

Activating My Democracy

- MIDDLE SCHOOL -

LESSON
6

Our Future is a Constitutional Right!

How to use our rights to
defend what we love

ultimate
CIVICS



Activating My Democracy

Civics lessons and resources for grade 6-8
Third Edition, 2018

Explores how to: (1) Move ideas into action; (2) Understand values and liberties (3) Rights, privileges, and the balance of power; (4) Trace the historic roots of the democracy crisis in current events; (5) Repair a democracy and protect our liberties; and (6) Use our rights to defend what we love.

Empowers: Youth by nurturing self-efficacy and teaching skills and strategies to take control of their destiny.

Engages: Youth as change agents to define their roles as global citizens during a critical time in human history.

Special thanks

Our Children's Trust
Sunnyside Environmental School grades 6-8 (2016)
ad hoc focus group of retired teachers of King County, WA

Contributors

Occasional gifts from those able to pay it forward
and the Jane Smith Turner Foundation

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Ultimate Civics, a project of Earth Island Institute



**“Una vez que el cambio social comienza, no se puede revertir.
No se puede educar a la persona que ha aprendido a leer.
No puedes humillar a la persona que siente orgullo.
Y no puedes oprimir a un pueblo que ya no tiene miedo.
Somos el futuro y el futuro es nuestro.”**

***Once social change begins, it cannot be reversed.
You cannot uneducate the person who has learned to read.
You cannot humiliate the person who feels pride.
And you cannot oppress a people who are not afraid anymore.
We are the future and the future is ours.***

~ César Chavez

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Our Future is a Constitutional Right

How to use our rights to defend what we love

Throughout U.S. history, people have used their civil liberties and the power of the courts to defend their civil rights.

Only some of the constitutional rights cases are about recognizing a new fundamental right or a new “protected class” – a group of people who are linked by a defining characteristic and who have been historically discriminated against, based on that characteristic.

“Climate change isn’t just about temperatures and weather, it’s about people. Our earth will be here for millennia, it’s up to us to decide if humanity will be too.”

~ Victoria, youth plaintiff
Juliana v. U.S. climate lawsuit

These particular constitutional rights cases are game changers, in the sense that affirmative action by a court would set legal precedent. It would result in a new body of law to secure protection and benefits under the new rights, in the interest of maintaining our order of society.

Now before the state and federal courts are such game-changing cases. What makes these of interest to educators and students is that the cases are being brought by youth under 18.

These young people are challenging the U.S. government, governments in all 50 states, and governments in 12 other countries over breach of fiduciary duty to protect the climate for their generation. The youth are asking for science-based climate recovery plans and action as judicial relief.

The youth plaintiffs are supported by Our Children’s Trust, a small nonprofit organization in Eugene, Oregon. Julia Olson, a young mother and lawyer, directs Our Children’s Trust and is the lead lawyer in the federal youth climate case.

In the federal climate case, *Juliana v. U.S.*, youth plaintiffs are claiming that the U.S. government has infringed or violated four fundamental rights. Claims are against two rights under the 5th Amendment protections of due process and equal protection, which the youth are claiming as a protected class under U.S. anti-discrimination law. After all, youth, as the youngest generation, will suffer more harm from climate disruption than the older generations they will outlive.

Youth are also claiming a right to a healthy atmosphere and stable climate system as a fundamental right under the 9th Amendment and as beneficiaries under the Public Trust Doctrine.



If a court affirms any of these four claims, it would set legal precedent – and give rise to new legal protections for youth and other people, and for Earth’s atmosphere and climate system.

In several state climate cases, lower courts have already affirmed that the atmosphere and climate system are public trust resources and that the state has a duty to protect these resources under the Public Trust Doctrine (Alaska, New Mexico, Washington). Washington also ruled that youth have a fundamental right to a healthy, pleasant environment.

Further, a Colorado appeals court found that the state has a duty to protect public health and the environment over oil and gas development.

And finally, the Massachusetts Supreme Court handed youth plaintiffs a victory and ordered annual reductions in greenhouse gas emissions. The Governor complied and issued an Executive Order for a climate recovery plan.

These courageous actions by youth set the framework for this 4-part lesson unit to explore the U.S. judicial system; legal concepts like standing, protected class, and the Public Trust Doctrine; how the court recognize new fundamental rights – and how youth might engage in local climate recovery actions to support their peers.

“Climate change is the defining issue of our time. The actions those in power take and decisions they make today, will determine the kind of world future generations will inherit.”

**~ Xiuhtezcatl, youth plaintiff
Juliana v. U.S. climate lawsuit**

Enduring Understanding for Civics Grades 6-8*

- Describe the roles of political, civil, and economic organizations in shaping people’s lives. (D2.Civ.6.)
- Assess specific rules and laws as a means of addressing public problems. (D2.Civ.12.)
- Analyze the purposes, implementation, and consequences of public policies in multiple settings. (D2.Civ.13.)

**C3 Framework for Social Studies State Standards*

<http://www.socialstudies.org/system/files/c3/C3-Framework-for-Social-Studies.pdf>

Essential Questions by Session

- 1. Why do people seek judicial relief when constitutional rights are violated?
- 1. What are the requirements for “standing” to bring a case before a court to seek relief from harm?
- 2. What is a “protected class” and how is it determined?
- 2. How are new fundamental rights recognized?
- 2. What are the basic principles of the Public Trust Doctrine?
- 3. and 4. What are examples of judicial remedies for violations of constitutional rights?
- 4. What makes a case a landmark or game changer?

Learning Objectives

Students can:

- Explain the basic elements of a lawsuit.
- Describe how cases proceed through the court system.
- Explain the basic principles of the Public Trust Doctrine.
- Describe the legal basis – harm and remedy – for the youth-driven climate cases.



Our Future is a Constitutional Right!

How to use your rights to defend what you love

Students consider why people seek judicial relief and then explore the elements of a civil lawsuit, drawing on real examples from the youth-driven landmark climate cases in federal and state courts. Using interactive activities, students explore: 1) the pre-trial requirement for “standing” in a court of law; 2) how protected classes are determined and how new rights recognized under the Constitution and under the Public Trust Doctrine; 3) decisions and remedies; and 4) game-changing cases in five states. Students gain an understanding of how values, law, science, and politics interface when addressing complex public problems with multiple perspectives.

Time

Approximately **four** 50-minute classes:
interactive activities supported by power point slides.

Suggested class sessions

1. Intro and pre-trial activities
2. Trial activities
3. Decisions and remedies
4. Game-changing state cases

Materials & Preparation by Session

Session 1: Intro and pre-trial activities

Materials

- Power point notes and slides 1–9
- 1 single-sided, ½-sheet copy per student of ACTIVITY 1, “Core Vocabulary”
- 1 single-sided copy per student of “Support Vocabulary”
- 4 single-sided copies of the ACTIVITY

2 set of 8 “Statements of standing”

- 1 blank name tag per student

Preparation

- Review power point notes and slides 1–9, including teaching guides for activities and vocabulary
- Give each student:
 - » 1 copy of U.S. Constitution
 - » 1 Core Vocabulary
 - » 1 Support Vocabulary
 - » 1 ACTIVITY “Statement of standing” for role play
 - » 1 blank name tag
- Open space for role play ACTIVITY



Session 2: Trial activities

Materials

- Power point notes and slides 10–21
- 1 pocket copy per student of Declaration of Independence and U.S. Constitution
- 8 single-sided copies per student of “Core vocabulary”
- 8 single-sided copies per student of “Support vocabulary”
- 1 single-sided, ¼-sheet copy per student of ACTIVITY 3, “Jury ballot – protected class”
- 1 single-sided, ¼-sheet copy per student of ACTIVITY 4, “Jury ballot – new right”
- 1 single-sided, ½-sheet copy per student of ACTIVITY 5, “Know your rights!”

Preparation

- Review power point notes and slides 10–21, including teaching guides for activities and vocabulary
- Find page numbers in your classroom’s pocket Constitutions for these activities
 - » Activity on slide 11, 5th Amendment on page ____
 - » Activity on slide 11, 14th Amendment on page ____
 - » Activity on slide 14, 9th Amendment on page ____
 - » Activity on slide 17, Preamble to Constitution on page ____
- Arrange tables in groups of 4 to 6 students
- Place on tables as resources
 - » 2 copies of Core Vocabulary
 - » 2 copies of Support Vocabulary
- Give each student:
 - » 1 copy of U.S. Constitution
 - » 1 ACTIVITY “Jury ballot – protected class”
 - » 1 ACTIVITY “Jury ballot – new right”
 - » 1 ACTIVITY “Know your rights!”

