind.

Job 12:7-10<sup>5</sup>.

Therefore, as we treat the gift, so we treat the giver. The Public Trust Doctrine reflects the religious teachings of many faiths which view the earth as a sacred endowment created for the benefit of all humanity. The public trust protects property rights, held in common by present citizens, to these crucial natural resources which are “a subject of concern to the whole people” clothed with sovereign trust interests compelling protection. *Illinois Central R.R. Co*, 146 U.S. at 455. Even if not all religious traditions adhere to the theory of creation by God,

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<sup>3</sup> See, e.g., RCW 43.21A.010.

<sup>4</sup> See, e.g., *Islamic Declaration on Global Climate Change*, International Islamic Climate Change Symposium, August 2015, available at <http://islamicclimatedeclaration.org/islamic-declaration-on-global-climate-change>; *Hindu Declaration on Climate Change*, November 23, 2015, available at <http://www.hinduclimatedeclaration2015.org>; see also, Mary Christina Wood, *Nature's Trust: Environmental Law for a New Ecological Age* (2013) at 279-280 (citing multiple faiths as recognizing public trust obligations to present and future generations).

<sup>5</sup> *New International Version- Job 12*, Biblica: The International Bible Society (June 20, 2018), available at <https://www.biblica.com/bible/niv/job/12/>

there is undeniably a sense of connection to the Earth and a recognition of the earth's importance to the religious traditions and deeply rooted wisdoms. As Clark Strand, an ex-Rinzai Zen Buddhist Monk and author puts it, "Nature is the great teacher. Shakyamuni went to the jungle to find its teachings, Moses up the mountain, Jesus to the desert, and Bodhidharma and Muhammad to their caves."<sup>6</sup>

## **2. Principle of Stewardship.**

Scores of public trust cases declare that future generations are legal beneficiaries with entitlement to the *res* of the public trust. See, e.g., *Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities Siting Board*, 457 Mass. 663, 702 (Mass. 2010) (Marshall C.J., concurring in part and dissenting in part); *Citizens for Responsible Wildlife Management*, 124 Wn.App. at 577; *State v. Rome*, 47 Wn.App. 666, 669, 736 P.2d 709 (1987) (recognizing the state's compelling need "to insure that this precious natural resource [fish] will be available for use by future generations and to accommodate the interests of commercial fishermen, sport fishermen and the Indian Tribes, as well as complying with federal laws and regulations and international treaties."); *State v. Dexter*, 32 Wn.2d 551, 556-57, 202 P.2d 906, 908 *aff'd*, 338 U.S. 863, 70 S. Ct. 147, 94 L. Ed. 529 (1949) ("Edmund Burke once said that a great unwritten compact exists between the dead, the living, and the unborn. We leave to the unborn a colossal financial debt, perhaps inescapable, but incurred, none the less, in our time and for our immediate benefit. Such an unwritten compact requires that we leave to the unborn something more

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<sup>6</sup> Clark Strand, *Turn Out the Lights*, Tricycle Magazine (Spring 2010), available at [https://tricycle.org/magazine/turn-out-lights/?utm\\_source=Tricycle&utm\\_campaign=828a32671a-Daily\\_Dharma\\_12\\_27\\_2017&utm\\_medium=email&utm\\_term=0\\_1641abe55e-828a32671a-307279917](https://tricycle.org/magazine/turn-out-lights/?utm_source=Tricycle&utm_campaign=828a32671a-Daily_Dharma_12_27_2017&utm_medium=email&utm_term=0_1641abe55e-828a32671a-307279917).

than debts and depleted natural resources. Surely, where natural resources can be utilized and at the same time perpetuated for future generations, what has been called ‘constitutional morality’ requires that we do so.”); *see also Laudato Si’*, ¶ 159.

Preservation of land for future generations is a duty recognized in the historical underpinnings of intergenerational principles and faith-based ideologies. Stewardship in the Public Trust Doctrine highlights that man has a covenant to future generations to a fair share of what the earth has to offer. Mary Christina Wood, *Nature’s Trust: Environmental Law for a New Ecological Age*, 264 (2013). This duty to future generations is also found among multiple faiths with their appeal to save the earth. *Id.*

The Framers recognized each generation’s fundamental obligation to *preserve* the value and integrity of natural resources for later generations. The most succinct, systematic treatment of intergenerational principles is provided by Thomas Jefferson to James Madison:

The question [w]hether one generation of men has a right to bind another . . . is a question of such consequence as not only to merit decision, but place among the fundamental principles of every government . . . . I set out on this ground, which I suppose to be self-evident, ‘that the earth belongs in usufruct to the living’ . . . [.]

