

Supplemental Brief for the Constitutional Complaint (2)

Violation of State's Obligation to Protect Basic rights Concerning Climate Change Response and Greenhouse Gas Reduction

Case 2020-hunma-389 Declaration of Unconstitutionality of Article 42 Section
 1 Subparagraph 1 of the Framework Act on Low Carbon, Green Growth

Petitioners Do-Hyun Kim and 18 others

Respondents 1. National Assembly of the Republic of Korea
 2. President of the Republic of Korea

The legal counsel for the Petitioners submits this Supplemental Brief for the Constitutional Complaint with respect to the “Violation of the State’s obligation to protect basic rights concerning the response to climate change and greenhouse gas reduction.”

1. State’s Obligation to Protect Basic Rights Concerning the Response to Climate Change and Greenhouse Gas Reduction

A. State’s obligation to protect basic rights concerning the response to climate change

(1) State’s obligation to respond to climate change

Climate change is not just a vague hypothetical scenario about the future, but an existing threat. There are imminent threats caused by climate change to survival of humankind and survival of communities. Rise in the Earth’s temperature above the natural range continues because of human activities, and once the Earth’s temperature rises beyond a certain critical point, it cannot be reversed no matter the kind of effort we put in. We know the cause of climate change and we can also fully predict the consequences of climate change.

Therefore, we must carry out the obligation to reduce greenhouse gas emissions so that we do not proceed toward the foregone conclusion. Efforts to reduce greenhouse gas emissions cannot be made only by individual citizens or private companies' voluntary activities. Therefore, any meaningful and substantive greenhouse gas reduction requires management and control at a national level. For it is the State that sets and implements industrial and socioeconomic policies. This creates the State's obligation to protect basic rights with regard to climate change response and greenhouse gas reduction.

(2) Constitutional Importance of the State's obligation to respond to climate change

The State's obligation to respond to climate change—an obligation to protect its citizens' lives and safety from the imminent threat caused by climate change and rising temperature—can be regarded as the State's obligation to protect basic rights, which are the foundations of 21st-century constitutional democracies. Considering the imminent and sweeping damage of climate change this obligation is as important as, or possibly even more important than, the State's responsibility to safeguard its people from foreign military aggression. As we all know the Covid-19 crisis in 2020 is creating a greater crisis in the lives, safety and livelihood of the people than the outbreak of a war. Furthermore, if the influx of just one new strain of virus can cause this much damage we can easily imagine that the consequences of climate crisis caused by uncontrolled climate change and rising temperatures will bring far more serious and fatal damages. The scale of damages to people's lives and safety could be even more severe and far reaching than large-scale wars. In this regard, the "21st-century state's obligation to cope with climate change" is equivalent to "20th-century state's obligation to defend against wars". This obligation to cope with climate change is perhaps the most important constitutional obligation of any 21st-century constitutional

democracy, much like the duty of 20th-century democracies to defend its citizens during the two World Wars. The preamble of the Constitution of the Republic of Korea proclaims, “We will secure the safety, freedom, and happiness of ourselves and our descendants forever”. This solemn oath should be interpreted as an explicit statement of the nation’s constitutional will and duty to protect the basic rights of its citizens. It is a promise that the Korean government would, now and in the future, secure the safety of both the current adult generation (Us) and the future adult generation (Our descendants).

(3) State’s obligation based on the Constitutional-Interpretation to protect basic rights pertaining to a response to climate change

At the time when the Korean Constitution was enacted in 1948, and when the current Constitution was amended in 1987, scientific, international, and domestic awareness of the climate change crisis was not ripe enough. As a result, while important basic rights such as environmental rights to live in a healthy and pleasant environment (Article 35), right to life, right to pursue happiness, and the state’s obligation to protect basic rights (Article 10), the state’s obligation to prevent disasters and to protect its citizens therefrom (Article 34 (6)), the state’s obligation to protect as to people’s health and well-being (Article 36 (3)) were all stipulated in the Constitution at the time of amendment in 1987, “the State’s obligation to protect the citizens’ basic rights in relation to a response to climate change and greenhouse gas reduction” could not yet be stipulated in the Constitution.

However, with the acceleration of full-scale global industrialization which happened during the half-century since the 1970s, the resulting rapid rise in global temperatures, and the in-depth scientific discussions and international approval among governments thereof, most people living in the current year of 2021, almost twenty years after the beginning of the 21st Century, agree that climate change and global warming are the most critical threats to the

people's basic rights such as right to life and safety and the right to pursue happiness. Therefore, if the Constitution were to be amended at this point in 2021, the suggestion that "a response to climate change and greenhouse gas reduction" should be included in the Constitution as one of the most important basic rights and as the most important obligation to protect basic rights could well be accepted as a rational and natural idea. In short, although the current Constitution as amended in 1987 does not explicitly stipulate "the obligation to respond to climate change and to greenhouse gas reduction," the multiple constitutional provisions of 1987 amendment regarding the right to life (Article 10), the environmental right to live in a healthy and pleasant environment (Article 35), the state's obligation to prevent disasters and to protect safety (Article 34(6)), and the state's obligation to protect health and safety (Article 36(3)) are collectively more than enough reasons for acknowledging "the obligation to respond to climate change and to greenhouse gas reduction" as the "State's obligation to protect basic rights *based on the Constitutional Interpretation.*"

(4) State's obligation to protect basic rights with respect to the Environment Right - Constitutional Court Decision [Declaration of unconstitutionality (by the decision of constitutional nonconformity)] No. 2018-hunma-730

(i) Constitutional guarantee of the right to live in a healthy and pleasant environment

Following paragraphs in *italic* are excerpts from the Constitutional Court's decision No. 2018-hunma-730.

『*The Constitution of Republic of Korea stipulates that "all people have the right to live in a healthy and pleasant environment, and the nation and the people should strive for the preservation of environment (Article 35 (1))." Said article imposes an obligation on the state to guarantee the people's environmental right and to make an effort to maintain a*

favorable environment where the people can lead a healthy and pleasant life. These environmental rights form the foundation for the protection of life and body, and ultimately aim to secure “quality of life” (cf. Constitutional Court's decision No. 2016-Hunma-45.).

In exercising environmental rights, people can exercise their freedom from, i.e., their right to enjoy a healthy and pleasant environment free of infringement by the State. Under certain conditions, people also have the right to exercise their freedom to, i.e., demand the State to provide a healthy and pleasant environment to live in. Thus, the environmental right itself is an all-encompassing basic right. While the specific content of the environmental right and the way to exercise thereof are to be stipulated by law (Article 35(2)), the purpose of this provision of the Constitution is to allow the legislature to decide the specific content of the environmental right in compliance with the intent thereof. It does not mean that the legislature can arbitrarily decide the content or decline to make any law at all. If such were the case the environmental right would become completely meaningless. Therefore, when certain conditions are met, a petition to the Constitutional Court may be brought for an infringement of the citizens' environmental rights which is caused by complete legislative omission or significantly insufficient legislation for protecting the environmental right (Constitutional Court's decision No. 2006-hunma-711).』

According to the decision above, this petition, seeking relief from the Constitutional Court because the contents of the legislation and the administrative enforcement concerning a response to climate change and reduction of greenhouse gas are significantly insufficient to protect the environmental right, does meet the subject matter standing for the Constitutional review.

(ii) State's obligation to guarantee the right to live in a healthy and pleasant

environment

『According to Article 10 of the Constitution, it is a duty of the state to acknowledge and guarantee the fundamental and inviolable basic rights of individuals, and such basic rights are objective values that bring order to the community. Therefore, the State has an obligation to actively protect citizens from the infringement by a third party of important fundamental rights such as the protection of life and body, even if the harm was not inflicted by the State.

Considering that the State is obliged to actively guarantee the basic rights of the people, that Article 35 (1) of the Constitution gives the State and its citizens the obligation to preserve the environment, that the legislature needs to set a limitation because environmental damages are often inflicted by private persons, and that environment damages can lead to a violation of important fundamental legal interests such as protection of life and body, the state has an obligation to actively take measures in response to the infringement by a third party of its citizens' environmental rights.』

Following such jurisprudence of the Constitutional Court above, the Korean government has an obligation to actively take protective measures to defend fundamental rights when people's environmental rights are being infringed by greenhouse gases emitted by a third party (private sector) or the government itself.

(5) Precedents regarding the state's obligation to protect basic rights with respect to the Specific Environmental Right

The Constitutional Court's decision No. 2006-hunma-711 (decision of constitutional nonconformity of Public Office Election Act) sets out the constitutional logic regarding a

point that “there exists the state’s obligation to protect fundamental rights as to the environmental rights.” The Constitutional Court went further and rendered a decision that the state has an obligation to protect citizens from an infringement of a *specific* environmental right as caused by the “*noise coming from the use of loudspeakers during a public election campaign.*”

As the Constitutional Court has recognized that the government has an obligation based on the Constitutional-interpretation to protect the specific environmental right with respect to the ‘security at home and protection from unwanted noise during the election,’ which has an impact on a *part* of the living environment of the people, the Constitutional Court can surely recognize the State’s obligation to protect fundamental rights concerning the ‘climate change response and greenhouse gas reduction’ which is an environmental risk that has an impact on all aspects of people’s lives as well as present and future safety. Such recognition would be in line with the spirit of the Constitution as portrayed in the above precedent.

(6) International cooperation on climate change and Responsibility of Individual State

On the other hand, considering the current global greenhouse gas emissions, skepticism can be raised as to how much an individual country’s implementation of greenhouse gas reduction could contribute to stopping climate crisis, and that it would be a futile attempt if other countries do not carry out their duties. What is clear, however, is that if a single country, my country, does not carry out its own duty to reduce greenhouse gases, it would be hard to expect that any other country would, and the dangerous consequences of climate change are certain to come as predicted. Certainly, international solidarity to combat climate change is a weak link that can be easily broken, but it is also the only way to cope

with climate change. The ‘Why Me?’ thinking gives individual countries a sense of skepticism about their response to climate change, but the ‘Me First’ thinking calls for a greater sense of responsibility for individual countries’ response to climate change. Therefore, the international solidarity to stop climate change shall begin first from fulfilling individual countries’ effective and responsible greenhouse gas reduction obligations.