Session 3: Decisions and remedies

Materials

- Power point notes and slides 22–27
- 1 pocket copy per student of Declaration of Independence and U.S. Constitution
- 8 single-sided, ½-sheet copies of “Core vocabulary”
- 8 single-sided copies per student of “Support vocabulary”
- 1 single-sided copy per student of ACTIVITY 6, “You be the Judge!”
- 1 single-sided copy per student of ACTIVITY 7, “Remedies: A wish list”

Preparation

- Review power point notes and slides 22–27, including teaching guides for activities and vocabulary
- Find page numbers in a classroom pocket Constitution for these activities
 - » General activities, Bill of Rights on page ____
- Arrange tables in groups of 4 to 6 students
- Place on tables as resources
 - » 2 copies of Core Vocabulary
 - » 2 copies of Support Vocabulary
- Give each student:
 - » 1 copy of U.S. Constitution
 - » 1 ACTIVITY “You be the Judge!”
 - » 1 ACTIVITY “Remedies: A wish list”

“I thought the Constitution was this big document full of words. Now I understand it is in parts and some of the parts I can use to defend what I love.”

**~ Collin, 8th grade (April 2016),
Sunnyside Environmental School**



Session 4: Game-changing state cases

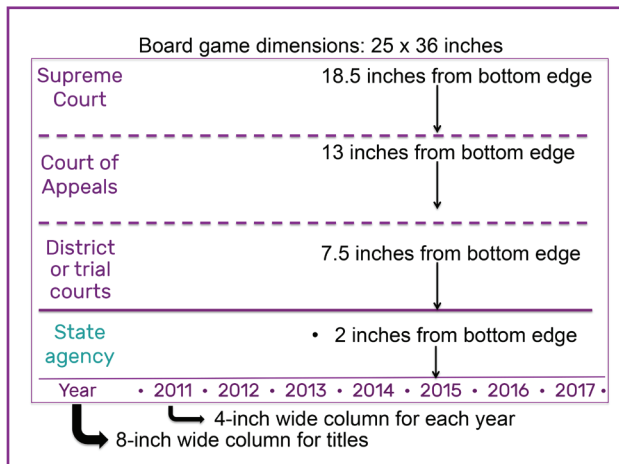
Materials

- Power point notes and slides 28–38
- 8 single-sided copies of “Core vocabulary”
- 8 single-sided copies of “Support vocabulary”
- 1 single-sided, ½-sheet copy per student of ACTIVITY 8, “Board Game Instructions”
- 1 single-sided COLOR copy of ACTIVITY 8, 5-state set of “Board game cards”
- 3 more single-sided copies of ACTIVITY 8, Colorado ONLY board game cards (4 sets in total)
- 8 small envelopes for game card sets
 - » Label 4 envelopes “COLORADO”
 - » Label 1 envelope for each of these states: ALASKA, MASSACHUSETTS, NEW MEXICO, and MASSASSACHUSETTS
- Create game sets
 - » Separate game card sheets by state (in gray graphic)
 - » Cut each sheet apart separately and remove any extra (blank) game cards
 - » Place remaining game cards into appropriate envelope
- 4 sheets of paper 25 by 36 inches
 - » Create 4 Game Changer game boards as shown in diagram

Preparation

- Review power point notes and slides 28–38, including teaching guides for activities and vocabulary
- Arrange tables in 4 working groups of 6–10 students
- Place on table:
 - » 1 Game Changer game board
 - » 1 envelope containing ACTIVITY game set for COLORADO
 - » 2 copies of Core Vocabulary
 - » 2 copies of Support Vocabulary
 - » 1 copy per student of ACTIVITY, “Board Game Instructions”

- Before starting state activities on slide 32, hand out:
 - » 1 envelope per TEAM containing another set of state game cards
- Before starting ACTIVITY on slide 37, hand out: 1 copy per student of ACTIVITY, “Reflections”



Power Point Notes

Lesson 6

1. *Ultimate Civics!* COVER SLIDE

Everyone has a story.

Suggested instruction for teacher

- ADD *your* 1-minute story to set this lesson on organization and structure of civil lawsuits and the court system, and using our rights to defend what you love. Like this.

In 2016, I was invited to give the opening keynote at an Energy Teach-In for 180 middle school students at Sunnyside Environmental School in Portland, Oregon. During the week, I led workshops on how to move ideas into action.

At the closing event, students asked me, "If I was their age, what is the most critical issue that I would be working on right now?"

I replied that youth their age were challenging the U.S. government over its failure to protect the climate for their generation, and that the first court hearing in the case was in Eugene, Oregon. I said that I would learn about this case, and that I would take a field trip to Eugene and pack the federal courthouse to show my support for these brave youth.

This is exactly what the Sunnyside students did. At their request, I created this lesson to explain how youth their age had changed the climate science into a constitutional right challenge.

2. How do youth use their rights to defend what they love?

Here are the Sunnyside middle school students and teachers on the steps of the U.S. District Courthouse in Eugene, Oregon, at the hearing in March 2016. The slogan and banner were created by sixth graders who had just learned about their Constitutional rights.

In this lesson, we will explore basic elements of civil lawsuits, how the court system is organized, several legal concepts, and our essential question:

<CLICK>

How do youth use their legal rights to defend what they love?

3. Climate kids & their team

In Eugene, the Sunnyside students met the 21 youth who are challenging the federal government over its failure to protect the climate for their generation. These youth were between 8 and 18 years old when their case was filed in federal court in 2015.

There are a lot of new words in this lesson. The words that will be used most are listed on a sheet of Core Vocabulary. Core vocab includes key players in a lawsuit and basic elements of a lawsuit. The other sheet is Support Vocabulary to help you follow along.

These youth are all "plaintiffs." Plaintiffs are persons who claim to have suffered harm caused by the actions of another person. The persons accused of causing the harm are the



“defendants.” These are the key players in a lawsuit.

Legal cases or lawsuits are named after the first plaintiff and first defendant listed in the documents filed with the court.

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The youth climate case is called “*Juliana v. U.S.*” after youth plaintiff Kelsey Juliana – here (point out on slide) – and the defendant, the United States government.

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These youth plaintiffs are supported by Our Children’s Trust, a small nonprofit organization in Eugene, Oregon. Julia Olson, a young mother and lawyer, directs Our Children’s Trust and is the lead lawyer in the federal youth climate case.

Julia is also coordinating youth-driven legal actions in all 50 states and in 12 countries.

RESOURCES

Our Children’s Trust

<https://www.ourchildrenstrust.org/>

CNN profile on Julia Olson, chief legal counsel for Our Children’s Trust
<http://www.cnn.com/2016/09/12/opinions/sutter-julia-olson-climate-kids-profile/>

4. Why the judiciary?

Throughout U.S. history, people have used their civil liberties and the power of the courts to defend their civil rights.

People choose to file constitutional rights cases when they feel some of their fundamental rights are being violated by government actions.

Most of the data cards in the “Timeline of

Rights and Powers” are lawsuits by people defending their civil rights.

A much smaller slice of the constitutional rights cases are about recognizing new fundamental rights.

These few constitutional rights cases are game changers, in the sense that affirmative action by a court would make new law.

The youth climate cases in federal and state courts are such game changers.

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- Does anyone recognize these youth plaintiffs?
Miko (lower left), Aji, and Levi

These cases are about climate justice for the youngest generation. If successful, the cases could create new legal protections for youth and other people, and for Earth’s atmosphere and climate system.

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The youth plaintiffs are claiming harm from government actions: that – for over 50 years – congresses and presidents have known of the danger from burning fossil fuels, and that they knowingly allowed that danger to happen.

The known danger is that carbon dioxide produced from burning fossil fuels would build up in the atmosphere and destabilize the climate system.

Despite the known danger, past and current governments have knowingly allowed carbon dioxide levels in the atmosphere to build to levels that now endanger present and future generations.

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The youth plaintiffs are asking the court to step in, recognize their rights, and order the



other two branches of government to create and enact adequate climate protections now.

