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No. 96316-9

SUPREME COURT OF THE STATE OF WASHINGTON

AJI P., et al.,

Appellants,

v.

STATE OF WASHINGTON, et al.,

Respondents.

AMICUS CURIAE BRIEF OF LEAGUE OF WOMEN VOTERS OF WASHINGTON

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I. STATEMENT OF INTEREST

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

The League files this brief in support of the thirteen Washington Youth Appellants (the "Youth"), to emphasize the proper role of the courts, in keeping with the separation of powers, to serve as a check and balance on the legislative and executive branches, particularly when their actions, as here, have infringed upon the fundamental rights of individuals, especially those who cannot yet vote.

II. STATEMENT OF THE CASE

The League concurs with and incorporates by reference the statement of the case set forth in the brief of Appellants, pages 3–11.

III. SUMMARY OF ARGUMENT

The League joins the Youth's request that this Court reverse the superior court's decision and allow the Youth to present evidence of the infringement of their rights under the Washington State Constitution and

Public Trust Doctrine. The Youth's fundamental rights have been and are being infringed by Respondents' historical and continuing creation and exacerbation of a dangerous climate system. Given their age, most of the Youth cannot rely on the representational political process to safeguard their fundamental rights. In addition to the lack of direct representation in democracy, the Youth also lack economic power. The lack of economic power, combined with the increasing costs of climate change mitigation, disproportionately burdens the Youth and the children of Washington.

"The 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 v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803). As a check on the legislative and executive branches, "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Id.* at 177. Given the advancing nature of climate change, the risks the Youth face from its impacts, and the fundamental rights at issue in this case, the matter falls squarely within the judiciary's role.

IV. ARGUMENT

A. The Youth Will Suffer Disproportionate Climate Change Impacts, Yet Lack Political and Economic Remedies.

Climate change disproportionately threatens children for at least two reasons. First, the progressive nature of climate change's impacts means

that today's children and future generations will see greater warming and associated impacts, including more frequent and severe extreme weather. "Warming and associated climate effects from CO_2 emissions persist for decades to millennia."[1] In Washington, wildfires are predicted to occur more frequently and more severely, due to drier summers.[2] Higher temperatures in the spring are predicted to result in the earlier melting of snowpack, which could cause more flooding in the spring, and affect water availability in the summer.[3] Sea levels are also expected to rise and coupled extreme weather events, will result in displacement and disruption of access to education, health care, and nutrition.[4]

Second, the unique life phase of childhood leaves children especially vulnerable to the impacts of climate change.[5] "Children are especially vulnerable because of (1) their growing bodies; (2) their unique

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[1] D.J. WUEBBLES ET AL., CLIMATE SCIENCE SPECIAL REPORT: FOURTH NATIONAL CLIMATE ASSESSMENT, 1 USGCRP 1, 1–31 (2017), https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf.

[2] REBEKAH FRANKSON ET. AL., WASHINGTON STATE CLIMATE SUMMARY, 149 WA NOAA Tech. Report NESDIS 1, 4 (2017), https://statesummaries.ncics.org/chapter/wa/.

[3] *Id.*

[4] EPA, *Fact Sheet: Climate Change and the Health of Children* 1 (May 2016), https://19january2017snapshot.epa.gov/sites/production/files/2016-10/documents/children-health-climate-change-print-version_0.pdf.
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[5] REIDMILLER, D.R., ET AL., IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES: FOURTH NATIONAL CLIMATE ASSESSMENT, 2 USGCRP 1, 28 (2018), https://nca2018.globalchange.gov/.

behaviors and interactions with the world around them; and (3) their dependency on caregivers."[6] Children likely will experience cumulative mental and physical health effects from climate change due to increased toxic exposures (such as increased ground-level ozone pollution in urban areas or increased risk of drinking water contamination in rural areas),[7] and increased exposure to extreme weather events (such as heat stress, trauma from injury, or displacement).[8] Children are more vulnerable than adults to pollution from burning fossil fuels,[9] and climate change is expected to lead to longer and more severe pollen seasons, which will trigger asthma in children.[10]

Although the children of Washington, including the Youth here, will experience disproportionate harm from climate change impacts, they have no direct representation in our government. The choices Respondents make today will determine the magnitude of climate change risks during the coming decades and beyond.[11] By continuing to utilize, authorize, and

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[6] EPA, *supra* note 4, at 1.

