

## March 14 Program – Juliana v. United States

The first week of June could be a climactic point for the future of the “climate Kids” litigation, Juliana v United States. That is the time when a panel from the Ninth Circuit Court of Appeals, sitting in Portland, will hear oral arguments both on a motion to appeal the District Court’s denial of a motion to dismiss brought by the defendants, and a motion for a preliminary injunction, which would bring a temporary halt to a large number of activities the plaintiffs allege breach the government’s duty to stop damaging the environment.

Professor Mary Christina Woods and Coreal Riday-White updated Springfield City Club on the litigation on March `14. The lawsuit alleges that the federal government, for many years has failed to protect residents by administering environmental and other laws in a way which adversely changes climate and endangers citizens and their life, liberty and property.

The lawsuit was initiated in 2015, naming then-President Obama, and officials of his administration as defendants. In 2017, the current President and administration officials were substituted in their official capacities. According to the presenters, the lawsuit raises four basic claims. The most novel of the claims is based on work by Professor Wood who is often credited as the originator of the application of the public trust doctrine to environmental claims. That doctrine, which asserts that all government derives its power from the citizens, and that it was given that power in a way that established a public trust, obliges the government to act in ways which protect the people. The claim is raised in this case in a somewhat novel way, asserting that the affirmative acts of the government – environmental management, permitting, etc., have created harm This approach is interesting because it simplifies the plaintiffs’ burden. They do not assert that the government has failed to act (which would require them to prove a duty to act before moving on to claim damages have resulted). Rather they assert that actions that have admittedly occurred create the damage and that the environmental laws are being administered in a way which encourages what they should be designed to prevent. This approach means the plaintiffs only need to prove that damage has resulted. It is the application of the public trust doctrine, which is a long established legal principle, in this way that is the subject of the motion to dismiss that was appealed.

The lawsuit makes three other constitutional claims, all based on the Fifth Amendment:

1. That the government knew of the danger that its activities on environmental regulation were causing and failed in its duty of care to protect plaintiffs from harm;
2. That the administration of the environmental laws has deprived plaintiffs of life, liberty and property without due process of law.’ And
3. That the administration of environmental laws has denied plaintiffs equal protection of the laws because of the disparate impact that the laws have on the variously situated plaintiffs.

These claims are not directly involved in the appeal to be argued in June, although any decision on that appeal might have an impact on those claims.

Apparently, the litigation has inspired a large outpouring of friend of the court briefs, many in support of the plaintiffs, who ranged in age from 8 to 19 when the litigation was filed.

Members of the audience asked what can be done by ordinary citizens. Professor Wood responded by pointing to her own history when her mother became one of the vast number of “victory mothers” who

spoke around the nation raising the alarm to the rise of Nazi Germany. “We need victory mothers” speaking today for the climate, she said. She also urged taxation of carbon, rather than a cap and trade approach, which still allows for substantial CO<sub>2</sub> emissions. The approach should rather be to keep it in the ground.

One questioner noted that the planet will survive (even though life on it will not). The planet can heal itself. He was, perhaps, referring to the third mass extinction in earth’s history, which occurred at the end of the Permian Era, about 350 million years ago and was, interestingly, also caused by climate change. In that case volcanism lasting a million years released frozen methane gas, killing 95 percent of all species existing on the planet.