This is the global significance of this Climate Change Litigation before the Korean Constitutional Court. The Court’s decision will be heard around the world and will influence the international response to the global climate change.

B. Overcoming Constitutional Crisis with respect to the responses to climate change

- ‘The need for judicial action when the politics has stopped to function’

(1) The need for judicial action where the function of politics is at a standstill

To avoid entering into the crisis stage of climate change, a political action is required. This is because the basic structure to cope with climate change is that the “National Assembly” (the legislative branch under Korean Constitution) enacts a legislation to cope with climate change and the “Government” (the executive branch headed by the President under Korean Constitution) carries out the obligation to reduce greenhouse gas emissions. However, when the climate change responses do not progress effectively and responsibly by either the National Assembly or by the Government due to various political and economic interests within the country, such as economic burden and pressure from industries, a judicial action may be necessary. Judicial action on seemingly political issues are called for when citizens’ constitutional demands for their survival and the continuation of their communities are at stake (cf. Constitutional Court’s decisions including No. 93-hunma-186, dated February 29, 1996, etc).

Today, when climate change poses the greatest risk to individual survival and basic rights and the State's actions are required to fulfill its constitutional obligation to protect citizens' fundamental rights from the dangers of climate change, and the National Assembly and the Government are failing to carry out effective legislation and responsible execution thereof, active judicial review of unconstitutionality as requested in this constitutional petition can become the only practical way to protect the life and the safety of the citizens from climate change.

(2) The Outbreak of Constitutional Crisis in response to climate change response

Reducing greenhouse gas emissions is an important issue for the people, individual countries, and for the global community. It is, however, a difficult task to accomplish unless the nation's constitutional institutions are strongly committed to implementing it because the task requires a transformation of the industrial structure and energy supply policies rather than just making extravagant promises or policy announcements. A proposition "When the nation lacks strong will and drive, thus the legislative action of the National Assembly is ineffective and the Government does not carry out responsible execution, it becomes practically impossible to cope with climate change and to achieve greenhouse gas reduction at the national level." is proved by the reality of the Republic of Korea in the past decade from 2010 to 2020 in the most serious way. There is no need to look for such cases in other countries.

First, the National Assembly, the legislative body of Korea, enacted the Framework Act on Low Carbon Green Growth (hereinafter "Low Carbon Act") in 2010 and delegated the Government to set up goals for reducing greenhouse gas emissions through Article 42(1)1. For the next ten years, the National Assembly has never made any serious efforts to take any

practical measures for amendment or improvement, to actually monitor/supervise or to prevent the Government's non-execution of its reduction target. Moreover, the Respondent 1 National Assembly of the Republic of Korea, has yet to submit any statements or briefs to the Constitutional Court regarding this constitutional petition.¹

Second, the Government (headed by the Respondent 2 President), which is the executive branch of Korea, enacted the Enforcement Decree of the Low Carbon Act (hereinafter "the Low Carbon Decree") in 2010 and set "the 2020 Greenhouse Gas Reduction Target" to be 30% of the expected emissions (BAU) of 2020 which is about 543 million carbon dioxide equivalent tons (tCO₂eq) under Article 25 (1) of the Enforcement Decree. Then, "How serious and responsible has the Korean government been about implementing the 2020 Greenhouse Gas Reduction Target?", this exact question will be a practical barometer of the Korean Government's execution of its obligation to respond to climate change.

The answer to the above question is; "*The Korean Government (headed by the President) has not implemented "the 2020 Greenhouse Gas Reduction Target (543 million tons)" in any practical or responsible manner during the ten years from 2010 to 2020.*" The Respondent President set the 2020 Greenhouse Gas Reduction Target at 543 million tons. However, the Government reported that 2018 greenhouse gas emissions were 727 million tons, already exceeding the 2020 Greenhouse Gas Reduction Target by around ▲34%, and the 2019 greenhouse gas emissions estimate also reached 703 million tons, making it clear that the 2020 Greenhouse Gas Reduction Target of 543 million tons has completely failed.

¹ The Korea Government Legal Service (a Government affiliated Law Firm) who submitted the written statement in October 29, 2020 acts as the legal counsel for the Respondent 2 President of the Republic of Korea, not for the Respondent 1 National Assembly of the Republic of Korea.

Therefore, it is indisputably clear that the Korean Government did not implement its 2020 Greenhouse Gas Reduction Target (543 million tons) in any practical or responsible manner.

(☞ Non-enforcement of the Greenhouse Gas Reduction Target)

Meanwhile, having the year of 1990 as a reference point, which is also a global reference point for reducing greenhouse gas emissions, let us turn to the Government's announcement of 727 million tons of greenhouse gas emissions in 2018. This was an increase, rather than a decrease, by ▲435 million tons in amount and by ▲148 % as a percentage, compared to 292 million tons (Exhibit 2, page 11, Annual greenhouse gas emission trend table in Korea) of greenhouse gas emissions in 1990. While the global community was making a strong effort to reduce greenhouse gas emissions, the Korean Government also announced its emissions reduction target, but in actuality the greenhouse gas emissions increased. As a result, South Korea has become the world's fifth largest greenhouse gas emission powerhouse among the OECD countries (11th in greenhouse gas emissions in the world and 7th in the carbon dioxide emissions in the world) (Exhibit 1, page 31, 2nd Masterplan for Climate Change Response in 2019). Now, Korea has become an irresponsible main culprit of global climate change and temperature rise, not a victim of irresponsible greenhouse gas emissions from other countries.

Third, what's even more shocking is that in 2016, the Korean Government amended Article 25(1) of the Low Carbon Decree so that the original "2020 Greenhouse Gas Reduction Target of 543 million tons" was surreptitiously replaced with "the reduction target of 536 million tons by 2030" ten years later. How convenient! The Korean Government, practically speaking, abandoned, gave up, or discarded the 2020 Greenhouse Gas Reduction Target under the pretext of amendment of the presidential decree. (☞ **Abandonment of**

Greenhouse Gas Reduction Target)

Regarding this issue, let us look at Exhibit 1-2 submitted by the Respondent 2 President (Official Gazette of the Republic of Korea), to which the lines 1 to 8 of page 5 of the “Written Statement” of the Respondent President submitted to the Constitutional Court as of October 29, 2020 refers to. It states; 「A part of the Low Carbon Decree shall be amended as follows... “emissions of greenhouse gases in 2020 by 30 percent below the estimated greenhouse gas emissions in 2020” in Article 25(1) shall be amended to “emissions of greenhouse gases in 2030 by 37 percent below the estimated greenhouse gas emissions in 2030.” (Exhibit 1-2 submitted by the Respondent 2 President, Official Gazette of the Republic of Korea, No. 18765, 2016. 5. 23., lines 1 and 8~9 of page 3). The above 2016 amendment of the Low Carbon Decree takes the form of the “amendments” of the 2020 Greenhouse Gas Reduction Target, but the truth is that the amendments in fact were the “enactment” of a new 2030 reduction target as well as the “abandonment” of the 2020 Reduction Target. When it comes to abandoning the state’s obligation to protect basic rights, it is such a convenient and irresponsible way for the Government to abandon, give up, and forget the ten-year national greenhouse gas reduction goal (2020 Reduction Target) without anyone’s monitoring and with a simple revision of the enforcement decree.

Consequently, the 2020 Greenhouse Gas Reduction Target (543 million tons) of Article 25(1) of the Low Carbon Decree enacted by the Government under the blanket delegation of Article 42 (1) 1 of the Low Carbon Act enacted by the National Assembly in 2010, has not been implemented at all. The final target year of December 31, 2020 has passed while the actual emissions in 2020 have exceeded the 2020 emissions target significantly. There has never been a single expression of regret or apology from the President or the

Government for this failure to meet the Greenhouse Gas Reduction Target in the past decade.

If the 2020 Greenhouse Gas Reduction Targets proclaimed under the Low Carbon Act and the Low Carbon Decree can be abandoned, given up or discarded simply by amending the presidential enforcement decree, on what grounds can the Government's implementation and execution of the 2030 Greenhouse Gas Reduction Target that has been proclaimed under the same Act and the Enforcement Decree be trusted and be guaranteed?

This Supplemental Brief for the Constitutional Petition (2) is being submitted in January of 2021, which is shortly after the passing of the original target of 2020 year-end. This is a very pertinent time to ask the above question to the Respondent 2 President of the Republic of Korea, and the Respondent 1 National Assembly of the Republic of Korea.

Nevertheless, the Respondent President of the Republic of Korea asserts on pages 17 to 34 of his Written Statement submitted on October 29, 2020 that the Korean Government enforced the Low Carbon Act, and first set the greenhouse gas reduction targets (2020 Reduction Targets) and amended them (2030 reduction target) through the process of enacting and amending the Low Carbon Decree. He further asserts that “(he) has fulfilled the Government's duty of low carbon green growth (lines 17-18 of the above-mentioned Written Statement)” by taking all the measures such as national climate change adaptation plan that are necessary for the management of greenhouse gases. However, the fact that the Korean Government did not fulfill its duties regarding the 2020 Greenhouse Gas Reduction Target is clearly evidenced by the fact that the Government abandoned the 2020 Reduction Target by amending the Low Carbon Decree in 2016 as shown in the Official Gazette of the Republic of Korea, Exhibit 1-2 submitted by the Respondent 2 President. The Petitioners would like to point out that the President's response that he has fulfilled the Government's duty to reduce carbon and to reduce greenhouse gases clearly shows the irresponsible attitude toward the

state's obligation to protect basic rights. Such response is as irresponsible as, or even more irresponsible, than the Respondent's failure to implement the 2020 Greenhouse Gas Reduction Target.

Given that the primary obligation to protect citizens concerning the response to climate change and greenhouse gas reduction depends on legislation by the National Assembly, which is the legislature, and the execution by the Government (headed by the President), the National Assembly is neglecting effective legislation to set and implement greenhouse gas reduction targets, and the Government also is neglecting taking any responsible measures to set and execute such greenhouse gas reduction target. On the contrary, the Government enunciates its position that "The Government has done all of its duties to respond to climate change." Both the National Assembly and the Government led by the President are not implementing effective and responsible measures in response to the imminent climate crisis. If the Constitutional Court, the judicial branch, also neglects and decides not to exercise its authority for constitutional review, the situation will result in a constitutional crisis where none of the three branches of power is able to resolve the delay in the nation's obligation to protect basic rights and to stop the imminent crisis.