[7] REIDMILLER, *supra* note 5, at Chapter 24. Infants and children are more vulnerable to toxic exposures because they eat, drink, and breathe more in proportion to their body size. EPA, *supra* note 4, at 3.

[8] REIDMILLER, *supra* note 5, at Chapter 24; *see also* EPA, *supra* note 4, at 3 (explaining that children have a higher risk of becoming ill or dying due to extreme heat).

[9] *See* Samantha Ahdoot et. al., *Am. Academy of Pediatrics Council on Envtl. Health*: *Policy Statement on Global Climate Change and Children's Health*, 136 Pediatrics, no.5, 994 (2015), https://pediatrics.aappublications.org/content/pediatrics/136/5/992.full.pdf.

[10] EPA, *supra* note 4, at 1.

[11] *See* Fourth National Climate Assessment, *supra* note 1, at 31.

promote Washington's fossil fuel energy system, Respondents are jeopardizing our children's future existence. As Governor Inslee has stated, "If we don't act, our children and grandchildren will inherit these problems on a scale that's hard to imagine. Vibrant forests, farms, salmon and shellfish are their birthright—part of what it is to be a Washingtonian."[12] However, children do not have rights of participation in our political process, where the decisions being made today will determine whether the State will continue to sustain the climate system they depend on for their lives, liberties, and futures.

In addition to the lack of direct representation, children also lack economic power in our society. The lack of economic power, combined with the increasing costs of climate change mitigation, will disproportionately burden the Youth and all other affected children. As time progresses, children will be saddled with the financial burdens of the changing climate. "Children cannot wait for adaption to climate change; they are and will continue to be the biggest losers if climate finance and adaptation continue to fall so far short of what is needed."[13]

Children and future generations will be forced to deal with the loss

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[12] Governor Jay Inslee, *Climate Impacts in Washington State*, https://www.governor.wa.gov/issues/issues/energy-environment/climate-impacts-washington-state (last visited June 19, 2018).

[13] Elizabeth Gibbons, *Climate Change, Children's Rights, and the Pursuit of Intergenerational Climate Justice*, 16 HHR. 1, 3–10 (2014).

of land and property due to rising waters along the coasts, especially in places like Washington. It will also be incredibly expensive to rebuild and relocate after natural disasters influenced by changing climate. "Continued high fossil fuel emissions unarguably sentences young people to either a massive, implausible cleanup or growing deleterious climate impacts or both."[14] The financial burdens faced by the next generation due to the current decisions of State officials could be substantially reduced if science-based action to reduce greenhouse gas emissions is taken today.

B. It is the Duty of the Courts to Protect Individual Rights.

The Youth ask Washington's judiciary to determine whether Respondents' systemic actions violate the Youth's constitutional rights, a question that implicates the judiciary's core role. As explained by the Washington Supreme Court long ago:

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

Gottstein v. Lister, 88 Wn. 462, 493, 153 P. 595 (1915).

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[14] James Hansen, *Young People's Burden: Requirement of Negative CO2 Emissions*, 8 ESD. 578, 577–95 (2017).

More than 60 years after *Gottstein*, the Washington Supreme Court re-affirmed "the need to protect those constitutional guaranties of a personal nature." *Seattle Sch. Dist. No. 1 of King Cnty. v. State*, 90 Wn.2d 476, 503, 585 P.2d 71 (1978); *see also McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012). The Court in *Seattle School District* declared that children have a constitutional right to an adequately funded education program pursuant to the Washington State Constitution Article IX, Sections 1 & 2. The State defendants in that case argued that the challenge violated the separation of powers doctrine. The Court disagreed, finding that "the ultimate power to interpret, construe and enforce the constitution of this State belongs to the judiciary. 90 Wn.2d at 496; *see also Leonard v. City of Spokane*, 127 Wn.2d 194, 897 P.2d 358 (1995); *Plummer v. Gaines*, 70 Wn.2d 53, 422 P.2d 17 (1966).

