

The aim in the op-ed below is to catch the attention of key judges on the Supreme Court, before they decide whether they will review the puzzling decision of the D.C. Circuit Court that the Federal Government has no trust obligations to young people and the unborn. However, the Court very seldom chooses to review Circuit Court decisions, so the odds are slender.

Young people are people. The U.S. Constitution guarantees equal rights, equal protection of the laws, and due process to all people. As I have argued for years, and as we note in [our paper published last December](#), these most fundamental rights should be the basis for legal action to require the government to do its job. Such pressure is needed and we intend to pursue it.

James Hansen, 18 November 2014

Earning Our Children's Trust

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Our Constitution was established to “promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.” And yet, our government persists with a business-as-usual path, despite the overwhelming scientific consensus that continued carbon emissions threaten the climate system on which civilization and nature as we know it depend.

In our view, the climate crisis cannot effectively be addressed by weak regulatory action and feeble statements of intent — such as those recently announced by the U.S. and China — while we maintain our present massive subsidization of the fossil fuel industry. We need a new approach, one grounded in government’s fundamental duty to safeguard essential natural resources in trust for our children and those yet to be born.

The idea that essential resources, such as the “air, running water [and] the sea,” are held in “common to all mankind,” stems at least from the sixth century code of ancient Rome. Blackstone, writing in his *Commentaries on the Law of England*, brought it forward to the 18th Century, noting that, notwithstanding developments in property law, certain resources must “unavoidably remain in common [including] the elements of light, air, and water.”

Our Supreme Court has also recognized the public trust doctrine, both as a limitation on government action and a source of its affirmative duty. In 1892 it held, for example, that government may not fully sell off public resources and so deprive future legislatures of their authority to provide for the people. Neither may government mismanage resources that it holds in trust for the people as part of the public domain.

But no one has raised to the Court the question whether, by its failure to ensure that carbon emissions are reduced, our federal government is in violation of its fundamental public trust obligation. Until now.

Last month climate activists representing the interests of young children and others submitted to the Court a petition for certiorari seeking review of a 2013 decision by the D.C. Circuit Court. That Court held that the public trust doctrine applies to states, but not to the federal government. In our view, that simply cannot be correct. The federal government not only is vested with inherent authority to protect essential natural resources, it is also uniquely situated to protect resources in which the nation as a whole retains an interest. That includes, prominently, the atmosphere.

Accordingly, climate scientists led by one of us (Hansen) have now filed a “Friend of the Court” brief urging the Supreme Court to decide the issue. In it, the scientists note that the level of atmospheric CO₂ functions as the long-wave control knob on the planet’s thermostat, so that our decisions today will determine whether or not the climate system remains viable for our children and future generations.

The problem arises from that fact that, by burning coal, oil and gas, we have driven atmospheric CO₂ from its preindustrial concentration of 280 parts per million to nearly 400 ppm. CO₂ acts as a blanket, reducing Earth’s heat radiation to space, and thus causing a planetary energy imbalance — more energy coming in than going out. This imbalance already has driven global temperature up 1.5 degrees Fahrenheit. From the measured energy imbalance today we know that more warming is “in the pipeline.” It is essential to our nation’s future that we act with courage and without delay to reduce the atmospheric CO₂ to 350ppm or less.

In light of the short window for action — as detailed, once again, in the recent consensus report of the Intergovernmental Panel on Climate Change — the Court must act to hold our government to its fundamental duty. That includes adherence to significant commitments, including our 1992 pledge to “protect the climate system for present and future generations” by stabilizing atmospheric CO₂ at a level that “prevents dangerous anthropogenic interference with the climate system.”

Yet CO₂ emissions remain unabated, and our nation persists in subsidizing fossil fuels as if there were, literally, no tomorrow. We have now sped well into the danger zone, with emerging effects including more extreme heat waves, droughts and damaging fires; energized storms with heavier rains and greater floods; poleward spreading of warm-climate pests and disease vectors; growing extirpations of species; global melting of glaciers and ice sheets, with rising seas impacting every coast.

In this context our government’s inaction works to consign our children and their progeny to a planet that is far less conducive to their survival — an egregious violation of the fundamental trust obligation. The Court should decide this case and reject the notion that the federal government is exempt from the public trust. That will empower a lower federal court to require the government at least to explain how its plans could safeguard the climate system. Our political leaders must not be allowed, in violation of the public trust, blithely to ignore our children’s future.