Is this diagnosis an exaggerated one? At least if the Government's 2020 Greenhouse Gas Reduction Target of 543 million tons had been responsibly implemented², Korea's 2030 greenhouse gas reduction target could have been approximately 300 million tons, at least 200 million tons lower than the target of 2020. However, the 2020 Greenhouse Gas Reduction Targets of 543 million tons, adopted by the Lee Myung-bak President administration in 2010, has been abandoned, given up and discarded in 2016 by the administration led by Park

² This is not to fully acknowledge that the government's 2020 greenhouse gas reduction target of 543 million tons was sufficient to stop climate change.

Geun-hye President who took office in 2013. As a result, the execution of Greenhouse Gas Reduction Target of Republic of Korea has been pushed off to 2030. As the 2030 greenhouse gas reduction target (536 million tons) is almost the same figure as that of 2020 (543 million tons of \approx 536 million tons) another ten years has been granted without any reasoning or progress. The 2020 Reduction Target of Korean Government simply has become nothing but a scam or a bounced check. What is more problematic is that Article 42 of the current Low Carbon Act does not have any legal mechanism to check and control if the newly elected Government in three or five years time changes, relaxes, abandons or discards the 2030 Greenhouse Gas Reduction Target again.

In the end, the only thing citizens and younger generation of Korea can do is to helplessly hope that someday the President and the Government would take adequate measures to respond to climate change and to reduce greenhouse gas emissions. The assertion made by the Respondent 2 President in the Written Statement dated October 29, 2020 that *“the citizens do not have a right to demand the President to reduce greenhouse gases even if there exists Low Carbon Act, and the enforcement decree thereof.”* is in the same vein of irresponsibility.

The crisis of climate change can be likened to a more sweeping and prolonged tragedy of the Ferry Sewol incident in April of 2014, which instantly caused the entire nation to grieve. If the judicial branch also rejects constitutional review when the National Assembly does not effectively legislate and the Government does not responsibly execute with regard to climate change and greenhouse gas reduction, the people and the Petitioners are in the same position as the high school student victims who were misdirected to *“stay still”* in a sinking Ferry Sewol in 2014. Therefore, the expression that the current state of affairs is causing a “Constitutional Crisis” in which the National Assembly and the Government cannot

effectively and responsibly respond to climate change and to reduce greenhouse gas emissions is not an exaggeration. Rather it is the only accurate description of the current desperate situation.

C. The need for a proactive application of the standard of review for the Prohibition of Underprotection Principle

Our country has established and implemented greenhouse gas reduction goals by joining the climate change convention and legislating relevant laws. Thus, it would be hard to say that there has been a complete omission or inaction. The issue, therefore, is whether the current greenhouse gas reduction target is ineffective and insufficient, thus resulting in a violation of the State's duty to protect basic rights.

Korean Constitutional Court has reviewed this type of petitions by applying "the Prohibition of Underprotection Principle", a type of a standard of review used to examine the violation of the State's duty to protect citizens' lives and safety. The Korean Constitutional Court has previously examined whether the legislative branch and the executive branch, which has been delegated by the legislative branch, have violated their duty to protect. The Constitutional Court reviewed whether there existed at least an adequate and effective minimum measure to protect. There is an academic evaluation that the Court had a tendency in the earlier period to grant a broad discretion of the legislature and the executive and to recognize the minimum protective measure as long as some measure was taken by the State. To follow this passive trend, there might be a possibility that the Constitutional Court would decide that the Government has implemented minimum protective measures with regard to the State's obligation to protect basic rights in response to climate change since they have set the current greenhouse reduction target and implemented some measures.

However, if such an extremely passive position is adopted, the judicial branch will

also stop functioning at a time when the political response to climate change has already stopped functioning. In this regard, it is worth referring to the arguments presented in the Dutch Urgenda climate case, which was recently confirmed by the Dutch Supreme Court. Despite Dutch Government's response in the Urgenda case that the specific implementation of greenhouse gas reductions is a political arena and also an area of discretion to be implemented by the State, the Dutch Supreme Court held that the Dutch government's less ambitious adjustment of greenhouse gas reduction target in spite of the urgency of climate crisis constitutes an infringement of the citizens' basic rights by violating the obligation to take appropriate measures to protect the lives and the safety of the people in response to the threat of climate change. The Dutch Supreme Court thereby finalized its decision ordering the increase of greenhouse gas emissions reduction target to be equivalent to the minimum reduction target acknowledged by the climate science and by the international norms.

In this Korean climate case, too, it is necessary to consider the uniqueness of the climate change problem, the reality of the imminent risk of climate change, and the level of greenhouse gas reduction agreed by the international community as standards of review for infringement of the citizens' basic rights. In fulfilling its obligation to reduce greenhouse gas reduction in response to climate change the State should have some discretionary power to decide on the specific measures and solutions. It is, however, possible and desperately necessary to rule that the current legislation and administrative protective measures are so ineffective and insufficient as to constitute an infringement of citizens' basic rights. The reasoning would be that what can be considered 'the minimum reduction target' agreed by the international community based on the facts recognized by climate science is not within the area of the State's discretionary power. It is the minimum required for the State to fulfill its obligation to protect citizens' security of life and body, survival and the continuation of the

community.

2. Violation of State's Obligation to Protect Basic Rights Concerning the Response to Climate Change and Greenhouse Gas Reduction

A. Article 42 of the Low Carbon Act– Violation of obligation of the Legislature to protect basic rights

(1) Violation of obligation to protect basic rights by the Respondent National Assembly

- Constitutional grounds for the obligation to enact law with regard to greenhouse gas reduction to address climate change

(i) Constitutional grounds for the obligation of the Respondent National Assembly to enact law with regard to greenhouse gas reduction

The Korean Constitution does not directly prescribe legislative obligations for the response to climate change or for the reduction of greenhouse gases. Therefore, further to be discussed is whether the legislature's obligation concerning greenhouse gas emissions reduction in order to protect against the risk of climate change can be derived from the Constitutional Interpretation.

Article 10 of the Constitution guarantees the rights of human dignity and value, and the right to pursue happiness. Article 34 guarantees the specific principles and rights based on such principles such as the right to live a life worthy of human beings. Article 35 guarantees the right to live in a healthy and pleasant environment. In addition, Article 36(3) of the Constitution, a provision about the State's protection of welfare, stipulates the State's responsibility for the welfare and health of its people. The State's obligation based on the interpretation of the Constitution to respond to climate change and to reduce greenhouse gas causing climate change can be derived therefrom. In other words, the people should be able to live their lives without being exposed to the destruction of the ecosystem and abnormal

environmental surroundings while maintaining their mental sanity and physical health.

The Constitution further stipulates in Article 34(6) the duty of the State to protect the “Safety” of its people from the risks of disasters: “The State shall endeavor to prevent disasters and to protect people from harm therefrom.” Considering the international consensus on climate science and the content of the approvals from international governments such as Intergovernmental Panel on Climate Change (IPCC), we can easily predict routinized occurrences of natural disasters, food shortages, water shortages, social disasters, and security threats if global warming continues at the current rate. The implementation of greenhouse gas reduction programs is therefore requested in order to stop climate change. By so doing the State can fulfill its obligation to protect its people from constantly occurring crisis and threats therefrom.

The State’s obligation to protect “Safety” as stipulated in Article 34 (6) of the Constitution means the duty to protect individuals’ lives, body, health, honor, property, and freedom from the risk occurring due to an act or condition that could cause damage if left neglected. The Safety here may also include environmental and social safety as well as physical safety, and the Constitution obligates the State to ensure the safety of the people. If climate change and its impact on national communities and individuals are considered as risks, it should be interpreted that the State has a constitutional obligation to protect individuals from disasters and risks caused by climate change and to ensure safety.

As such, the guarantee of safety from climate change has its basis on the State’s obligation to protect basic rights derived from the Preamble of the Constitution stating that “...ensure security, freedom and happiness for ourselves and our posterity forever” and from the provision of Article 10 stipulating the State’s obligation to confirm and guarantee the fundamental and inviolable basic rights of individuals. It also has as its constitutional basis

the obligation to prevent disasters and to protect people from harm therefrom, as stipulated in Article 36 of the Constitution.

Furthermore, Korea bears the obligation to reduce greenhouse gas emissions that cause climate change by having joined the U.N. Climate Change Convention, the Kyoto Protocol, and the Paris Accord. Although Korea is not obligated to reduce greenhouse gas emissions as one of the Annex I countries of the Kyoto Protocol, countries that are not listed in Annex I are still responsible for the greenhouse gas reduction. The Paris Accord requires countries to voluntarily set their level of contribution to the reduction of greenhouse gas emissions. As such, the Korean Government is also obligated to reduce greenhouse gas emissions based on the international law. Furthermore, Article 6(1) of the Constitution stipulates that “Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of Korea.” This provision also gives such international treaty the same legal effect as that of the domestic laws.

As seen from above, if the State’s obligation to protect its basic rights in terms of a response to climate change and greenhouse gas reduction is recognized, such obligation must be performed specifically through legislative and government enforcement activities in light of the importance of climate change. The Respondent National Assembly’s constitutional obligation to protect the basic rights to take efficient and responsible legislative measures to address climate change and to reduce greenhouse gases thereby is recognized.

(2) Violation of obligation to protect basic rights by the Respondent National Assembly of Korea – substantial inadequacy and lack of effectiveness of legislation

(i) The standards of review for the breach of obligation to protect basic rights

The issue surrounding the statutory provision in question is whether the legislature's protective measures for climate change and greenhouse gas reduction taken by the enactment of Article 42 of the Low Carbon Act have violated important basic rights of the Petitioners such as the right to life and physical safety.

Let us look at the precedent cases of the Constitutional Court where the issue was whether complete, or partial, omission, inaction or inadequacy of measures for preventing the dangers of climate change causes an infringement of the basic rights such as the right to life and physical safety. The cases held that "In such case the Court examines whether there is a *violation of the State's duty* to protect basic rights. As the *infringement* of the basic right is reviewed only with regard to the examination of whether the State has *violated its duty* to protect basic rights, it is not necessary for the Court to separately consider an *infringement of the basic rights*." (Constitutional Court's decision No. 2012-hunma-89·955).