Indeed, the courts historically have exercised jurisdiction to determine the constitutional rights of children. In recognizing the rights of children, courts have relied on both the autonomy rights of children and their special vulnerability to deprivations of liberty or property interests by the State. "A child, merely on account of his minority, is not beyond the protection of the Constitution." *Bellotti v. Baird*, 443 U.S. 622, 633 (1979) (plurality opinion). In *Bellotti*, the United States Supreme Court noted that its "concern for the vulnerability of children is demonstrated in its decisions

dealing with minors' claims to constitutional protection against deprivations of liberty or property interests by the State." *Id.* at 634.

For example, the United States Supreme Court has found that children have the right to notice and counsel under the Equal Protection Clause of the Fourteenth Amendment. *See In re Gault*, 387 U.S. 1, 13 (1967). Students, both in and out of school, have First Amendment rights. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969). Children may not be deprived of certain property interests without due process. *See Goss v. Lopez*, 419 U.S. 565, 574 (1975). Children are entitled to protections under the Eighth Amendment, which "reaffirms the duty of the government to respect the dignity of all persons." *Roper v. Simmons*, 543 U.S. 551, 560 (2005). And, as discussed above, Washington courts have determined the rights of children under the Washington State Constitution. *See generally Seattle Sch. Dist.*, 90 Wn.2d 476; *McCleary*, 173 Wn.2d 447; *see also Schroeder v. Weighall*, 179 Wn.2d 566, 578–79, 316 P.3d 482 (2014) (en banc).

Here the Washington Legislative and Executive branches have actively infringed upon the fundamental rights of the Youth, and so the judiciary must fulfill its role to serve as a check and balance. *See Bowsher v. Synar*, 478 U.S. 714, 721 (1986) ("The declared purpose of separating and dividing the powers of government, of course, was to diffuse power the

better to secure liberty.”). “[P]olicing the enduring structure of constitutional government when the political branches fail to do so is one of the most vital functions of this Court.” *N.L.R.B. v. Canning*, 134 S. Ct. 2550, 2593 (2014) (Scalia, J., concurring) (internal quotations omitted).

The Youth are vulnerable to deprivations of liberty by the government because they must rely on others to advocate for them, and at the same time, are directly impacted by Respondents’ decisions and actions in furthering and responding to climate change. “The nature of injustice is that we may not always see it in our own times.” *Obergefell v. Hodges*, 135 S. Ct. 2584, 2598 (2015). Respondents’ knowing causation of and contribution to climate change presents one of those injustices, and the Youth assert “a claim to liberty [that] must be addressed.” *Id.*

C. The Youth Lack Available Redress through the Political Process.

The majority of these Youth are minors who cannot vote and must depend on others to protect their political interests. In the 1962 case *Baker v. Carr*, plaintiffs alleged that the Tennessee Secretary of State had violated their equal protection rights under the Fourteenth Amendment by failing to reapportion legislative districts in response to significant population migrations. 369 U.S. 186, 187–88 (1962). The *Baker* plaintiffs alleged that the malapportionment scheme resulted in a “debasement of their votes” and

accompanying diminishment of their voice in representational government. *Id.* Plaintiffs like those in *Baker* must rely on the courts for redress because, by the nature of their claims, cannot effectively preserve their fundamental rights through the political process.

The Youth here share that characteristic. The Youth's fundamental rights, arising under Article I, Sections 3, 12, and 30 of the Washington State Constitution and the Public Trust Doctrine, have been and are being infringed upon by Respondents' historical and continuing creation and exacerbation of a dangerous climate system. The Youth cannot rely on the representational political process to safeguard their fundamental rights; by the time many of the Youth are able to participate in the political process to preserve their rights, the stable climate system on which their rights depend will have already sustained irreparable damage. Accordingly, their only redress is through the judiciary.