5. Trial map

Most people are familiar with trial scenes in TV shows and movies where lawyers for the plaintiffs and defendants argue their case and present their evidence before a judge and sometimes a jury in a court of law.

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But actually important parts of a lawsuit happen before trial and after trial.

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Instructions



- At your tables, review your Core Vocabulary sheet and decide:
- When do each of these things happen – before trial or after the trial?
- Allow about 2 minutes for this exercise.

Class discussion

- What activities happen before trial?
- What activities happen after trial?
- After discussion show answers.

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6. Pre-trial activities

For a case to be accepted by a court of law, the plaintiffs must meet three requirements for “*standing*” – the ability to bring a case before a court. Not all cases make it to trial.

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The judge acts as a gatekeeper, deciding which cases will go on to trial.

The three requirements are:

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- that plaintiffs have suffered personal harm or injury;

<CLICK>

- that the harm was caused by defendants’ actions; and

<CLICK>

- that the court can provide a remedy to fix the harm.

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Only the cases that meet the standing requirements may proceed to trial.

7. Statement of standing

We’re going to do a role-play exercise to learn how the youth plaintiffs declared standing.

Everyone has an ACTIVITY, “Statement of standing.”

- There is one statement for each of these 8 plaintiffs.
- The statements were adapted from the complaint filed in *Juliana v. U.S.*
- The paragraph numbers match those in the primary source.

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Instructions for role-play activity

Prepare a statement to share



- Make a nametag with your plaintiff’s name and put it on.
- Read your plaintiff’s declaration.
- Write at least 4 things that your plaintiff values here and the cause of harm claimed from the defendants’ actions here (point on slide).
- For example, Jayden’s home was damaged from more and more severe storms caused by too much carbon dioxide in the atmosphere.



- You have 5 minutes to do this.

Share your statement with others

- Now find another plaintiff and turns sharing your statements.
- Allow about 4–5 minutes for each round.
- When you hear this sound – demonstrate, move and find a different plaintiff.
- Conduct 3 rounds of role play with different partners.
- After the last round, finish with your partner and return to your seat.

CONDUCT EXERCISE

Ask students to take their seats.

Plaintiff	Personal values	Harmed claimed
Journey	<ul style="list-style-type: none"> • taro farming and fishing • swimming, snorkeling, canoeing, and paddle boarding • personal safety and health • cultural values & sense of stewardship 	<ul style="list-style-type: none"> • flooding and erosion decrease harvest • ocean acidification killing coral reefs, lessens enjoyment • poor water quality, high bacteria counts, and more shark activity • emotionally painful to lose traditions
Nick	<ul style="list-style-type: none"> • church values & sense of stewardship • hiking, fishing, camping • growing own food, buying local food • biking and tennis • skiing 	<ul style="list-style-type: none"> • emotionally hard to feel sense of loss • harmed by more and more severe wildfires, droughts, and floods • hail, rainstorms, pests destroy food • too hot to enjoy outdoor activity • warmer winters mean less snow



Jamie	<ul style="list-style-type: none"> • cultural values & sense of stewardship • moved from homeland and resettled • hiking, spending time in forest • health • feeling safe in home 	<ul style="list-style-type: none"> • emotionally painful to lose traditions • water scarcity, springs drying up, costs of hauling water too high • forest killed by beetles and fires • allergies worsen by dry, hot weather • more fires, worried may lose home
Isaac	<ul style="list-style-type: none"> • home and yard • hiking along creeks and in forests • mind/body benefits playing in snow • personal health • soccer, basketball, hiking 	<ul style="list-style-type: none"> • trees dying from groundwater drop, harms enjoyment • fire and drought harms enjoyment • less snow means less recreating • asthma increases with poor air quality • asthma worsens performance
Jayden	<ul style="list-style-type: none"> • family home, property & personal safety • health • swimming in ocean, playing at beach, eating seafood, crabbing • visiting friends in coastal communities 	<ul style="list-style-type: none"> • damaged from more and more severe storms, hurricanes, floods; land loss, storm surge; sea level rise; erosion • poor air/water quality from fossil fuel development and activities • residual oil from BP disaster makes these foods and activities dangerous • harder and dangerous to travel with increased storms and land loss



Zealand	<ul style="list-style-type: none"> • biking, rock climbing, rafting, camping • personal health • winter sports like skiing • job security • drinking water security • playing in dunes, photography, surfing, boogie boarding, eating seafood 	<ul style="list-style-type: none"> • high temps make outdoor sports less fun and even dangerous • asthma worse with high pollen count • warmer winters, less snowpack • mother seasonal worker at ski resort • water source snowpack disappearing • rising sea level & ocean acidification threaten ability to enjoy activities
Avery	<ul style="list-style-type: none"> • swimming in lakes & streams, boating, hiking, backpacking, camping, watching wild salmon spawn • personal health • sledding, snowshoeing • visiting coast, exploring tidepools, eating seafood 	<ul style="list-style-type: none"> • high temps, drought, fires, beetle-kill forests & hungry bears make outdoor activities less likely and enjoyable • allergies worse in high pollen and heat • reduced snowpack • coastal erosion, dead wildlife, high temps, ocean acidification and sea level rise lessen enjoyment
Levi	<ul style="list-style-type: none"> • growing food in family's garden • beach activities • swimming in lagoon • watching sea turtles • family home and property • mind and body health 	<ul style="list-style-type: none"> • high temps make it harder • drying, smelly seaweed from high temps harms enjoyment • dead fish and more flesh-eating bacteria endanger personal safety • less wildlife with higher temps • less value from sea level rise, may be lost completely • allergies worse, worries about his favorite outdoor places and sea life



RESOURCES

Primary source document: *Juliana v. U.S.*, Complaint, Sept. 10, 2015
<https://www.ourchildrenstrust.org/court-orders-and-pleadings>

Tampering with history: Adapting primary sources for struggling readers

<https://jwa.org/sites/jwa.org/files/mediaobjects/tamperingwithhistory.pdf>

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Class discussion guide

What types of economic wealth were harmed and what was the cause of harm, claimed by the plaintiff?

- property or home devalued or lost from violent storms and rising seas

What types of environmental wealth were harmed and what was the cause of harm, claimed by the plaintiff?

- extended droughts
- extensive forest fires
- dying fish from rising temps
- coral loss from ocean acidification

What types of social wealth were harmed and what was the cause of harm, claimed by the plaintiff?

- increased asthma and respiratory problems from burning forests and increased pollen
- limited opportunities to recreate outdoors, because of hot weather (summer) or snow loss (winter)

What types of political wealth were harmed and what was the cause of harm, claimed by the plaintiff?



- harm to life, liberty, and property violates 5th Amendment rights

Does the personal harm claimed have to have a financial value?

- No, it just has to contribute to overall wellbeing like pleasure gained from hiking in forest or the ability to breathe without difficulty.

Do you have to own the thing that you claim was harmed?

- No, it can be swimming in the sea or the liberty to enjoy your way of life.

Does the harm have to have been caused or partially caused by the defendants' actions?

- Yes.

Reflect a minute on what activities and things YOU enjoy.

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Reflections



- Do YOU have anything in common with the plaintiffs?
- Write some of your values and possible causes of harm.
- After a couple minutes, ask students to turn to a partner and share.

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After a couple more minutes, ask class:

- » Raise your hand if YOU found something in common with the youth plaintiffs. Ask class to look around. [Most people will have their hands raised.]
- » Allow any discussion.

8. Youth standing was challenged

In an effort to have the court “*dismiss*” – throw out – the youth climate case, the federal defendants challenged the youth plaintiffs’ standing. The federal lawyer was not alone.

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Over six hundred and fifty (650) of the nation’s largest oil and gas companies and manufacturers joined the federal government as intervenors.

An “*intervenor*” is a person that the court allows to join an ongoing lawsuit when the decision in the case may affect that person’s rights or property. Intervenors may join either the plaintiffs or defendants. Intervenors present their own evidence through their own legal team.

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You be the Judge!



Instructions

- How might an oil or gas company be affected by a victory for the youth plaintiffs?
» *Hint:* Think about what remedy might address the claims of personal harm.
- Turn to a partner and answer the question.