When the issue is the "Violation of the State's duty to protect basic rights" the key is to examine whether the complete, or partial, inaction on the part of the government constitutes a violation of the State's duty to protect. When the Constitutional Court reviews whether the State has fulfilled its duty to protect the people's lives and their physical safety and whether the legislature and the executive who received delegation from the legislature have fulfilled their duty to protect, the Court applies the Prohibition of Underprotection Principle. The test is "whether the State has taken at least adequate and effective minimum protective measures to protect the rights of the people." Following is a detailed analysis of whether Article 42 of the Low Carbon Act adequately meets this constitutional standard in fulfilling the State's duty to protect basic rights.

(ii) Review/Analysis of whether there was a violation of the duty to protect basic rights

by the enactment of Article 42 of the Low Carbon Act

The fundamental problem with the Low Carbon Act is that it does not provide basic standards for setting greenhouse gas reduction targets and measures to ensure their implementation. Even if the reduction target itself is not directly specified (in number) by the Low Carbon Act, the Low Carbon Act must present the basic direction and standard of the reduction target. The Low Carbon Act must also present the basic direction on how to distribute the reduction target for each field, how to finance resources, and how to monitor and control the implementation by the Government. If the reduction target is set and implemented without any limitation on the Government's policies, it is highly possible that the obligation will not be fulfilled and there is a high possibility that the Government would avoid fulfilling its obligation to reduce greenhouse gas. This "possibility" has now become the horrible "reality" of this day as we have passed through the target year of 2020, having abandoned the 2020 Greenhouse Gas Reduction Target established by the President in 2010.

(a) Significant inadequacy of legislation (unconstitutionality of a blanket delegation to set the reduction target)

The provisions on greenhouse gas reduction and the target establishment, including Article 42 (1) of the Low Carbon Act, can be seen as "a" legislative measure to implement the greenhouse gas reduction system and to protect basic rights. There could be some discretionary power in implementing the greenhouse gas reduction system, such as the kind of steps to take and how to manage the greenhouse gas reduction system. Even if the specific reduction target is delegated to the enforcement decree, however, it would be hard to say that the legislature has taken appropriate measures to protect basic rights when the law does not prescribe any minimum standard in setting a reduction target. (In this regard, in declaring the

unconstitutionality of Article 42 of the Low Carbon Act, the Prohibition of Blanket Delegation Principle provided in Article 75 of the Constitution is closely interrelated to the Prohibition of Underprotection Principle.)

Therefore, Article 42 (1) of the Low Carbon Act, which does not specify any criteria or scope for setting greenhouse gas reduction targets, should be regarded as unconstitutional. It does not meet the minimum standard required for enabling the State to fulfill its obligation to protect basic rights with regard to the establishment of greenhouse gas reduction target.

For the same reason, Article 42(2) of the Low Carbon Act that provides, “(when it establishes the reduction target,) the Government should take into consideration domestic conditions and trends in other countries” is also unconstitutional because such provision violates the Prohibition of Blanket Delegation Principle and the Prohibition of Underprotection Principle. The Respondents may perhaps be tempted to assert that Paragraph 2 of Article 42 is providing a ‘specific criteria’ for the reduction of greenhouse gases. However, according to the objective meaning of the language, the words ‘domestic conditions’ or ‘trends in other countries’ in paragraph 2 above are totally open and abstract concepts that are equivalent to the ‘domestic and international circumstances’. This reaffirms that the blanket delegation enabled the Government to exercise its administrative power arbitrarily. Vague words such as ‘domestic conditions’ or ‘trends in other countries’ do not satisfy the conditions of the Prohibition of Blanket Delegation Principle required by the Constitution: “Anyone can predict the general idea of what will be prescribed in the presidential decree.” Accordingly, Article 42(2) of the Low Carbon Act also is an unconstitutional provision, which fails at guaranteeing the Respondent National Assembly’s obligation to establish some minimal criteria for greenhouse gas reduction target.

(b) Specific standard and scope of the greenhouse gas reduction target – possibility of constitutional legislation

Of course, even if the basis for the obligation to reduce greenhouse gas emissions can be derived through the constitutional interpretation, it can be difficult to present the “specific” details, methods, and degree of implementation of the obligation. Naturally, specific figures and detailed methods of implementation of greenhouse gas reduction targets should be embodied through legislative and/or administrative action. However, this does not necessarily leave the Government’s decision on specific criteria and methods for reducing greenhouse gas emissions entirely up to the Government's policy discretion. It is because such absolute discretion of the Government has produced a serious and critical unconstitutional situation of climate crisis in Korea, (i) that the Respondent President had set the 2020 Greenhouse Gas Reduction target at 543 million tons, but the successor did not implement it at all, and the target year of 2020 passed, leaving the 2020 Greenhouse Gas Reduction Target abandoned, given up, and discarded, and (ii) that through the amendment of the enforcement decree, which manifested as an establishment of 2030 greenhouse reduction target of 536 million tons, ten years were wasted as the new target for 2030 was nearly the same as that of 2020 (543 million ton).

Therefore, the current climate change, the degree of risk therefrom, and the extent and trend of greenhouse gas emissions suggest that there certainly exists a constitutionally required minimal criteria and standard for the minimum level of greenhouse gas reduction that should be mandatory for the purpose of guaranteeing the people’s basic rights and safety. If the National Assembly’s legislation and the Government’s enforcement violate such requirement, those exercises of powers can be determined to be violating the standard

supported by the Constitution.

What could be the specific criteria and methods for reducing greenhouse gas emissions that was discussed earlier? It is the global minimum standard for greenhouse gas reduction which has been approved by the international community of scientific research and Governments. This is prescribed in Article 2 (1) of the Paris Accord, a treaty ratified by the Korean Government, which stipulates: “limit global temperature increase to well below 2 °C compared to pre-industrial levels and strive to keep it within 1.5 °C.”³

Therefore, Article 42(2) of the current Low Carbon Act, a vague and contentless provision, which requires consideration of ‘domestic conditions and trends’ in setting greenhouse gas reduction targets, should be discarded. Said provision should instead be replaced with the minimum standard for greenhouse gas reduction formulated by the Paris Accord. Furthermore, in achieving such target, the Korean Government should come up with a legal method to guarantee a responsible and effective execution of greenhouse gas reduction target so as to fulfill its obligation that befits a country ranked 7th in the global greenhouse gas emissions. Such new legal method will then be a reasonable standard for reviewing whether the country fulfills its obligation to protect basic rights concerning greenhouse gas reduction and climate change response, as well as a practical standard for the

³ Regarding the above minimum target level, a climate scientific survey including the IPCC 1.5°C Special Report has confirmed that there is a significant risk difference including the tipping point between 1.5°C and 2°C increases, leading to a global consensus that 1.5°C should be the standard. The European Union has established a vision to achieve carbon neutrality by 2050 to achieve the 1.5°C target right after the IPCC special report was published, and many European countries, including New Zealand, Denmark, Germany, Britain, and France, have already enacted it. The recent “strong request for emergency response to climate crisis” resolution of September 24, 2020 based on the IPCC report passed by the National Assembly of the Republic of Korea also suggested a minimum target of 1.5°C rise, and the Respondents also recognized that 1.5°C should be the minimum target in limiting temperature rise. For instance, the Korean government announced in December 10, 2020 that carbon neutrality by 2050 must be achieved in order to limit temperature rise to below 1.5°C.

constitutional amendment to fulfill the nation's obligation to effectively and responsibly protect its citizens' basic rights in the future.

In summary, the standard of review to determine whether the State has violated its obligation to protect basic rights by taking adequate and effective minimum protective measures does **not** imply that 『the evaluation of the adequacy, efficiency, and the minimum standard shall be entirely up to the Government. In other words, it does not imply that and as long as the Government has taken any measure within its discretionary power that is relevant and contributable to the protection of human right, then the Government can be deemed to have taken minimum required measures to protect basic rights.』 When it comes to a duty to protect basic rights from the risks of climate change, the Government can be assessed to have fulfilled its obligation to protect basic rights from climate change only when it has implemented measures to the minimum level agreed upon by the international community on scientific grounds.

(c) Lack of effectiveness – absence of legal mechanisms to ensure the execution of greenhouse gas reduction targets

Next, the more important unconstitutionality of Article 42 of the Low Carbon Act is that there is no mechanism or regulation to control and to guarantee the Government's practical and responsible enforcement of greenhouse gas reduction targets.

As a result, Article 42 of the Low Carbon Act, which is the subject of review in this petition, has neglected (i) the Respondent President's 'abandonment and non-execution of the 2020 Reduction Target' enacted in 2010 (neglect of past non-execution) and (ii) there is no legal means to prevent the Respondent President's 'abandonment and non-execution of the 2030 Reduction Target' (inevitable neglect of present and future non-execution).

In this regard, Article 42(3) of the Low Carbon Act provides a procedural provision for changing the greenhouse gas reduction target that, “when the Government changes its greenhouse gas reduction target under Paragraph 1(1) it shall hear the opinions of relevant experts and stakeholders through public hearings. In this case, if the opinion is deemed reasonable, it shall be taken into consideration.” However, the above provision is not effective to prevent irresponsible and arbitrary changes in the Government’s greenhouse gas reduction goals as evidenced in the process of abandoning, giving-up and disposing of 2020 Greenhouse Gas Reduction Target.

Under current provisions, if the Government, in the future, wishes to change the current 2030 Greenhouse Gas Reduction Target to be more relaxed than the current target figure, the only procedural requirement is to hold a public hearing and listen to the opinions of related experts and interested parties for a certain period of time. It is also the Government’s sole discretion to acknowledge that the opinions heard in this process are deemed reasonable. Accordingly, in the future, if the present Government, or the Government organized after the next election, has in mind of relaxing the present greenhouse gas reduction target and wishes to increase the greenhouse gas emissions or to reduce the greenhouse gas reduction amount, only procedural requirements are a public hearing and passing of time for gathering opinions. Article 42(3) of the Low Carbon Act does not provide for an effective legal mechanism for the National Assembly or the people to control and prevent changes to the Government’s regressive greenhouse gas reduction target.