Jefferson to James Madison, September 6, 1789, *Papers of Thomas Jefferson*, Julian Boyd ed., XV at 392-98 (1950).

Strikingly, Jefferson based his theory of intergenerational political sovereignty on a prior “self-evident” concept of intergenerational rights and

obligations to the earth. In Jefferson’s time as now, “usufruct” referenced the rights and responsibilities of tenants, trustees, or other parties temporarily entrusted with an asset—usually land. Usufructuary rights-holders were prohibited from committing waste (lasting damage) to the property. *See* William Blackstone, II, *Commentaries on the Laws of England* (1769) at 281.

These dual concepts of usufruct and waste, applied to entailed estates over the course of centuries, reflected a bedrock ethical principle of intergenerational stewardship clearly evident in the political philosophy of the late 1700s. This sense of intergenerational responsibility was widely shared, shaping the early “traditions and conscience of our people.” *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934); *see also* Herbert Sloan, *Principles and Interest: Thomas Jefferson on the Problem of Public Debt* 5 (1995).

The Founding Fathers provide additional support for the deep roots of the Public Trust Doctrine in our nation’s history and traditions. As James Madison succinctly detailed in the *Federalist Papers*, “the federal and State governments are in fact but different agents and trustees of the people.”<sup>7</sup>

The writings of Theodore Roosevelt also furnish powerful expressions of the sovereign obligations of intergeneration equity to future generations, the youth, as the foundation of the American conservation ethic:

The “greatest good of the greatest number” applies to the number within the womb of time, compared to which those now alive form but an insignificant fraction. Our duty to the whole including the unborn generations, bids us restrain an unprincipled present-day minority from wasting the heritage of these unborn generations. The movement for the

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<sup>7</sup> *The Federalist No. 46* (James Madison).

conservation of . . . all our natural resources [is]  
essentially democratic in spirit, purpose, and method.

Theodore Roosevelt, *A Book-lover's Holidays in the Open*, 299-300 (1916).

The trust approach provides tangible legal backing to the concept of intergenerational equity, and the same public trust principles continue to find expression in numerous state constitutions, including the Washington Constitution, and federal statutes today. *See, e.g.*, Pa. Const. art. I, § 27; Mont. Const. art. IX, § 1; Haw. Const. art. IX, §1; Ill. Const. art. XI, §1; Wash. Const. art. XVII, §1; Ak. Const. art. VIII; National Environmental Policy Act, 42 U.S.C. § 4331(b)(1).

Faith-based ideologies of stewardship echo this intergenerational covenant to preserve the Earth from ecological crisis. Pope Francis repeatedly refers to this sacred trust in *Laudato Si'*, describing the natural environment as “a collective good, the patrimony of all humanity and the responsibility of everyone.” *Laudato Si'*, ¶ 95; *see also* ¶ 93 (“Whether believers or not, we are agreed today that the earth is essentially a shared inheritance, whose fruits are meant to benefit everyone.”). Perhaps the oldest extant affirmation of the importance of taking to heart the young and future generations in protecting the Earth and preventing its destruction is the very last passage of the last of the ancient Hebrew Prophets:

See, I will send the prophet Elijah to you before that great and dreadful day of the LORD comes. He will turn the hearts of the parents to their children and the hearts of the children to their parents; or else I will come and strike the land with utter destruction.