RESOURCES

Biggest case on the planet
<http://news.nationalgeographic.com/2017/03/kids-sue-us-government-climate-change/>

Updates on federal, state, and global legal cases
<https://www.ourchildrenstrust.org/>

Class discussion guide

- After 2 minutes or so, ask students to share their answers.
- The remedy for a climate justice case will involve cutting back on use of fossil fuels to reduce greenhouse gas emissions. This remedy will cause economic harm to energy companies that are not creating, selling, and distributing green renewable energy.

The legal challenges to dismiss the case took almost a whole year to settle and involved hearings before two separate federal judges, acting as gatekeepers.

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Both judges decided that the youth plaintiffs’ case met requirements for standing and should proceed to trial. The case was scheduled for trial in February 2018.

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However after the November 2016 election, things changed. In May 2017, the intervenors – all 650-plus oil and gas companies and manufacturers – dropped out of the case.

RESOURCES

Trump lawyers fight to stop youth climate case
<http://www.climatechangenews.com/2017/06/12/trump-lawyers-use-extraordinary-trick-quash-youth-climate-case/>

Plaintiffs’ standing in *Juliana v. U.S.* – See U.S. District Judge Ann Aiken, Opinion and Order, November 10, 2016, and U.S. Magistrate Judge Thomas Coffin, Order, June 28, 2017
<https://www.ourchildrenstrust.org/court-orders-and-pleadings>



<CLICK>

And in June 2017, the Trump Administration sought to block the case from going to trial!

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The president petitioned the Ninth Circuit U.S. Court of Appeals directly for “review and relief” – in other words, to deny the youth plaintiffs’ standing and dismiss their case.

The Ninth Circuit U.S. Court of Appeals heard the case on December 11, 2017 and will decide whether or not it will proceed to trial.

9. Completion of pre-trial activities

Suggested stopping point for class.
Next: Trial activities

10. Trial map: Claim 4 legal rights violated

The Constitution prevents governments from violating our inalienable rights. Fundamental rights are violated or “*infringed*” when government action removes or limits the protections these rights provide.

What makes *Juliana v. U.S.* a landmark or game-changing case is that each of the four rights claimed by the plaintiffs could set legal “precedent” – create new law – and give rise to new legal protections for youth and the climate system.

Here is a summary of the four legal claims. We will explore each claim separately like the judge and jury will do during trial.

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Youth plaintiffs are claiming two rights under the 5th Amendment protections of due process and equal protection. Youth are claiming these rights as a “*protected class*,” which we’ll explore.

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Youth plaintiffs are claiming a third right – a fundamental right to be sustained by a stable climate system – under the 9th Amendment.

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The fourth right claimed by youth plaintiffs is the right to be sustained by a stable climate system under the Public Trust Doctrine.

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During trial, defendants – including the U.S. President and heads of several agencies, such as the U.S. Secretary of Energy and the U.S. Secretary of Transportation – will argue against *each* of these four claims.

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The judge or jury will decide *each* claim separately and the appropriate remedy for *each* claim. The decisions and remedies may be separately appealed, but in the end, there will be final rulings.

A victory to youth on any of these four claims would set new legal precedent – a whole new body of law for youth and for a stable climate system.

Now let’s explore each of these claims and the legal theory behind them.

11. Due process & equal protection

Let’s look at the 5th Amendment and see if we can find the rights that the youth claim were harmed.



Instructions

5th Amendment inquiry

- At your table, find in the 5th Amendment, the rights of due process and equal protection.

The 5th Amendment is on p. ____.



- What did you find?
 - » Likely: “No person... shall be deprived of life, liberty, and property, without due process of law.”
 - » But: not anything about equal protection.

The Bill of Rights limits the power of the federal government.

After the Civil War, the 14th Amendment extended the 5th Amendment rights – and most others – to limit the power of state governments as well.

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14th Amendment inquiry

- At your table, find in the 14th Amendment, the rights of due process and equal protection. The 14th Amendment is on p. _____. Look in Section 1 near the end.
- What did you find?
 - » “Nor shall any State deprive any person of life, liberty, and property, without due process of law.”
 - » And: “... nor deny to any person within its jurisdiction the equal protection of the laws.”

The equal protection rights against states in the 14th Amendment became part of the “due process” rights against the federal government in the 5th Amendment.

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So whenever you read “due process of law” in the 5th Amendment, think also “equal protection of law.”

<CLICK>

Youth plaintiffs claim their 5th Amendment

right to equal protection has been infringed, because youth, as the youngest generation, will suffer more harm from climate disruption than the older generations they will outlive.

What makes these two claims game changers is that youth are claiming due process and equal protection as a “*protected class*.”

12. Protected class for a youth

In U.S. anti-discrimination law, a protected class is a group of people:

- who are linked by some kind of defining characteristic, AND

<CLICK>

- who have been historically discriminated against based on this characteristic.

<CLICK>

For example, the Civil Rights Act of 1964 recognized race, color, gender, religion, and national origin as protected classes.

<CLICK>

A higher standard of legal review is used when plaintiffs claim government actions discriminated against them as a protected class.

Establishing a protected class for youth would be a game changer.

13. Jury Ballot – Protected class

Now it’s your turn to be the Jury.

Instructions



- You each have a Jury Ballot for this issue.
- Let’s work on the first question together.
- Are youth linked by a defining characteristic? What might



make youth different from other people in the eyes of a court?

- » Kids can't vote.
- » Kids are dependent upon adults for physical, mental, and social wellbeing.
- » Kids are more vulnerable during childhood, because they have not fully developed mentally or physically.
- » Kids generally will outlive older generations and so will have to live with consequences of adults' decisions.
- Roll up screen to project slide onto white board.
- When ready, call for the vote.
- Tally the votes and post the results on white board.

- The second question is: Have youth been historically discriminated against based on this characteristic?
- Encourage students to work at their tables for answers.
- Discuss as a class.
 - » Possible examples: Every state has laws dealing with child labor issues, distinct from adult labor issues.
- After discussion, call for the vote.
- Tally the votes and post the results on white board.

- Finish the last two questions together.
- Announce the answer to the final question.
 - » Remind students that the jury or judge will use this logic flow to answer this last question.

If the Court affirms that youth are a protected class, the other claims in this case would be held to a higher standard of legal review – and a new body of anti-

discrimination law would be created for youth.

14. What amendment gives people a right to propose other rights?

(If anyone asks, these youth are Victoria, Kiran, and Kelsey.)

Another key issue to be addressed at trial is whether people – including youth – have a constitutional right to a stable climate system.

A constitutional right is called a "*fundamental right*" or an inalienable right.

- What amendment gives people a right to propose rights not listed in the Constitution?
 - » The 9th Amendment.

<CLICK>

Instructions



- Turn to the 9th Amendment in the Bill of Rights on p. ____ of the Constitution.
- Turn to a partner and translate in your own words. Use the back of an Activity sheet to write it out.
- Allow about 2 minutes.
- Ask students to share their interpretations.
- To summarize...

<CLICK>

15. Establishing a fundamental right

For a right to become a fundamental right, a judge must decide that the right is either:

<CLICK>

1) deeply rooted in our Nation's history or tradition, OR



2) fundamental to our order of society.

- Can you find the most recent fundamental right that was recognized?
 - » *Hint:* Start backwards in the timeline and look for blue.
 - » Answer: 2015, the right to same-sex marriage.

<CLICK>

In *Obergefell v. Hodges*, the Court decided that marriage is “the foundation of the family in our social order” and that “marriage is a keystone of our social order.”

16. Fundamental right: Stable climate system?

Under 5th Amendment, youth claim their rights to life, liberty and property were violated.

<CLICK>

Under the 9th Amendment, youth claim a fundamental right to a healthy atmosphere and stable climate system in order to secure their 5th Amendment liberties.

<CLICK>

In other words, youth plaintiffs claim that their 5th Amendment rights cannot be secured without a constitutional right to a healthy atmosphere and stable climate system.

17. Preamble to U.S. Constitution

Let’s consider the youth plaintiffs’ claim as we reflect upon the Preamble to the Constitution. Let’s turn to the Preamble on p. -----

The Preamble is the very first paragraph and

RESOURCE

Fundamental rights in *Juliana v. U.S.* – See U.S. District Judge Ann Aiken, Opinion and Order, November 10, 2016, pp. 29–33
<https://www.ourchildrenstrust.org/court-orders-and-pleadings>

it sets out the goals of the Constitution.