Ironically, provisions under Article 42(4) of the Low Carbon Act allow the Government to provide guidance and supervision regarding greenhouse gas reduction of central administrative agencies, local governments, and public institutions (Paragraph 4) and allow supervision of greenhouse gas emissions of the certain supervisory enterprises

(Paragraphs 6 through 12). However, Article 42 of the Low Carbon Act does not provide for any provision supervising the “Government’s implementation of greenhouse gas reduction target.” If you look at the history of the Government’s complete abandonment of its 2020 Greenhouse Gas Reduction Target without implementation, could it not be construed as leaving a fish to a cat for safekeeping?

Given that the State’s obligation to protect basic rights regarding the response to climate change and greenhouse gas reduction can only be achieved by the effective legislative act of the National Assembly and by strong implementation of the responsible Government, it is a big mistake that a blank check was given to the Government regarding establishment of greenhouse gas reduction target by Article 42 of the Low Carbon Act without establishment of any monitoring, supervision and control mechanism concerning the Government’s implementation of the established greenhouse gas reduction targets. Article 42 of the Low Carbon Act resulted in non-performance of the 2020 Greenhouse Gas Reduction Target, which passed the deadline on December 31, 2020, and will inevitably lead to non-performance of the 2030 Greenhouse Gas Reduction Target.

Current Article 42 of the Low Carbon Act cannot prevent the current 2030 Greenhouse Gas Reduction Target, which is already far short of preventing climate change and temperature rise, from deteriorating to more passive figures. In addition, there is no way to hold the Government responsible for non-execution of 2030 Greenhouse Gas Reduction Target as was the situation of 2020. The Government, after neglecting the increase in greenhouse gas emissions, can simply repeat that “the Government fulfilled its obligation, but due to the domestic and international situations, the target could not be achieved.” This is the most decisive reason for petitioning that Article 42 of the Low Carbon Act violates the State’s obligation to protect basic rights in response to climate change and greenhouse gas

reduction and, thus, it should be held unconstitutional.

It is possible to correct the defects of the unconstitutionality through a constitutional amendment of the provision subject to review in this case. Once the Constitutional Court declares the decision of nonconformity under the Constitution, the National Assembly as the legislative body can accordingly amend or newly establish some provisions of Article 42 of the Low Carbon Act over a certain period, (i) prescribing effective control methods and procedures regarding the Government's arbitrary change to the greenhouse gas reduction target, (ii) require the Government to report to the National Assembly annually about the result of implementation of greenhouse gas reduction target, and if there occurs extra emissions exceeding the greenhouse gas reduction target, enacting an appropriate law to require a legal accountability about the excess.

Is such amendment impossible? It is certainly possible. The National Assembly has the authority to approve the Government's budget and settlement of accounts, and other effective control over the Government, including ratification of the treaty and consent to war. Considering the weight of the State's obligation to protect against climate change and to reduce greenhouse gases, it is possible and desperately necessary to supplement legislation that allows the National Assembly to monitor, approve, and control the Government's implementation of greenhouse gas reduction targets.

(3) Constitutional solution – Decision of “Nonconformity with the Constitution” concerning Article 42 of Low Carbon Act;

As seen from the above, the way to correct the constitutional violation of Article 42 of the Low Carbon Act is for the Constitutional Court to confirm the unconstitutionality of the provisions to be judged in the instant case and to require the legislature to amend Article 42 of the Low Carbon Act based on a decision of nonconformity with the Constitution. This

is to carry out constitutional actions entrusted to the Constitutional Court while respecting the autonomy of the National Assembly and the Government to carry out specific legislation and execution in response to climate change.

The Constitutional Court's constitutional clarification of the unconstitutionality of the Government's non-performance regarding obligation to protect basic rights to climate change and calling for legislative corrections has the effect of giving the National Assembly and the Government positive assistance based on the constitutional ground and justification regarding implementation of legislative and executive obligation concerning the response to climate change and greenhouse gas reduction. This can be an ideal example of how the three branches, National Assembly, the Government, and the Constitutional Court, can serve as a check and balance to fulfill the State's obligation to protect basic rights concerning the response to climate change and reduction in greenhouse gas emissions.

(4) With respect to the *Standing*

(i) Standing as a *Subject matter* of the Constitutional Complaint – A constitutional complaint against the significantly inadequate legislation

According to the Constitutional Court's decision No. 2018-hunma-730, if there is complete legislative omission or partial omission due to substantially inadequate protection of the environmental rights, resulting in an infringement of the environmental rights of the people, one can seek relief from the Constitutional Court (Constitutional Court's decision No. 2006-hunma-711).

The nature of the instant case before the Constitutional Court is to seek relief from the Constitutional Court due to a substantially inadequate legislation to protect environmental rights through climate change response and greenhouse gas reduction and, thus, this case

satisfies the Court's legality requirement. The Petitioner has clearly stated earlier herein that the National Assembly has a duty to protect basic rights through legislation on climate change response and greenhouse gas reduction and that the provisions are subject to a constitutional petition because they are significantly inadequate and ineffective.

(ii) Regarding the *Statute of Limitation*

First, the response to climate change and the reduction of greenhouse gases are not just past events, but are on-going and continuing national protection obligations and are important constitutional rights of the people. Related to establishing and implementation of the reduction of greenhouse gases, Article 42 of the Low Carbon Act not only results in a violation of the State's obligation to protect basic rights in the *past* and in the *present*, but also will inevitably lead to a more serious violation of the obligation to protect basic rights in the *future* due to accumulation of greenhouse gas emission. Therefore, the statutory provisions in question clearly violate the Petitioner's *future* environmental rights due to the unavoidable nature the provisions. According to the Constitutional Court's previous decisions, *if such a clear violation of basic rights is expected in the future, the problem of the statute of limitation will not be raised* (such as the Constitutional Court's decision No. 2005-hunma-997). In other words, since it is clear that Article 42 of the Low Carbon Act infringes on the future environmental rights of Petitioners in relation to the establishment and implementation of greenhouse gas reduction targets, the statute of limitation cannot be an issue in this case.

Second, the petition to the Court about the provisions at issue in this case was made after Petitioners realized the seriousness of the climate crisis and the urgency of greenhouse gas reduction in the course of their education and growth as minors. In the instant case, there

is a “*justifiable reason*” to make an exemption of the statute of limitations of the petition (such as the Constitutional Court’s decision No. 89-hunma-31). Currently, young people in Korea have filed a constitutional petition out of desperation for the “future” crisis. If the petition to the Court is prevented from a just review by the Court on the ground of “past” time limit, it is very unjust in light of the Constitutional Court's ideal of guaranteeing basic constitutional rights.

Third, as in the case of Low Carbon Act, there is a precedent from the Federal Republic of German Constitutional Court (Second Court of the Federal Republic of German Constitutional Court Decision, BVerfGE 15, 46, November 6, 1962), which states *that if the substantive contents of the law continue to be amended, then the statute of limitation of the petition commences upon the amendment of the enforcement decree* (See page 83, Bang Seung-joo, Hong Il-sun, Jung Tae-ho, Kim Young-jin. (2018). Constitutional Court Research Vol. 29. *A Study of Structure of Constitutional Petition for the Non-exercise of Public Power*. Constitutional Court). If the above legal principle is applied to our constitutional case, as the instant petition was made on March 13, 2020, within 90 days from the amendment date of Article 25, Section 1 of the Low Carbon Decree, .Therefore, this satisfies the statute of limitation requirement.

In addition, the instant petition to the Court addresses one of the biggest constitutional challenges of this era, whether the legislature and legislative measures have lawfully implemented the obligation to protect basic rights concerning climate change and greenhouse gas reduction. According to the Constitutional Court’s previous decisions, “The petition to the Court carries out not only the function of the individual’s subjective right relief but also the guarantee of an objective constitutional order. *If such infringement is at risk of repetition or if the settlement of the dispute is a matter of constitutional importance, the*

interest in standing of the petition must be recognized.” (Constitutional Court’s decisions such as decision No. 90-hunma-110-136, decision No. 91-hunma-111, decision No. 90-hunma-82, decision No. 93-hunga-2.) A review and decision from the Constitution Court in this instant petition about whether the State violates the obligation to respond to climate change and to reduce greenhouse gas emissions to protect basic rights has a constitutional significant meaning, even more than the decisions described hereinabove do. Thus, the constitutional importance of this case to support the standing of this petition to the Court is sufficient to be recognized.

B. Article 25 Section (1) of the Low Carbon Decree– Violation of the Duty to Protect Basic Rights by the Government’s Administrative Legislation

(1) Article subject to review (goals to reduce greenhouse gas emissions by 2030)

Article 25 Section (1) of the Low Carbon Decree (as amended on December 31, 2019)

Article 25 (Setting and managing national goals for greenhouse gas reduction)

- (1) A target for the reduction of greenhouse gas emissions referred to in Article 42(1)1 of the Low Carbon Act shall be to reduce total nationwide emissions of greenhouse gases in 2030 by 24.4 percent of the country’s total greenhouse gas emissions in 2017.

(2) The Government’s duty to act regarding greenhouse gas reduction target (Partial Omission (*Unechte Unterlassung*) of the Administrative legislation)

The above provision is an administrative legislation. With regard to the petition to the Constitutional Court against an administrative agency’s omission or non-performance (*unterlassung*), the Constitutional Court reviews the administrative agency’s duty to act in accordance with the following requirements (Constitutional Court’s decision No. 2012-hunma-89-955).

「Pursuant to Article 68 (1) of the Constitutional Court Act, a person whose basic rights guaranteed under the Constitution is infringed “by the exercise or non-exercise of Governmental authority” may submit a constitutional complaint to the Court. A constitutional complaint challenging the omission of an administrative authority is permissible when (i) the duty to act originating from the Constitution is specifically set forth to the administrative authority, and (ii) the citizen holding basic rights can require an administrative action, (iii) but such administrative authority negligently does not perform its duty. The meaning of the clause “duty to act originating from the Constitution is specifically set forth” includes those instances (i) when the duty to act on the part of a governmental authority is expressly stipulated in the Constitution, (ii) when the duty to act on the part of a governmental authority can be derived from the interpretation of the Constitution, and (iii) when the duty to act on the part of a governmental authority is specifically described in the statute (see Constitutional Court’s decision No. 2003-hunma-898, decision No. 2009-hunma-621).」

The Respondent President’s duty to enact administrative legislation with regard to the defense against the climate change or reduction of the greenhouse gases (i) is not directly defined in the Constitution, but (ii) the Government’s constitutional duty to act to respond to climate change is obviously recognizable through the interpretation of the Constitution, and (iii) the Government’s duty to set greenhouse gas reduction targets is also clearly prescribed in the statute, Article 42(1)1 of the Low Carbon Act.