D. This Case Does Not Implicate Nonjusticiable Political Questions.

The superior court determined that "Plaintiffs' claims are nonjusticiable—they present political questions that must be resolved by the political branches of government. If the court addressed the issue posed by the Plaintiffs and ordered the relief they seek, it would violate the separation of powers." Order at 7. However, the United States Supreme Court in *Baker*

explained that simply because a case implicates significant and entrenched political issues does not make it a case involving a "political question." 369 U.S. at 217. The "courts cannot reject as 'no law suit' a bona fide controversy as to whether some action denominated 'political' exceeds constitutional authority." *Id.* Respondents, in their briefing on appeal, urge this Court to adopt a new, unworkable standard for the political question doctrine—one that would preclude almost any case against the government. This Court should reject Respondents' approach.

1. Respondents propose a dangerous standard that is contrary to the established law of the political question doctrine and separation of powers.

The political question doctrine was first discussed by the Supreme Court of the United States in *Marbury.* There, the Court explained, "[q]uestions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.'" 5 U.S. (1 Cranch) at 170. Here, however, the Youth seek protection of their individual rights, which the State has no discretion to violate.

Respondents argue that "when an issue involves matters of political and governmental concern, courts consider such questions to be nonjusticiable 'political questions.'" Response Brief at 10 (quoting *Brown v. Owen*, 165 Wn.2d 706, 712, 206 P.3d 310 (2009)). Respondents' proposed framework would preclude almost all cases against the

government, which would directly contradict the system of checks and balances underlying the separation of powers. Respondents misapprehend the law. Indeed, the *Brown* case on which they rely contradicts their simplified approach. 165 Wn.2d at 718 ("To determine whether a particular action violates separation of powers, we look not to whether two branches of government engage in coinciding activities, but rather whether the activity of one branch threatens the independence or integrity or invades the prerogatives of another.").

Many of our nation's and state's most celebrated cases have involved matters of profound governmental concern. For example, in *Baker*, the United States Supreme Court decided that an apportionment challenge was justiciable. The Court acknowledged that the claims had political aspects and ramifications, but nonetheless concluded that the case did not involve nonjusticiable political questions. 369 U.S. at 209; *see also Brown v. Plata*, 563 U.S. 493 (2011); *Brown v. Bd. of Educ.*, 349 U.S. 294 (1955).

Washington cases are consistent. In *Seattle School District*, the use of special excess tax levies to fund basic education was deemed unconstitutional. 90 Wn.2d at 526. The mechanisms by which public education is funded surely is a "matter of governmental concern," and one that involves "policy considerations." *Contra* Response Brief at 10 (citing *Duke v. Boyd*, 133 Wn.2d 80, 88, 942 P.2d 351 (1997)). The Washington

Supreme Court, however, determined that the issue did not involve a nonjusticiable political question. 90 Wn.2d at 490; *see also Wash. State Coal. for the Homeless v. Dep't of Social & Health Servs.*, 133 Wn.2d 894, 918, 949 P.2d 1291 (1997) ("[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.").

In *Marbury*, the United States Supreme Court clarified the distinction: "[t]he province of the Court is, solely, to decide on the rights of individuals, not to inquire how the executive, or executive officers, perform duties in which they have a discretion." 5 U.S. (1 Cranch) at 170. It is axiomatic that government conduct "cannot be discretionary if it violates a legal mandate," especially a constitutional protection of individual liberties. *Nurse v. U.S.*, 226 F.3d 996, 1002 (9th Cir. 2000).

In this case, the Youth challenge the State's systemic conduct as infringing upon their rights, and therefore, resort to the judiciary. The quest for the protection of individual rights is not a nonjusticiable political question and, therefore is ripe for resolution by the judiciary. *See I.N.S. v. Chadha*, 462 U.S. 919, 942–43 (1983) ("Resolution of litigation challenging the constitutional authority of one of the three branches cannot be evaded by courts because the issues have political implications[.]").