Instructions



- Read the Preamble as a class or in partner teams.
- As you read, identify WHO is protected by the Constitution, and identify the GOALS.

<CLICK>

- Read: “We the People of the United States, in Order to

<CLICK>

- Read: “form a more perfect Union,

<CLICK>

- Read: “establish Justice,
 - » What’s another word for “Justice”? fairness

<CLICK>

- Read: “insure domestic Tranquility,
 - » What’s another word for “Tranquility”? peace

<CLICK>

- Read: “provide for the common defense,

<CLICK>



- Read: “promote the general Welfare,
» What’s another word for “Welfare”?
wellbeing; all forms of wealth,
combined

<CLICK>

- Read: “and secure the Blessings of
Liberty to ourselves and our Posterity,
» The definition of “Liberty” is what?
» freedom from government
oppression; liberty refers to
our protected freedoms, our
constitutional rights

<CLICK>

- Read: “do ordain and establish this
Constitution for the United States of
America.”

Discussion guide

- WHO is protected by the Constitution?
» present generations: “We the
People...”
» “... ourselves and our Posterity” –
“Posterity” means what?
future generations
- What are the GOALS in the Preamble
that promise an ordered society?
all of them

<CLICK>

Let’s focus on these 4 goals.

18. Jury Ballot – New right?

And now – You be the Jury, again.

Instructions



- You each have a Jury Ballot.
- Read each question, discuss it
at your tables, and then vote.
- Let’s work on the first two
questions together: “... establish
Justice”



Discussion guide

Justice is about fairness. Is it fair that some
people’s homes or farms are flooding or
threatened by flooding?

- Which plaintiffs experienced this?
- Journey, Jayden, Levi

Is it fair that some people’s health is
damaged or threatened by smoke from
burning forests or by oil spills?

- Which plaintiffs experienced this?
- Journey, Jamie, Jayden, Zealand,
Avery, Levi

Is it fair that some people are or may
be forced to relocate because of water
shortages from extended droughts or sea
level rise or forest fires?

- Which plaintiffs experienced this or are
threatened by this?
- Journey, Jamie, Jayden, Levi

Is it fair that some people’s way of life is
threatened from harm to land, ocean, and
wildlife?

- Which plaintiffs experienced this?
all of them

“Climate change is a multiplier of
injustice.”

~ Jacqueline Patterson
Director of the NAACP
Environmental and Climate Justice
Program

[http://www.yesmagazine.org/
issues/just-transition/climate-
justice-is-racial-justice-is-gender-
justice-20170818](http://www.yesmagazine.org/issues/just-transition/climate-justice-is-racial-justice-is-gender-justice-20170818)

ultimate
CIVICS

- Allow about 3 minutes for discussion.
- Roll up screen to project slide onto white board.
- Call for the vote.
- Tally the votes and post the results on white board.
- The next question on your ballot is about: "... insure domestic Tranquility"

Discussion guide

Domestic peace is about enjoying home and family life and community life.

What do you think happens to people, their homes, and their community life during extended droughts, huge forest fires, super storms and violent hurricanes?

Jayden's home was flooded during the August 2016 heavy rains in Louisiana. Her supplement to her statement of standing gives an eyewitness account. Consider reading Jayden's story in quote box.

- Allow about 3 minutes for discussion.
- Roll up screen to project slide onto white board.
- Call for the vote.
- Tally the votes and post the results on white board.
- Ask students to do the next two questions at their tables.
- Allow about 4 minutes.
- Call for the vote.
- Tally the votes and post the results on white board.
- Finish the last question on the white board as a class.
 - » Did we answer NO to ANY of these questions? If this answer is YES, then...

<CLICK>

- » ... the answer to the last question is also YES.

8. Floodwaters were pouring into our home through every possible opening. Our toilets, sinks, and bathtubs began to overflow with awful smelling sewage, because our town's sewer system also flooded. We had a stream of sewage and water running through our house.

10. The hard rain and floods continued for two weeks. We had nowhere to go. So we kept sleeping in our house that was full of sewage and floodwater damage.

16. A few days after the flood, my siblings and I began to get real sick. We had flu-like symptoms with fevers and sore throats, as well as stomach pain and diarrhea. My whole body felt hot and my hands were very cold. Most people we know in the town of Rayne are also sick.

Excerpts from "Declaration of youth plaintiff Jayden," supplement, September 7, 2016
<https://www.ourchildrenstrust.org/court-orders-and-pleadings>

» Check appropriate box.

Class discussion

"... promote the general Welfare"

- Tally the votes by asking students to raise hands for "Yes" (count) and "No" (count).
- Post results on white board.
- Ask students to share their reasons.



- For example, an unstable climate system is already causing super storms, extended drought, water shortages, large-scale forest fires, ocean acidification, and more. This harms general wellbeing.

“... secure the blessings of Liberty”

- Tally the votes by asking students to raise hands for “Yes” (count) and “No” (count).
- Post results on white board.
- Ask students to share their reasons.
- For example, an unstable climate system threatens life, liberty, and property; due process; and equal protection.

If the students voted “no” to any of these questions, then the “jury” recognized the fundamental right to a stable climate system under the 9th Amendment.

The jury or judge may use this logic flow to answer the critical last question.

If the Court affirms a constitutional right to a healthy atmosphere and a stable climate system, a new body of law would be created to protect this right.

19. Rights under the Public Trust Doctrine

The fourth right is claimed under the Public Trust Doctrine.

As expressed in Roman law from 533 A.D., the Public Trust Doctrine states: “By the law of Nature ... the air, the running water, the sea, and consequently the shores of the sea ... are common to mankind.”

533 A.D. was almost 1,500 years ago!

- What do you think “running water” meant back then?
 - » Natural fresh water bodies like a river or lake.



The Public Trust Doctrine was carried forward from ancient Roman law into modern law of many democratic countries, including the United States.

Class discussion guide



- Consider this. What do you own? What do you think of as your property? Students usually list private property.
- What about public property? You own part of every national forest, state park, public museum, and more.
- When you breathe the air or swim in the ocean or boat on a river – did you have to pay anyone for that? These are other examples of public property.
- When oil companies spill oil and kill wildlife like sea turtles and dolphins, fish and sea otters, pelicans, and more, the company must pay a fine to the federal government on behalf of the public. That’s because you own part of all the wildlife under the Public Trust Doctrine.

The common ownership of these critical resources evolved into a public trust relationship between democratic governments and citizens. In a sense a Public Trust Doctrine comes twin-born with a democratic society.

The “trust relationship” limits the government’s ability to privatize resources. It separates a society of citizens from a society of serfs.

Here’s why. Under the Public Trust Doctrine:

<CLICK>

- Certain natural and cultural resources are held in trust by sovereign governments.

The word “certain” here means those resources that are essential to survival of humankind. This is different than public property like man-made parks and museums.

“Held in trust” means the government has a public “trust relationship” – a duty – on behalf of the people.

<CLICK>

- It is the duty of governments to protect and maintain these resources...

<CLICK>

- ... for the survival and benefit of present and future generations.

“... protect and maintain...” means resources may be used by the present generation, but not used up – or so badly damaged or polluted that the resources do not benefit future generations.

Instructions



- Turn to a partner. Explain the Public Trust Doctrine to each other in your own words. Use your Vocabulary SHEET if needed.
- Allow about 2 minutes.

Class discussion

- Clarify any confusing points about the Public Trust Doctrine.

RESOURCE

Public trust foundation and claims in *Juliana v. U.S.* – See U.S. District Judge Ann Aiken, Opinion and Order, November 10, 2016, pp. 36–49
<https://www.ourchildrenstrust.org/court-orders-and-pleadings>

- Identify any lines of inquiry that students may wish to pursue.

Youth plaintiffs in *Juliana v. U.S.* are also claiming a right to a healthy atmosphere and stable climate system as “beneficiaries” under the Public Trust Doctrine.

The youth plaintiffs claim that the government has failed to fulfill its public trust duty by not protecting and maintaining a stable climate system for the survival and benefit of present and future generations.

20. Know your rights!

Now it’s your turn to decide your rights.

Here is a list of public property. Some things on this list are critical to survival of humankind and are, or should be, public trust resources.