First, it has been discussed in detail earlier in this Supplemental Brief whether there exists a State’s duty to protect basic rights concerning the risk of climate change according to the interpretation of the Constitution. The summary of the aforesaid discussion is as follows. Article 10 of the Constitution guarantees the rights of human dignity and value, and the right

to pursue happiness. Article 34 stipulates the specific principles and rights based on its principles such as the right to live a life worthy of human beings, and Article 35 guarantees the right to live in a healthy and pleasant environment. In addition, Article 36(3) of the Constitution, a provision about the State's protection of welfare, stipulates the State's responsibility for the welfare and health of its people. The State's obligation based on the interpretation of the Constitution to respond to climate change and to reduce greenhouse gas causing climate change can be derived therefrom. By doing so citizens can maintain their mental sanity and physical health, and live their lives without being exposed to the destruction of the ecosystem and abnormal environmental surroundings caused by global warming and climate change. If the State's obligation to protect its people's basic rights with regard to climate change and greenhouse gas reduction is recognized, such State's obligation to protect basic rights should be implemented in detail through legislation by the National Assembly and the enforcement by the Government. Therefore, the constitutional obligation of the President (head of the Government) to take action (an obligation to protect basic rights) to implement effective and responsible administrative legislation and administrative enforcement measures, so as to cope with climate change and to reduce greenhouse gas emissions, is clearly recognizable under the interpretation of the Constitution.

Second, there can be no dispute over the fact that the President's obligation to enact administrative legislation to reduce greenhouse gases is specified in the statute in Article 42(1)1 of the Low Carbon Act as follows.

Article 42 (Climate Change Response and Energy Objective Management)

(i) The Government shall set up medium and long-term targets attached to each particular phase for the following matters and seek active measures necessary for accomplishing the targets in order to cope with the global reduction of greenhouse gases and to promote low

carbon, green growth efficiently and systematically:

1. Greenhouse gas (GHG) Reduction Target

A constitutional complaint can be brought to the Constitutional Court centering on the provisions stipulating the greenhouse gas reduction target and its implementation thereof, *when* the president's administrative legislation under the mandate of the Low Carbon Act establishing and implementing a goal of reducing greenhouse gas is *insufficient* to prevent the climate change crisis and, therefore, there is a serious danger of infringing on the lives and the physical safety of the citizens. If the provisions that received delegation from the Low Carbon Act do not exist at all, a petition may be filed against such complete omission or genuine non-performance (*echtes unterlassen*) of administrative enactment. Under the current legal statutes, however, because Article 25(1) of the Low Carbon Decree, which is subordinate to the Low Carbon Act, sets forth the reduction target of the greenhouse gas, the issue of complete omission or genuine non-performance (*echtes unterlassen*) is not applicable.

However, a constitutional complaint to the Court can be made regarding partial omission or quasi non-performance of the administrative enactment (*unechtes unterlassen der Gesetzgebung*) when the Low Carbon Decree concerning the reduction goal of the greenhouse gas incompletely and inadequately sets forth the reduction goal, resulting in a violation of the duty to protect basic rights. This is the nature of this constitutional complaint to the Court, dealing with the content of the Low Carbon Decree mentioned hereinabove.

(3) Incompleteness and inadequacy of the 2030 Greenhouse Gas Reduction Target – breach of duty to protect basic rights

Under the circumstance where an international consensus regarding the reduction of

greenhouse gas is achieved and where a disaster is imminent due to climate change, a responsible effort by each country is necessary to prevent the disaster by establishing and implementing greenhouse gas reduction goals. Regardless of the issue of whether an international sanction will be imposed in the event of non-performance under the enforceable terms of the international treaties, the duty of the Republic of Korea to protect the basic rights concerning the response to climate change and the reduction of greenhouse gas is a duty to protect the basic rights recognizable from the interpretation of the Constitution, arising out of the basic principles of the Constitution itself and multiple provisions of the Constitution protecting the basic rights. Therefore, only when the Korean Government sets out in regulation the basic criteria and standard for setting a greenhouse gas reduction target above the minimum standard set forth in the international treaties, it will be seen as having taken the minimum measure to protect the basic rights of the Korean citizens.

Article 25(1) of the Low Carbon Decree specifies the target amount of greenhouse gas reduction. Under the present provision, the goal is “to reduce total nationwide emissions of greenhouse gases in 2030 by 24.4 percent of the country’s total greenhouse gas emissions in 2017.” If this is followed, the emission reduction goal in Korea by 2030 is calculated as 536 million tons. One of the main issues of the instant petition is whether the stipulated goal of reducing greenhouse gases by 2030 under the current Low Carbon Decree is appropriate and is the appropriate and efficient minimum measure to protect people’s lives and physical safety from the climate change crisis. However, the target amount of greenhouse gas reduction in this Low Carbon Decree falls far short of the expected reduction of greenhouse gases to “well below 2°C” suggested by the scientific community and the international standard. Moreover, the targeted amount falls significantly short of meeting the figure of “1.5°C” which is the standard of the international community concerning the anticipated

reduction of greenhouse gases established in response to the rapid increase in the current global temperature and to be on the safe side. The reasons are as follows.

First of all, according to paragraph D.1.1. of the IPCC Special Report on Global Warming of 1.5°C (“IPCC 1.5 Special Report”) adopted at the conference held in Songdo, Incheon, Korea on October 6, 2018, “the reduction targets adopted by each country by 2030 will result in global warming of about 3.0°C.” It is also stated in page 10 of the Executive Summary of the UNEP (United Nations Environmental Plan) Emission Gap Report that it is certain that the Earth’s temperature will rise above 3.2°C by the end of the 21st century if the current national reduction plan is carried out.

In this regard, the Respondent Korean Government also acknowledged in page 39 of the 2015 Second National Climate Change Adaptation Plan (Exhibit 2) that “if the current (1981-2010) greenhouse gas reduction policy is implemented (RCP 4.5), it is expected that the increase of 2.4°C in the mid-21st century and the increase of 3.0°C in the late 21st century will occur.”

Thus, we can find that there is no dispute between the Petitioners and the Respondents in that with the current reduction goal of greenhouse gases, it would be impossible to keep a rise in global warming at the minimum standards set under the Paris Accord.

Based on the UNEP’s 2019 report, applying the target ratio of greenhouse gas emissions by each country to limit global temperature rise “well below 2°C” or “1.5°C”, Korea is required to reduce ▼ 27% more than its 2030 target to meet “well below 2°C” goal and ▼ 57% more than its 2030 target to meet “1.5°C” goal, respectively. Therefore, in accordance with the above UNEP report, Korea’s 2030 Greenhouse Gas Reduction Target, which should meet the minimum standards of the Paris Accord, should be further reduced by

at least 145 million tons (for well below 2°C) to 300 million tons (for 1.5°C) from the current 536 million tons (see Petitioners' Constitution Complaint dated March 13, 2020, pages 17-19).

The Petitioners made detailed claims and explanations that the 2030 Greenhouse Gas Reduction Target objectively and scientifically fell short of the Paris Accord minimum standards of well below 2°C and 1.5°C in our Constitutional Complaint to the Constitutional Court, dated March 13, 2020 (see pages 17~19) and in the Petitioner's Supplementary Complaint, dated May 15, 2020 (see pages 62-74), "C. Evaluation of Korea's Greenhouse Gas Reduction Target." The main grounds are: (i) the assessment of the UNEP Environmental Plan's Emissions Gap Report, (ii) the evaluation of carbon budget distribution, (iii) the evaluation of international research groups such as Climate Action Tracker and (iv) Korea's significantly passive approach to reduce greenhouse gases compared to the other countries' response to climate change, i.e., only a small reduction of emission compared to 2010.

Recently there was a remarkable event related to this point. At the plenary session of the Respondent National Assembly of Korea on September 24, 2020 "A Resolution to address an emergency measure on the climate crisis" was passed. The Respondent National Assembly declared the present situation as a climate crisis emergency situation and called on the Government to raise its 2030 Greenhouse Gas Reduction Target to meet the IPCC 1.5 Special Report's recommendation of minimum 45% reduction target compared to 2010 in order to limit temperature rise to below 1.5°C.⁴

Korea's greenhouse gas emissions in 2010 were 657 million tons. Consequently, a

⁴ Link to the article about this issue <http://www.hani.co.kr/arti/society/environment/963587.html>
(Last visited: January 25, 2021.)

45% reduction from 2010 as required by the National Assembly would result in approximately 361 million tons of greenhouse gas emissions in 2030. This would be about ▼175 million tons less than the current 536 million tons or about ▼32.6% lower in percentage terms. What is particularly eye-catching about the Respondent National Assembly's recent resolution is that it is almost completely consistent with the fact that Korea's 2030 Greenhouse Gas Reduction Target should be raised by at least 30 percent, coinciding with the assertion of the Petitioners and international organizations.

The Government has also recently acknowledged the current problem of national greenhouse gas reduction targets. In December, the Korean Government announced its vision to achieve carbon neutrality by 2050 by recognizing the seriousness of climate change and to limit temperature rise to below 1.5°C as recommended by the IPCC. The Minister of Environment expressed his intention to raise the "2030 greenhouse gas reduction target."⁵ This fact, along with the resolution of the National Assembly, shows that the legislative branch and the administrative branch of Korea are aware that the current target of reducing greenhouse gas emissions by 2030 is insufficient for Korea's response to climate change and fulfillment of its obligation to reduce greenhouse gases. In other words, both the Respondent National Assembly and the Respondent President are publicly acknowledging that the Low Carbon Decree cited in the instant petition is insufficient and inadequate to fulfill the State's obligation to protect the basic rights.