2. Application of the *Baker* factors shows that there is no separation of powers issue.

Courts have a test for identifying political questions to determine whether a case must be resolved by political means, as required by the doctrine of separation of powers. This test is definitively stated in the United States Supreme Court case, *Baker v. Carr*. Respondents do not mention the *Baker* factors, which provide the proper and well-established formula for identifying political questions. *See Seattle Sch. Dist.,* 90 Wn.2d at 504; *Davis v. Passman*, 442 U.S. 228, 242 (1979); *Nixon v. United States*, 506 U.S. 224, 226 (1993); *Vieth v. Jubelirer*, 541 U.S. 267, 278 (2004); *Corrie v. Caterpillar*, 503 F.3d 974, 980 (9th Cir. 2007). Application of the *Baker* factors to the present case demonstrates that this case is not one that can be resolved by the political branches, but rather one that requires resolution by the judiciary.

The Court in *Baker* set forth six formulations under which a political question may arise:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning

> adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

369 U.S. at 217. The Court continued: "Unless one of these formulations is inextricable from the case at bar, there should be no dismissal for nonjusticiability on the ground of a political question's presence. The doctrine of which we treat is one of 'political questions,' not one of 'political cases.'" *Id.*

Neither the superior court nor Respondents mentioned any of the *Baker* factors, nor did they perform any *Baker* analysis. Since the factors are listed in decreasing order of importance and certainty, *see Vieth*, 541 U.S. at 278, the League briefly addresses only the first three in order to demonstrate the political question doctrine's inapplicability to this case.

First, there is no "textually demonstrable constitutional commitment" to the legislative or executive branches of government of the right to a stable climate system. In fact, the interpretation of the scope and extent of constitutional rights, as are implicated by this case, squarely rests within the domain of the judiciary. *See Marbury*, 5 U.S. (1 Cranch) at 170. Nothing in the Youth's prayer asks the court to issue a ruling requiring that Respondents pass legislation or specific regulations. Rather, it asks the court to declare that Respondents' systemic actions have infringed upon the Youth's fundamental rights.

Second, case law interpreting equal protection, due process, and the Public Trust Doctrine provide clearly judicially discoverable and manageable standards. *See, e.g., Schroeder*, 179 Wn.2d at 578 (recounting levels of scrutiny in equal protection challenges). As there are standards available for interpreting equal protection challenges, there also are standards for due process and the Public Trust doctrine. *See, e.g.*, *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 219, 143 P.3d 571 (2006) (articulating test for level of review to be applied in a due process challenge).[15]

Third, adjudicating the Youth's claims would not require a policy determination, but rather, a determination of whether the State's already existing policies and actions comport with the constitution. The Youth do not request that the court substitute its judgment for that of the legislative and executive branches. Rather, they request that the court declare that Respondents have violated the Youth's rights and direct Respondents to prepare a plan—of their own devising—adequate to protect the Youth from further injury. *Cf. McCleary*, 173 Wn.2d at 51 (declaring that the State

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[15] The Public Trust doctrine protects, at minimum, "public ownership interests in certain uses of navigable waters and underlying lands, including navigation, commerce, fisheries, recreation, and environmental quality." *Weden v. San Juan County*, 135 Wn.2d 678, 698 (1998). "The state can no more convey or give away this jus publicum interest than it can abdicate its police powers in the administration of government and the preservation of the peace." *Caminiti v. Boyle*, 107 Wn.2d 662, 669, 732 P.2d 989 (1987) (citation omitted).

failed to comply with its constitutional duties and directing the Legislature to develop a basic education program).

The Youth are asserting their individual constitutional rights—including the right to a stable climate system, which is encompassed by the right to a healthful environment recognized by the Legislature as inalienable. Because the Youth's claims implicate none of the *Baker* factors, the case does not involve nonjusticiable political questions. In fact, the very basis of the political question doctrine—separation of powers—calls upon the courts to exercise their constitutional duty to serve as a check and balance on the other branches where they have violated individual rights. *See Bowsher*, 478 U.S. at 721. This Court should reverse the superior court's declination of its constitutional duty to hear this case.

3. Respondents attempt to stretch *Northwest Greyhound* and *Northwest Animal Rights* beyond their breaking point.

Respondents point to two cases to argue that the Youth's statutory challenges are nonjusticiable. Both cases are easily distinguishable because the issue in each was the Legislature's prerogative to define criminal conduct, based on a balancing of public policy and morals. In contrast, the Youth's concern is one of individual rights. *See Juliana v. United States*, 217 F. Supp. 3d 1224, 1270 (D. Or. 2016) ("If a litigant claims that an individual right has been invaded, the lawsuit by definition does not involve

a political question.”) (citing Howard Fink & Mark Tushnet, *Federal Jurisdiction: Policy and Practice* 231 (2d ed. 1987)).