Instructions



- At your table, review the list.
- Circle the public trust resources.

Let’s work through the first few items together.

- Are public schools critical to survival of humankind?
 - » Maybe, but they are not considered public trust resources!
- National forests?
 - » Yes, most federal public land in the United States is held in trust for the people by the federal government.

<CLICK>

- The air we breathe?
 - » Yes, this dates back to Roman law.

<CLICK>



- At your tables, go through the list.
- Allow about 4 minutes for the activity.

Class discussion guide

- Continue, as before, with “public library.”
 - » No.
- Ocean?
 - » Yes, this dates back to Roman law.
 - » Did you know that 50–85 percent of oxygen in the Earth’s atmosphere is produced by tiny marine plants called phytoplankton? The rest is produced by land-based plants.

<CLICK>

- Public zoo?
 - » No.
- Running water?
 - » Yes, this dates back to Roman law.

<CLICK>

- Atmosphere?
 - » Consider that the air is part of the atmosphere.
 - » So, probably, yes, although this will be argued in court.

<CLICK>

- Ocean shores?
 - » Yes, this dates back to Roman law.

<CLICK>

- Wildlife?
 - » Yes, this dates back to Roman law.

<CLICK>

- Public museum?
 - » No.
- Stable climate system?
 - » A stable climate system is critical to protecting our constitutional



RESOURCES

How much oxygen is produced from ocean plants?

<http://earthsky.org/earth/how-much-do-oceans-add-to-worlds-oxygen>

Why is the atmosphere important to life on Earth?

<https://www.ck12.org/earth-science/importance-of-the-atmosphere/lesson/Importance-of-the-Atmosphere-HS-ES/>

rights and to our survival.

- » Earth’s atmosphere supports life, and we’ve yet to find another planet that does.
- » So, probably, yes, although this will be argued in court.

<CLICK>

- State park?
 - » Answer: No.

21. Completion of trial arguments

Suggested stopping point for class.

Next: Decisions and remedies

22. Trial map: Decisions & remedies

<CLICK>

The judge will decide whether each of the youth plaintiffs’ four claims to legal rights has merit and is valid, legally, depending on the trial lawyers’ arguments and the judge’s own research.

<CLICK>

Here is a statement by one of the federal youth plaintiffs, Xiuhtezcatl.

Instructions



- Turn to a partner and discuss.
- Do you agree with this statement? Why or why not?
- Allow about 3 minutes.
- Ask students to share.

23. You be the Judge

Now it's your turn to be the Judge.

Instructions



- You each have an ACTIVITY, "You be the Judge."
- You have answered some of these questions, but now the Judge is reviewing the entire case in preparation for final decisions.
- Read each question, discuss it at your tables, and then vote.
- Allow about 5 minutes.

Class discussion guide

- Call for the vote for each question.
- Tally the votes and post the results on white board.
- Encourage discussion by asking for reasons.

Now let's consider possible remedies – starting with a review of what the youth plaintiffs have proposed.

24. Remedy: Climate recovery plan

Sophie is one of the youth plaintiffs. Dr. James Hansen is her grandfather. He's also one of the world's leading climate scientists and the former director of NASA (National Aeronautics and Space Administration).

<CLICK>

Dr. Hansen and most climate scientists

maintain that, since the industrial revolution, human activities have caused an increase in the concentration of carbon dioxide in the atmosphere from 280 parts per million (ppm) to over 400 ppm.

The excess carbon dioxide is heating the atmosphere, destabilizing the climate system, melting ice caps, and causing ocean acidification.

Dr. Hansen warns that the last time the Earth was this hot, the ocean was about 20 feet higher than it is today, because of melting polar ice caps and glaciers.

Dr. Hansen and other climate scientists tell us that the maximum safe concentration of carbon dioxide in the atmosphere is 350 ppm.

We need to reduce the atmospheric level of carbon dioxide to 350 ppm or lower immediately and as fast as possible by:

<CLICK>

RESOURCES

Sunnyside Environmental School
Climate Cohort, *LNG: Just Another Dirty Fossil Fuel* video
<https://www.youtube.com/watch?v=x8CQ9Qrei3c>

Kids vs Global Warming film
<http://www.youngvoicesonclimatechange.com/youth-climate-videos/kids-vs-global-warming/>

A People's Curriculum for the Earth,
edited by Bill Bigelow and Tim Swinehart, 2014
<https://www.rethinkingschools.org/static/publication/apcekit/Climate-Justice-Seed-Kit-APCE-Preview.pdf>



- REDUCING activities that use and burn fossil fuels
- INCREASING activities that transition to green safe energies like solar and wind power, and activities that are proven to sequester carbon like planting trees.

Dr. Hansen and his team have calculated that to return our climate to a stable state, we need to return atmospheric levels of carbon dioxide to under 350 ppm by the end of the century.

The remedy that the youth plaintiffs are seeking in court is a science-based climate recovery plan to achieve 350 ppm carbon dioxide by the year 2100.

25. Trial map: Remedies for harm

The Judge must provide relief for any affirmed claims of harm – while considering any new rights.

For example, if the “Jury” decided that people have a right to healthy atmosphere and a stable climate system, then what must the Court do to secure the people’s rights, in the interest of an ordered society?

Remedies should address concerns raised in a statement by Victoria, one of the youth plaintiffs.

<CLICK>

Read Victoria’s statement.

Instructions



- Turn to a partner and discuss.
- Think system change. What kind of systems might we need to change to reduce greenhouse gas emissions?
- Allow about 3 minutes.
- Ask students to share.

Let’s see if we can organize these ideas into workable remedies – how we might move these ideas and others into action.

<CLICK>

You each have an ACTIVITY, “Remedies: A wish list.”

Consider the question: What must the Court do to secure these new rights?

Let’s break that question down into three issues:

<CLICK>

1. **WHAT** activities could provide relief from harm?

<CLICK>

2. **HOW** could the Court make government – the President and Congress – take the required actions? What kind of policies might help?

<CLICK>

RESOURCES

GHG Emissions

U.S. Dept. of Energy, Energy Info Association

https://www.eia.gov/energyexplained/?page=us_energy_home

Greenhouse gas emissions by source

<https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>

<http://www.cnn.com/2017/12/11/politics/donald-trump-women-allegations/index.html>



3. **WHO** should manage the remedy – the Court or the President and Congress?

26. Remedy: The plan

Remember the youth plaintiffs are asking for a science-based climate recovery plan to reduce greenhouse gas emissions, store carbon, and shift to renewable energies.

The goal is to reduce atmospheric carbon dioxide to below 350 parts per million by the year.

Let's start with some evidence.

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According to EPA, sources of greenhouse gas emissions in the U.S. in 2015 included:

- *electricity*: 29% of emissions, mostly from burning fossil fuels like coal to generate power
- *transportation*: 27% of emissions, mostly from burning oil and natural gas, including frack gas
- *industry*: 21% of emissions, mostly from burning fuel and making products
- *homes and businesses*: 12% of

RESOURCES

Climate solutions: Carbon sinks
<https://www.livescience.com/32354-what-is-a-carbon-sink.html>

Pathway to Climate Recovery
<https://www.ourchildrenstrust.org/the-science/>

Renewables revolution
<http://www.yesmagazine.org/issues/just-transition/4-reasons-trump-cant-stop-the-renewables-revolution-20170920>

emissions, mostly from burning fuel, product off-gassing, and handling waste

- *agriculture*: 9% of emissions, mostly from burning fuel, using chemicals like fertilizers, and cows.

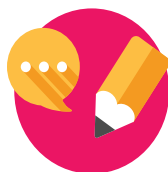
<CLICK>

Also according to EPA, 12% of U.S. emissions are offset by our forests and land use practices. Trees and healthy soils absorb and store carbon.

<CLICK>

Let's use these 5 sources and offsets as our 6 systems of concern to focus our activity list.

Instructions, continued



- What might be some activities to reduce these sources of GHG emissions?
- What might be some activities to increase offsets of GHG emissions?
- Be specific as possible like WHAT, WHO, and WHEN?
- For example, we might want all public buildings – federal, state, and local – on renewable energies in 10 years.
- Work together at your tables and make a list of activities.
- Write up to 6 activities on 6 index cards.
- Be prepared to present your proposed activities in about 10 minutes.
- When ready, ask groups to share the activities listed on their index cards.