Although both Respondents, the National Assembly and the Government, acknowledge that the current 2030 Greenhouse Gas Reduction Target is insufficient and inadequate, there is no guarantee whatsoever that the *current law* (Low Carbon Act and Low

⁵ Link to the article about this issue

<http://www.segye.com/newsView/20201206513705?OutUrl=naver> (Last visited: January 25, 2021.)

Carbon Decree) will provide for minimum protection for the basic rights of the people. The recent declaration by the President of carbon neutrality by 2050 would be good in itself, but we need a concrete method, willingness to implement it, and legal guarantees to ensure that the policy does not become meaningless if there is a change in administration. Recently, as stated above, the National Assembly and the Minister of Environment stated that the 2030 reduction target was insufficient and needed to be strengthened. They emphasized the necessity of reducing (↓) the quantity of emissions, but in the end, on December 31, 2020, the Government submitted a NDC plan without any change to the State's reduction target of greenhouse gases to the United Nations. The recently submitted NDC plan was substantially identical to the previous plan. Because the reduction of greenhouse gas emissions cannot be achieved by verbal promise, but only by concrete action, the Government's policy responding to current climate change has no effective guarantee. This is the reason why the Constitutional Court needs to declare as unconstitutional the Low Carbon Act and the Low Carbon Decree, which are challenged in this petition.

Under Article 42 of the Low Carbon Act and Article 25 (1) of the Low Carbon Decree reduction targets for greenhouse gases are established. Thereafter, specific reduction targets and administrative standards are established by converting the reduction targets to various sectors and industrial structures. However, according to the Government's own assessment, as well as international assessments, the Republic of Korea has proposed a total reduction goal of greenhouse gases that falls far short of the minimum standard of quantity reduction for each country to cope with the imminent climate crisis. Even if individual countries set specific national reduction target (NDC) in consideration of specific circumstances and conditions, and are given legislative and mandated enforcement discretion, it should be determined that the State failed to minimally provide proper and effective

response to protect lives and physical safety of the people if the total reduction in quantity of each country does not meet the minimum standard required under climate science and international regulation to combat climate change.

According to the Written Statement of October 29, 2020 submitted by the Respondent 2 President, he has provided *no* explanation, *no* argument *at all*, or proof that the current 2030 Greenhouse Gas Reduction Target is a target that can achieve the minimum standard of “effort for well below 2°C and strive for 1.5°C” based on the Paris Accord. This also proves that Korea’s 2030 Greenhouse Gas Reduction Target is a figure *arbitrarily* selected by the Government and not a reduction target that can effectively contribute to achieving the reduction target of the Paris Accord.

(4) Standing

The provisions of the Low Carbon Decree applicable to the instant petition is an administrative legislation which was enacted based on the President’s executive action. Because the contents of the administrative legislation are grossly inadequate to fulfill the State’s obligation to protect the basic rights, the instant petition meets the subject matter requirement under Article 68(1) of the Constitutional Court Law for filing a petition to the Constitutional Court.

There is no issue with the statute of limitation of this petition to the Constitutional Court since the petition was submitted on March 13, 2020, challenging the constitutionality of the Low Carbon Decree which was amended on December 31, 2019.

(5) Solution - Declaration of unconstitutionality of the 2030 Greenhouse Gas Reduction Target by the decision of constitutional nonconformity

The Low Carbon Decree applicable to the instant petition is closely linked to Article 42 of the Low Carbon Act. Therefore, if the Constitutional Court declares the provisions from

the Low Carbon Act and the Low Carbon Decree applicable to the instant petition as unconstitutional and decide on the nonconformity with the Constitution, the Respondent National Assembly can revise Article 42 of the Low Carbon Act within a certain period of time, and/or the Respondent President can revise the greenhouse gas reduction target prescribed in Article 25 (1) of the Low Carbon Decree. Of course, it will be at the legislature's autonomous discretion whether the legislature will revise the Low Carbon Act (i) by directly stipulating the 2030 greenhouse gas reduction target or (ii) by delegating them to the Low Carbon Decree while specifying the scope and standards of the greenhouse gas reduction target in the Low Carbon Act.

There is sufficient scientific standard for the Respondent President to revise the Low Carbon Decree (or for the Respondent National Assembly to enact in the Low Carbon Act itself) to revise the 2030 greenhouse gas reduction target without violating the Constitution. This is because the international community has specifically agreed on climate change temperature restrictions through the Paris Accord, and the IPCC-represented climate scientists and Government consultative body also suggests the level and path of greenhouse gas reduction for minimal protection against climate change. In addition, the suggestion of the UNEP report (the international organization's survey report) for at least ▼ 27% (2°C standard) to ▼ 57% (1.5°C standard) additional reduction, assessment of internationally recognized reports such as CAT (Climate Action Tracker), and implementation of 2020 reduction target (543 million tons) abandoned by the Respondent President, can all serve as bases for the standard for revising reduction target of greenhouse gases by strengthening 2030 reduction target.

Especially, the “strong request for emergency response to climate crisis” resolution of September 24, 2020 by the National Assembly which has the legislative duty and the

legislative power concerning the 2030 reduction target of greenhouse gases called for an increase to be in accord with the ▼45% reduction target as compared to 2010 greenhouse gas emission amount. More specifically, the fact that a strong request was made to the Government to decrease the present 2030 reduction target by an amount of about ▼175 million tons, representing ▼32.6 % reduction in emissions more than the current 2030 reduction target, should be viewed as having a great significance in the review and litigation of the instant petition to the Constitutional Court.

The resolution by the National Assembly hereinabove, first not only recognizes the “need” to increase the current greenhouse gas reduction target, but secondly, suggests the “standard” for revising the 2030 reduction target of greenhouse gases, and thirdly, offers a practical “possibility” of more aggressively establishing and implementing to reduce by a minimum of 30% more than the present reduction target. The resolution is effectively saying that, in the event a decision of nonconformity with the Constitution by the Constitutional Court is rendered, the National Assembly or the Government, under a proper delegation from the National Assembly, can constitutionally establish and implement such aggressive reduction.

Without the pain of change, the fruit of climate change response and greenhouse gas reduction cannot be obtained. The fact that Korea has set the 2020 Greenhouse Gas Reduction Target, but has abandoned it without implementing it at all, demonstrates that the power of the National Assembly and the Government alone may not be sufficient to endure the pain of this change. When the President (the Government) and the National Assembly (the legislative body), who are elected and get replaced through periodic elections, do not have enough power or strong will to make constitutional responses to climate change in legislating and implementing responses to climate change, the Constitutional Court's

declaration of unconstitutionality of the law, enforcement decree and Government measures will serve as a catalyst to the National Assembly and the Government. Such judicial action would enable the National Assembly and the Government to make a strong effort to respond to the climate change with the concrete and unavoidable constitutional mandate.

C. Abandonment and lack of enforcement of the 2030 greenhouse reduction target by the Respondent President

- Breach of obligation to protect basic rights by the administrative agency resulting from its insufficient action (*unechtes unterlassen*)

(1) The President's obligation to take action regarding the 2030 greenhouse reduction target

(i) Legality requirements for filing a constitutional petition against the non-performance (*unterlassen*) of an administrative agency

Pursuant to Article 68 (1) of the Constitutional Court Act, a person whose basic rights guaranteed under the Constitution are infringed “by the exercise or inaction of Governmental authority” may submit a constitutional complaint to the Constitutional Court. A constitutional complaint challenging the omission or inaction of an administrative authority is permissible when (i) the duty to act originated from the Constitution is specifically set forth to the administrative authority, and (ii) the citizen holding basic right can require an administrative action, (iii) but such administrative authority negligently does not perform its duty. The meaning of the clause “duty to act originated from the Constitution is specifically set forth” includes those instances (i) when the duty to act of a governmental authority is expressly stipulated in the Constitution, (ii) when the duty to act of a governmental authority can be derived from the interpretation of the Constitution, and (iii) when the duty to act of a governmental authority is specifically described in the statute (see Constitutional Court's

decision No. 2012-hunma-89-955).

(ii) Obligation to take action of the administrative agency (the President) about the greenhouse gas reduction target

The Republic of Korea has a duty to protect its citizens' basic rights in responding to climate change and in reducing greenhouse gas emissions. The State's obligation to protect is performed through the National Assembly's legislative action and the Government's enforcement action. As the head of the Government, which is responsible for the fulfillment of the obligation to protect the people's basic rights regarding the response to climate change and reduction in greenhouse gases, the Respondent President has an obligation based on the interpretation of the Constitution.

Also, the Respondent President has a statutory obligation to enforce the greenhouse gas reduction target as the head of the Government. Article 3 of the Low Carbon Act stipulates the Government's basic responsibility for responding to climate change, Article 9 of the same Act stipulates the Government's obligation to establish and implement national strategies for responding to climate change, and Article 42 of the same Act stipulates the establishment of reduction target by the Government of greenhouse gases and implementation of matters related to the reduction target.

(iii) Administrative Agency (the President)'s Omission or Insufficient performance of the duty to act

After the lapse of December 31, 2020, the 2020 Greenhouse Gas Reduction Target year, it is objectively an indisputable fact that the Respondent President has failed to fulfill his duty to implement the 2020 Greenhouse Gas Reduction Target of 543 million tons.

Specifically, the Respondent President, by enacting Article 25 (1) of the Low Carbon

Act, established “the 2020 Greenhouse Gas Reduction Target” to “reduce the total national greenhouse gas emissions by 30% of 2020.” The Reduction Target figure was 543 million tons. According to the Government’s announcement actual greenhouse gas emissions in 2018 was 727 million tons, far exceeding the 2020 Greenhouse Gas Reduction Target of 543 million tons. The excess is ▲184 million tons in volume and ▲34% in percentage terms. The estimated emission figure for 2019 is about 703 million tons. Even before the announcement of the volume of emissions for 2020, there can be no disagreement over the fact of the failure or inadequate performance of the Respondent President’s obligation to implement the 2020 Greenhouse Gas Reduction Target.

Furthermore, on May 24, 2016, the Respondent President revised Article 25(1) of the Low Carbon Act by substituting the 2020 Greenhouse Gas Reduction Target with 2030 Greenhouse Gas Reduction Target. It was as if the 2020 Greenhouse Gas Reduction Goals did not exist. It also exhibited an attitude of just giving up without putting in any serious effort. These actions clearly demonstrate that the Respondent President failed to carry out the obligation to implement the 2020 Greenhouse Gas Reduction Target.