In *Northwest Greyhound Kennel Association v. State*, “the thrust of [the] action [was] to involve the courts in the question of the degree to which professional gambling activities will be permitted in this state.” 8 Wn. App. 314, 319, 506 P.2d 878 (1973). The court characterized this as “primarily a political question * * * of almost complete legislative discretion and in an area vitally affecting public safety and morals.” *Id.* at 321. The court concluded that “appellant’s complaint 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.” *Id.*; *see also State v. Gedarro*, 19 Wn. App. 826, 579 P.2d 949 (1978) (“[A]ny approved gambling activity is a legislative privilege and not an inherent right.”).

The underlying issue in *Northwest Animal Rights Network v. State* likewise implicated the “function and responsibility of the legislature to define crimes.” 158 Wn. App. 237, 245, 242 P.3d 891 (2010). The court decided that the issue of what conduct should be criminalized was not for the courts to decide. *Id*. “Our legislature has determined that certain common and customary activities involving animals are not abhorrent to our society * * * It is not the role of the judiciary to second-guess the

wisdom of the legislature." *Id*. at 246; *accord Pasado's Safe Haven v. State*, 162 Wn. App. 746, 758, 259 P.3d 280 (2011) ("[T]he authority to define crimes is legislative, not judicial[.]").

In contrast, the Youth's claims, including those challenging RCW 70.235.020 and RCW 70.230.050, do not ask the courts to interfere with the Legislature's policy discretion to define criminal conduct. The Youth argue that the State's creation and perpetuation of a fossil-fuel based economy, including vis-à-vis the challenged statutory provisions, violate their fundamental rights. Unlike the plaintiffs in *Northwest Greyhound* and *Northwest Animal Rights*, here, the Youth do not ask the court to second-guess the legislature's intent or to re-balance public policy concerns. Rather, they ask the courts to, *inter alia* "ensure the act will be implemented in a manner that protects the constitutional rights of the Plaintiffs." Complaint at 70.

In its Order, the superior court mischaracterizes the Youth's claims, and the role of the courts' in serving as a check and balance on the coequal branches: "Plaintiffs ask the court to order and oversee the development of a far-ranging climate action plan that would involve a complex regulatory scheme. * * * This policy-making is the prerogative and the role of the other two branches of government, not of the judiciary." Order at 6. The superior court put the cart before the horse. This constitutional challenge asks the

courts to measure existing policies for constitutional compliance; as explained in *Marbury*, where individual rights depend on the performance of a specific duty that has already been assigned by law, the injured party has the right to a remedy. 5 U.S. (1 Cranch) at 170.

V. CONCLUSION

In *Seattle School District*, the Washington Supreme Court explained, “[w]e must *interpret* the constitution in accordance with the demands of modern society or it will be in constant danger of becoming atrophied and, in fact, may even lose its original meaning.” 90 Wn.2d at 516 (emphasis in original). Just as Washington courts have found that the requirements of “ample” provision for education under the Washington Constitution are different today than in 1889, the challenges of climate change were unknown to the framers during the Constitutional Convention.

Today’s protection of the guarantees enshrined in the Constitution is all the more important; it is the judiciary’s duty to safeguard those rights. It would be fundamentally contrary to the State’s founding principles if the systemic violations of the rights of the Youth were beyond the courts’ core role to serve as a check on the unconstitutional conduct of coequal branches. Given the urgency of climate change and the disproportionate harms that children will suffer from it, the courts must act to fulfill this vital function to safeguard the Youth’s constitutional rights.

RESPECTFULLY SUBMITTED this 4th day of June, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on June 4th, 2019, I electronically filed the foregoing with the Clerk of the Court by using the Court's electronic filing portal. Participants in this case who are registered e-portal users will be served by the appellate system.

s/ Oliver J. H. Stiefel
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