<CLICK>

Now focus the second issue: **HOW** could the Court could make the President and Congress take the required actions.



Remember the youth plaintiffs are asking for new **policies** – like laws, rules, and Executive Orders – to carry out the plan with deadlines for completing the tasks. For example:

- Congress could make some of these activities into new laws.
- The President could turn some of these activities into Executive Orders.
- Government agencies could write and enforce new rules to carry out the climate recovery plan.

Instructions, continued

- Work together at your tables and discuss ideas for policies for each of the activities on your table. Write at least 1 policy for each activity on the index card.
- Be specific as possible with WHO, WHAT, and WHEN?
- For example, we want the President to issue an Executive Order to his agencies to create and put into action in one year a plan to achieve 100% renewable energies in public buildings within 5 years.
- Be prepared to present your proposed policies in about 10 minutes.
- When ready, ask groups to share their policies listed on the index cards.

Consider posting the matching sets of activity and policy cards on the wall at the end of class for class extension ideas.

Now let's focus the third issue: **WHO** should manage the remedy – the Court or the President and Congress.

This is about holding the government accountable to the people – and to carry out a plan to reduce the atmospheric level of carbon dioxide to under 350 parts per million by 2100.

Instructions, continued

- So, WHO and WHY? Discuss this at your tables.



- Be prepared to share your choice and reason in about 2 minutes.
- Encourage class discussion.

27. Completion of decisions & remedies

Suggested stopping point for class

Next: Game-changing state cases

28. Court system: Federal

So far, we've been talking about what happens in court. Now let's look at how civil lawsuits proceed through the court system.

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Federal civil lawsuits are filed in a trial court, called a U.S. District Court. This is where the trial happens.

<CLICK>

Federal district courts are organized into 12 regional circuit courts, including the DC Circuit. The thirteenth circuit is the Federal Circuit. Where a case is filed determines what regional circuit court it is in.

For example, *Juliana v. U.S.* was filed in Eugene, Oregon.

- Oregon is in what circuit?
Answer: The 9th circuit.

<CLICK>

Rulings and decisions made by a U.S. District Court judge can be "appealed" to the next highest court, the U.S. Court of Appeals, for review.

The Ninth Circuit U.S. Court of Appeals is in San Francisco. This is where *Juliana v. U.S.* will go on appeal.

<CLICK>

If the appeals court does not agree with the lower court's ruling, the higher court has

several options. It can affirm a lower court's decision; reverse or overturn it; or return it or "remand" it to the lower court for further work.

A remand is like having a teacher review your paper and return it all marked up for more work before a final grade is given.

<CLICK>

A case can be appealed several times on various legal issues, but eventually the U.S. Appeals Court judge will make a ruling.

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For the last time, the decision can be appealed to the highest court, the U.S. Supreme Court in Washington, DC. The U.S. Supreme Court may or may not decide to accept the case, based on whether there are constitutional questions at stake.

If the Supreme Court takes the case, the lawyers argue their case before the Supreme Court Justices in Washington, D.C., and the court's decision is final.

<CLICK>

Sometimes in exceptional cases, the highest court will skip the Appeals Court and take the case directly from the trial court.

RESOURCES

Judicial Learning Center

<http://judiciallearningcenter.org/levels-of-the-federal-courts/>

Comparing federal and state court systems

<http://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts>

29. Court system: States

So far, we've been talking about the youth climate case in federal court.

Our Children's Trust also filed youth-driven legal actions in all 50 states in May 2011.

State courts are organized the same way as federal courts with cases proceeding from the trial courts to the appeals courts and then, maybe, to the state supreme court for cases that raise constitutional questions.

<CLICK>

Youth plaintiffs are making constitutional rights claims under the state constitution, and they are bringing cases through the state court system in the judicial branch.

Like the federal climate case, these state cases are also game changers, because they could establish new rights for people and the climate.

<CLICK>

Unlike the federal case, some of the states have existing laws to control greenhouse gas emissions. The legislature makes these laws, and the executive branch writes the rules to put the law into effect.

<CLICK>

In some cases, youth are pursuing a second legal strategy. They are petitioning the executive branch – usually state agencies – for new, stronger rules to reduce greenhouse

RESOURCES

Legal vocabulary

<https://legal-dictionary.thefreedictionary.com/>

State actions pending

<https://www.ourchildrenstrust.org/pending-state-actions>



gas emissions faster than required under existing laws.

Everything below this line is a petition for a new rule through the executive branch.

<CLICK>

One more thing: If state agencies deny a petition, the petitioners may challenge the state agency's decision by filing a case in a district court. In other words, the issues in the petition may become issues in a constitutional rights case.

30. Game Changer

To see how this works, we will look at what's happening with youth legal actions in five states – Alaska, Colorado, Massachusetts, New Mexico, and Washington.

To do this, we're going to play a game called, "Game Changer."

There is a Game Changer board game on your table. It looks like this slide.

- Please don't write on the board game.
- There are four teams.
- We're going to do Colorado together to demonstrate how this game is played.
- Every team has an envelope with game cards for Colorado.
- Everyone has the Game Changer Instructions.

<CLICK>

The goals of the game are to:

1. Show and tell the story – of what happened in this state.
2. Find the game changers – rulings that changed the game; and
3. Determine the status – of the legal actions (ongoing or over)?



Game Changer instructions

- Open the envelope and take out the game cards.
- Arrange game cards in piles by year along the bottom of the board.

<CLICK>

- Look at the cards. Each has 3 position clues: WHO, WHAT, and WHEN. Does everyone see that?
- We just did the WHEN by arranging the cards horizontally by year.

<CLICK>

- Determine the vertical position by COLOR and CLUE, using the chart in your instructions and on the slide.

<CLICK>

- The first game card is what color and year?
 - » Pink and 2011.
- **Pink** cards are youth legal actions. Pink cards can be played in either the court system or the executive branch – above or below the purple line. You have to decide.
 - » The chart shows to match by WHAT. Read the card.
 - » If the WHAT is about a petition for a new rule, the card goes below the purple line.
 - » If the WHAT is about a case, the

card goes above the purple line and is placed by matching the court.

- Where does this card go?
 - » District Court row in the 2011 column.

<CLICK>

- The next game card in chronological order is what color and year?
 - » Purple and 2012.
- **Purple** cards are court rulings in the judicial system. They go above the purple line.
 - » The chart shows to match court with a row.
 - » Read game card to find WHAT court is mentioned.
- Where does this card go?
 - » District Court row in the 2012 column.

<CLICK>

- The next game card in chronological order is what color and year?
 - » Pink and 2013.
 - » Determine if this card goes above or below the purple line.
- Where does this card go?
 - » State agency row and 2013 column.

<CLICK>

- The next game card in chronological order is what color and year?
 - » Aqua and 2014.
- **Aqua** are state legal actions. They can be played in either the court system or the executive branch – above or below the purple line. You have to decide.
- The chart shows to match by WHAT. Read the card.

- » If the WHAT is about a petition for a new rule, the card goes in the state agency row.
- » If the WHAT is about a case, the card goes in the judicial system and is placed by matching the court.

- Where does this card go?
 - » State agency row in the 2014 column.
- You have 15 minutes to position the game cards on the board and complete the goals and last instruction.
- Circulate amongst the teams to answer questions about card position.
- When there are multiple cards in one position, arrange in chronological order with oldest date at bottom of row.

RESOURCE

Colorado legal pleadings

<https://www.ourchildrenstrust.org/colorado>

31. Game changer: What's happening?

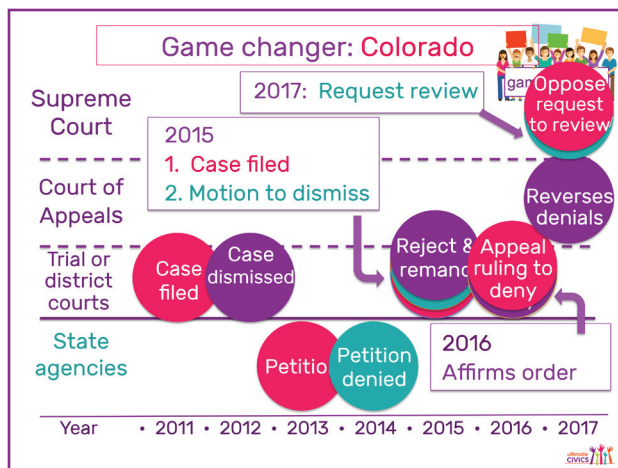
Let's show and tell Colorado's story. We will take turns reading the cards in chronological order. Follow along on your team's game board.