Does the Respondent President’s establishment of the 2030 Greenhouse Gas Reduction Target through the revision of the 2016 Low Carbon Decree have a legal and constitutional effect of abolishing or nullifying the 2020 Greenhouse Gas Reduction Target? The Respondent President has not made any comment or explanation on this issue either at the time of the amendment of the Low Carbon Decree or afterwards. Logically, there are two possibilities: (i) additional 2030 Reduction Target is established and co-exists with the 2020 Reduction Target and (ii) the 2030 Reduction Target is established and the 2020 Reduction Target is extinguished. Whichever is the situation, it is impossible to interpret that the Respondent President’s constitutional commitment to implement the 2020 Greenhouse Gas

Reduction Target is automatically eliminated and, therefore, the President is exonerated. In the case of (i) above, “omission or non-performance of the existing 2020 Reduction Target” will be recognized as a violation of the President’s obligation, and in the case of (ii) above, “omission or non-performance resulting from an abandonment of the 2020 Reduction Target” will also be recognized as a violation of the President’s obligation. In both situations, the fact that the Respondent President committed a violation of his obligation is the same.

(iv) Subject Matter requirement for the constitutional complaint

As such, the Respondent President has an obligation to execute the 2020 Greenhouse Gas Reduction Target, and the fact that the Respondent President has failed to perform such a duty, or that his performance was inadequate, is very clear. The subject matter before the Court satisfies the criteria of “exercise or inaction of state power,” meeting the legal requirement for review by the Constitutional Court.

If the executive branch which has an obligation to implement the greenhouse gas reduction target under the Constitution and other laws completely fails at implementation, it would constitute a complete omission of an administrative obligation (*echtes unterlassen*). If some of the greenhouse gas reduction measures have been implemented, but if the measures do not meet the standard required to guarantee the basic rights under the Constitution, thereby resulting in a possible infringement of the basic rights, it would constitute a partial omission or non-performance of an administrative obligation (*unechtes unterlassen*). Accordingly the Constitutional Court can review the constitutionality of the partial omission outlined in this petition.

The instant petition to the Constitutional Court can be categorized as a partial administrative omission or inaction (*unechtes unterlassen*). Related to the 2020 Greenhouse

Gas Reduction Target, the President had taken partial actions, but continuously failed to fulfill the yearly reduction targets. After 2016, the 2020 Greenhouse Gas Reduction Target has in fact been abandoned from the beginning. It is very clear that the act of the President in implementing the 2020 Greenhouse Gas Reduction Target fell far short of the minimum standard and responsible performance necessary for guaranteeing the basic rights under the Constitution. An administrative partial omission or inaction (*unechtes unterlassen*), the subject matter of this petition, satisfies the legal requirement for a petition to the Constitutional Court.

(3) Non-performance and abandonment of the 2030 Greenhouse Gas Reduction Target – breach of obligation to protect basic rights

(i) The Government's failure to reduce greenhouse gas emissions

Now, we would like to discuss in detail how the President's non-execution and abandonment of the 2020 Greenhouse Gas Reduction Target constitutes a direct violation of the State's obligation to protect citizens' basic rights.

As elaborated above, the State has an obligation to protect the people's right to life, environmental rights, and basic rights to safety and health in Korea as a response to climate change and reducing greenhouse gas emissions. The State's function of enforcing the State's obligation to respond to climate change and reduce greenhouse gas emissions is the responsibility of the Government led by the Respondent President.

Korea began to enact and enforce the State's obligation to cope with climate change and reduce greenhouse gas emissions by enacting laws such as the Low Carbon Act in 2010 and establishing 2020 goals for greenhouse gas reduction in the Low Carbon Decree. Now in 2021, ten years since the enactment of the Low Carbon Act, the global climate crisis and

global temperature rise have rather intensified.

If Korea had implemented its 2020 Greenhouse Gas Reduction Target designated in 2010 seriously and responsibly over the subsequent 10 years (2010~2020), Korea's greenhouse gas emissions would be at 543 million tons as of 2020, a reduction of ▼20% from 675 million tons in 2010. But the Respondent President and the Government have not seriously implemented their 2020 Reduction Target and even abandoned them since 2016.

As a result, the government's actual emissions of 727 million tons in 2018 have already exceeded the 2020 target of 543 million tons by ▲184 million tons or ▲34 percent in percentage terms. The government not only failed to implement its 2020 Greenhouse Gas Reduction Target (543 million tons), but substituted the 2020 Reduction Target of 543 million tons with the 2030 Reduction Target of 536 million tons, resulting in a loss of 10 years' time. Accordingly, it is quite evident that during the period of ten years from 2010 to 2020, the Respondent President has failed to implement the 2020 Greenhouse Gas Reduction Target (543 million tons), which was established in 2010.

(ii) The government's *underprotection* of basic rights in implementing the 2020 Greenhouse Gas Reduction Target

The Constitutional Court of Korea states that, “When the State has an obligation under the Constitution to protect the basic rights of the people, the Constitutional Court can review and judge whether the State is properly implementing the duty to protect basic rights, This is true even if we acknowledge that, in principle, the State's responsibility on how to fulfill the obligation to protect the basic rights falls within the responsibility of the legislature. The standard of constitutional review must be whether there was a violation of the *principle of prohibition of underprotection*, asking whether the State has taken the appropriate and effective minimum protective measures?” (See Constitutional Court's decision No.

2006-hunma-771).

Related to the above principle, the Constitutional Court recently made an affirmative decision on a constitutional complaint against the Public Office Election Law. The Court, in its decision No. 2018-hunma-730, declared constitutional nonconformity based on the principle of prohibition of underprotection related to an environmental right. The Court stated as follows:

“When the Constitutional Court reviews the issue of whether the State has fulfilled its obligation to protect the right of the people to live in a healthy and pleasant environment, the standard of review should be whether “the principle of prohibition of underprotection” was violated. In other words, the test should be whether the State took at least an appropriate and effective minimum protective measure. (. . .)

In light of the obligation imposed on the State under Article 35 (3) of the Constitution to make an effort to provide for the people a favorable living environment allowing for healthy and pleasant livelihood, a failure to provide appropriate and effective minimum protective measures, resulting in an under-implementation of the State’s obligation to protect the basic rights, infringed on the petitioner’s right to livelihood in a healthy and pleasant environment. It is a violation under the Constitution.”

In the instant case, the Korean government cannot allege that an appropriate and effective minimum effort was made related to the 2020 Greenhouse Gas Reduction Target. The clear evidence for this is that after the revision of the 2016 Low Carbon Decree, the greenhouse gas reduction target for 2020 was abandoned as if the target had never existed. During the period from 2016 to 2020, it appeared as if Korea had no greenhouse gas reduction target, neglecting the fact that greenhouse gas emissions were continuously rising.

Therefore, the Respondent President's failure to enforce and thus abandonment of the 2020 Greenhouse Gas Reduction Target is as big, or bigger than, the constitutional violation found in the 2018-hunma-730 decision cited above. Such failure is "a violation under the Constitution by infringing on the rights of the Petitioners to live in a healthy and pleasant environment when the State did not take appropriate and effective minimum protective measures and by under-implementing the State's obligation to protect the basic rights."

(4) With respect to Standing

If the Respondent President's decision to abandon the 2020 Greenhouse Gas Reduction Target is viewed as having been ended on December 31, 2020, the last day of the target year, there is no problem with the statute of limitation of the petition since the petition was filed on March 13, 2020, before the date of December 31, 2020.

Regarding the statute of limitations, the following facts and reasons also should be recognized: the fact that the Petitioners are minors and as such "*justifiable reason*" should be recognized, the fact that the statute of limitation for petitions is not applicable since the "*future damage*" will accumulate and continue to occur in the future, and the reason that the nature of the instant petition represents a strong case of *constitutional importance* for the interpretation of the Constitution.

A question can be raised whether it is necessary to rule on the unconstitutionality of the Respondent President's omission or inaction as the target year of the 2020 Greenhouse Gas Reduction Target has already passed.

Related to the instant petition, the fact that the Respondent President had "not only failed to enforce the 2020 Greenhouse Gas Reduction Target, but abandoned it" over a ten-year period from 2010 to 2020 following the enactment of the Low Carbon Act and the Low

Carbon Decree is the evidence of “lack of action regarding response to climate change” and the central issue of the Respondent President’s constitutional violation. Regarding the response to climate change and greenhouse gas reduction, the Korean National Assembly and the President have over the last ten years made promises through enactment of law and enforcement decree, but did not carry out any actual action at all.

First, the unconstitutionality of Article 42 of Low Carbon Act, applicable to the instant petition, resulted in the non-execution and abandonment of the 2020 Greenhouse Gas Reduction Target. Second, judging by the non-execution and abandonment of the 2020 Greenhouse Gas Reduction Target the implementation of the 2030 Greenhouse Gas Reduction Target cannot be guaranteed. Third, the 2030 Greenhouse Gas Reduction Target (536 million tons) is effectively the same as the 2020 Reduction Target (543 million tons). It is simply a postponement of ten years, a serious delay in the response to climate change. Additionally, the non-execution and abandonment of the 2020 Greenhouse Gas Reduction Target was a contributing factor.

Accordingly, related to the instant petition, Petitioners not only request that the Court review and hold that Article 42 of the Low Carbon Act and Article 25 (1) of the Low Carbon Decree, which violated the State’s obligation to protect the basic rights, be held unconstitutional, but would also like to request the Constitutional Court to hold that “the Government is seriously responsible for the violation under the Constitution by wasting the last ten years (2010 ~2020) during which the Government should have actively protected the basic rights of the people concerning Korea’s response to the climate change and greenhouse gas reduction. This would add to the *constitutional importance* of this case.

3. Conclusion

For the above reasons, (i) Article 42 of the Low Carbon Act, (ii) Article 25 (1) of the

Low Carbon Decree, and (iii) the Failure of the Respondent President to take measures to implement the 2020 Greenhouse Gas Reduction Target and abandoning it clearly violated all of the State's obligations to protect the basic rights regarding responses to climate change and greenhouse gas reduction. These omissions by the State inevitably led to an underprotection of the basic rights of the people.

On these matters, the Petitioners respectively request the Court to rule on the violation of the Constitution.

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