Malachi 4:5-6.<sup>8</sup>

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<sup>8</sup> *New International Version- Malachi 4*, Biblica: The International Bible Society (June 20, 2018), available at <https://www.biblica.com/bible/niv/malachi/4/>

In our own generation, Jewish wisdom has underscored this truth:

In Leviticus 26, the Torah warns us that if we refuse to let the Earth rest, it will “rest” anyway, despite us and upon us – through drought and famine and exile that turn an entire people into refugees. Human behavior that overworks the Earth – especially the over-burning of fossil fuels – crests in a systemic planetary response that endangers human communities and many other life-forms as well.<sup>9</sup>

In 2017, the Catholic Pontifical Academy of Sciences released a declaration on the dangers of climate change and the responsibilities of Catholics to participate in the actions to mitigate the impending and ongoing damages caused by climate change.<sup>10</sup> The solutions proposed, among others, included education of the young to become sustainability leaders, to undertake actions to protect public health, and to restore degraded lands to protect biodiversity. *Id.*

In 2007, in an interfaith gathering held in Greenland, with a coalition of Muslim, Buddhist, Hindu, Jewish, Christian, and Shinto leaders, urged citizens to leave the planet, “in all its wisdom and beauty to the generations to come.” Mary Christina Wood, *Nature’s Trust: Environmental Law for a New Ecological Age* (2013) at 265. Buddhist environmentalism also displays principles of trusteeship in the protection of land for future generations. His Holiness the Dalai Lama also presents religious instruction infused with obligations to future generations, the

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<sup>9</sup> Rabbi Arthur Waskow, *Rabbinic Letter on Climate- Torah, Pope, & Crisis Inspire 425+ Rabbis to Call for Vigorous Climate Action*, published May 2015, available at <https://theshalomcenter.org/RabbinicLetterClimate>

<sup>10</sup> The Pontifical Academy of Sciences, *Declaration of the Health of People, Health of Planet and Our Responsibility Climate Change, Air Pollution and Health Workshop*, (last visited on February 24, 2019), available at <http://www.casinapioiv.va/content/accademia/en/events/2017/health/declaration.html>

hallmark of a trust.<sup>11</sup> Also, his Holiness the Dalai Lama made a plea to current and future generations that many of the problems the current generation faces are of their own creation, and to solve these problems, the current generation must make an effort to help not only themselves, but future generations. *Id.* Additionally, Justice Weeramantry recounts a story of a monk's sermon to a king: although the king was King of the country, he was not the owner but the trustee of the land on which he was hunting. *See*, Mary Christina Wood, *Nature's Trust: Environmental Law for a New Ecological Age* (2013) at 23 (citing C.G. Weeramantry, *Buddhist Contribution to Environmental Protection*, Asian Tribune (June 20, 2007)). This sermon reiterates the basic principle of the Public Trust Doctrine that the government is a trustee of the land and has a duty to protect the land from either being alienated or substantially impaired for the public's use and future generations.

In short, stewardship through compassion and resistance to degradation of the environment and its natural resources runs deep in the guiding moral principles upon which humanity has gleaned the ideal of righteous governance for centuries.

### **3. Principle of Justice.**

Justice is in the interest of every religion. It is geared towards equality and fairness for future generations yet has roots in the present. Our rapidly heating climate, along with the Defendants action in causing high levels of carbon dioxide emissions, implicates public trust principles to a far greater degree than the submerged lakebed of *Illinois Central*. Climate degradation poses a threat to human society of a magnitude unimaginable in the day when Justice Field invoked the

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<sup>11</sup> Dalai Lama, *An Ethical Approach to Environmental Protection* (June 5, 1986), available at <http://www.dalailama.com/messages/environment/an-ethical-approach>.

doctrine to protect Chicago Harbor. As the preeminent climatologist, Dr. James Hansen, has warned, “[f]ailure to act with all deliberate speed in the face of the clear scientific evidence of the long-term dangers posed, is the functional equivalent of a decision to eliminate the option of later generations and their legislatures to preserve a habitable climate system.”<sup>12</sup>

Speaking at the White House in 2015, Pope Francis urged action: “[C]limate change is a problem which can no longer be left to a future generation. When it comes to the care of our ‘common home,’ we are living at a critical moment in history”.<sup>13</sup> Justice for all individuals transcends the needs of the minority. If diverse faith-based communities can agree on equity principles with regard to the climate, then the State of Washington as trustee should have no problems dutifully fulfilling their obligations with public trusts affecting all citizens.

These children will be most affected by the impending disaster of climate change. Throughout the United States and the world, the next generation of youth are fighting for their right to a liveable future.<sup>14</sup> *See, e.g., Juliana*, 217 F.Supp.3d 1224; Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala de Casación Civil, abril 5, 2018, M.P.: Luis Armando Tolosa Villabona, STC4360-2018 (Colom.); *Minors Oposa v. Sec'y of the Dep't of Env'tl. & Nat. Res.*, G.R. No. 101083, 33 I.L.M. 173, 187 (S.C., Jul. 30, 1993). In *Schroeder v. Weighall*, the Washington

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<sup>12</sup> James E. Hansen et al., *Scientific Case for Avoiding Dangerous Climate Change to Protect Young People and Nature*, NASA (Jul. 9, 2012), available at <http://pubs.giss.nasa.gov/abs/ha08510t.html>.

<sup>13</sup> Ryan Teague Beckwith, *Read the Speech Pope Francis Gave at the White House*, TIME Magazine, (June 6, 2019), available at <http://time.com/4045956/pope-francis-us-visit-white-house-transcript/>

<sup>14</sup> *Students worldwide skip school to demand tough action on climate change*, CBS News (March 15, 2019), available at <https://www.cbsnews.com/news/youth-climate-strike-students-skip-class-demand-tough-action-on-climate-change/>

Supreme Court stated that the “group of minors most likely to be adversely affected [government action] may well constitute the type of discrete and insular minority whose interests are a central concern in our state equal protection cases.” 179 Wn. 2d 566, 579, 316 P.3d 482, 489 (2014). This argument should logically be extended to the Appellants at hand – the State of Washington must act to protect this generation of children who will have to deal with the effects of climate change for the longest period of time may very well constitute a “discrete and insular minority” who may be successful in a state equal protection case.

Additionally, Appellants in their original complaint discussed the urgency of the climate change crisis in the State of Washington. The atmospheric carbon dioxide (“CO<sub>2</sub>”) concentrations, in the State of Washington, now exceed 415 parts per million (“ppm”), compared to pre-industrial levels of 280 ppm. CP 3. This excessive increase in atmospheric carbon dioxide has substantially impacted the Appellants, as CO<sub>2</sub> and other greenhouse gases have caused, dangerously increasing temperatures, changing precipitation patterns, heatwaves, rising storm-surge, ocean acidification, and other adverse health and environmental risks. CP 3-4. The Complaint explains that an increase in atmospheric carbon dioxide levels, has led to rising sea levels, which will force some of the Appellants and their families to relocate from historical areas of Washington where these families have lived since time immemorial. CP 7-8. Other Appellants allege that the increasing temperatures combined with heatwaves, have led to disastrous wildfires throughout the State of Washington, burning large tracts of wildlife and subsistence habitat, and have affected the health of those in Washington with high levels of unhealthy

air for all groups. CP 7, 9, 12. Climate change is a problem affecting not only the current generation, but also future generations.

With so little time remaining to curb carbon dioxide emissions before our nation crosses irrevocable climate thresholds, it is urgent that Washington's courts exercise jurisdiction to assess the constitutionality of Respondents' affirmative actions in contributing to the climate crisis.

#### IV. CONCLUSION

In the papal encyclical, *Laudato Si'*, Pope Francis issued a clarion call for "the establishment of a legal framework which can set clear boundaries and ensure the protection of ecosystems." *Laudato Si'*, ¶ 53. Under the Public Trust Doctrine, citizens stand as beneficiaries holding clear public property interests in these essential natural resources. The public trust demarcates a society of "citizens rather than serfs." Joseph L. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 Mich. L. Rev. 471, 484 (1970). All faiths represented in this brief, and many others, recognize and support governments' public trust obligations.

The Public Trust Doctrine plainly applies to the prevention of climate change impacts, necessary for the welfare of present and future generations. The signatories to this brief, represent a broad cross-section of faiths united on the principles of creation; stewardship; and justice, respectfully request this Court to reverse the Superior Court's incorrect dismissal of the Appellants' complaint, and let the Appellants have their day in court.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of June 2019.

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## CERTIFICATE OF SERVICE

I hereby certify that on June 6<sup>th</sup>, 2019, I electronically filed the foregoing with the Clerk of the Court by using the Court's electronic filing portal.

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*s/Vicki L Yount* \_\_\_\_\_  
Vicki L Yount  
Paralegal, SCBA 136

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