<CLICK>

Class discussion guide – COLORADO

- When presenting, use the format: In WHEN, the WHO did WHAT.
- Use state guide to check students' work.
- <CLICK> after a student reads a game card to show legal action on slide.
- Interject comments to add to story.





See state guide.

Comments in Colorado case

2012-13: Youth did not appeal the District Court's decision to dismiss their 2011 case, but instead changed legal strategy and filed a petition through the state government. The State has laws to protect public health, the environment, and wildlife, but the state's rules are not strict enough to enforce the law. People and wildlife are getting sick and water is being polluted from oil and gas activities.

2014: Now the youth have a stronger case. The state laws are based on the Constitution. It's up to courts to interpret constitutional issues.

2014: Why is game changing?

Because the District Court is affirming that the state has a legal duty to protect public health, the environment, and the wildlife and that the state must act to fulfill its duty. This could stop harmful and polluting oil and gas activities in Colorado.

2016: Now why did the same District Court that allowed the case to proceed turn around and deny it?

It's noted in the court proceedings online

that a different judge was presiding over the case. So, same court, different judge – and different political perspective. Even though this is supposed to be a matter of law, politics often colors the game board.

2017: Notice two new players have joined the state as intervenors. The intervenors represent the oil and gas industry.

Status as of November 2017: Youth plaintiffs are waiting for a hearing or decision from the Colorado Supreme Court.

RESOURCE

Records and updates of Colorado actions

<https://www.ourchildrenstrust.org/colorado>

32. Game changer



Now it's your turn to explore a game-changing story.

Please put all the Colorado game pieces back in the envelope on your table.

[Teacher collects the envelopes and hands out another envelope with another state to each team.]



**ultimate
CIVICS**

Instructions

- Work together as a team.
- Same instructions – different state.
- Make sure you find the game-changing action and can explain why it's a game changer.
- Be prepared to share your story in about 10 minutes.

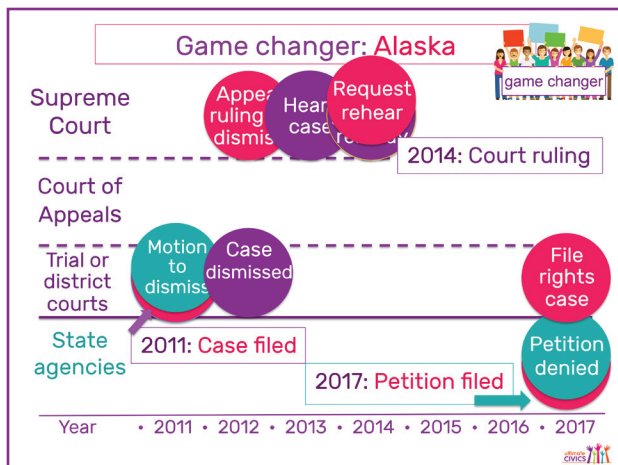
Any questions?

Conduct activity

Start by opening your envelopes and taking out the cards.

Class discussion guide for all states

- Each team shares their story with rest of class around their game board – and/or use slides.
- When presenting, use the format: In WHEN, the WHO did WHAT.
- Use state guide to check students' work.
- If using slides, <CLICK> after a student reads a game card to show legal action on slide.
- Interject comments to add to story.
- Note the game changing action and why it's a game changer.
- Allow about 5 minutes per team.
- Encourage discussion.



33. Game changer: Alaska

See state guide.

Comments in ALASKA case

2012: This starts the same as Colorado, but instead of dropping their case after it was dismissed and filing a petition for rulemaking, what did the Alaska youth do?

They felt they had a strong constitutional rights case, and they appealed directly to the Alaska Supreme Court for review.

2014: This legal strategy paid off, as the Alaska Supreme Court affirmed the state's constitutional duty to protect the atmosphere – but awarded no remedy for political reasons. Alaska gets 85 percent of its state revenue from oil taxes.

2017: What's the legal strategy with petitioning a state agency for a new rule to reduce carbon dioxide or greenhouse gas emissions? It seems these petitions always get denied.

By denying a petition, a state is saying it is already complying with state law. However, the rules are not strict enough to protect youths' right to a healthy climate system. The state's denial provides the basis for a constitutional rights case.

RESOURCES

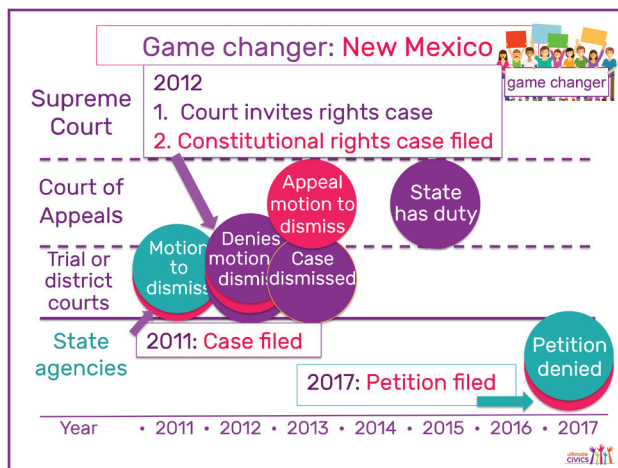
Records and updates of Alaska actions

<https://www.ourchildrenstrust.org/alaska/>

Alaska's transition to renewable energies

<http://www.yesmagazine.org/issues/just-transition/alaskas-small-villages-turn-toward-renewables-and-dont-look-back-20170825>





Status as of November 2017: Youth plaintiffs are waiting for the District Court to schedule their case for a hearing.

34. Game changer: New Mexico

See state guide.

Comments in NEW MEXICO case

2012-13: At first the District Court encouraged youth plaintiffs to amend their case, as a public trust case, and allowed the case to proceed. But then the Court seemed to alter it's opinion. What might have happened?

Unlike Colorado's situation where a different judge took over the case, this time it was the same judge in the same court that denied the case. The judge might have believed there was no remedy the Court could provide.

2017: What do you think the Appeals Court in 2015 suggested that the youth plaintiffs to do?

RESOURCE

Records and updates of Washington actions
<https://www.ourchildrenstrust.org/washington/>



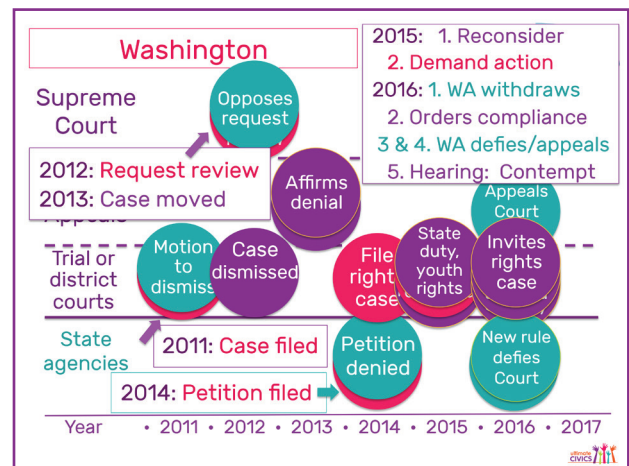
Since the youth changed legal strategy and petitioned the state for a new rule, it seems the Appeals Court felt the youth would have a stronger constitutional rights case if the youth went this route. By denying the petition, the state is claiming it is already protecting the atmosphere. A denial would provide the basis for a constitutional rights case.

Status as of November 2017: Youth plaintiffs are likely to file a constitutional rights case with the District Court.

RESOURCE

Records and updates of New Mexico actions
<https://www.ourchildrenstrust.org/new-mexico>

35. Game changer: Washington



See state guide.

Comments in WASHINGTON case

2011-13: What's going on here, based on what we learned in Colorado, Alaska, and New Mexico about legal grounds for a constitutional rights case?

The Washington youth need to first show the Court that the State is not doing its job. The

youth need to petition for a new rule first and have the State deny their petition in order to have the legal basis for a constitutional rights case.

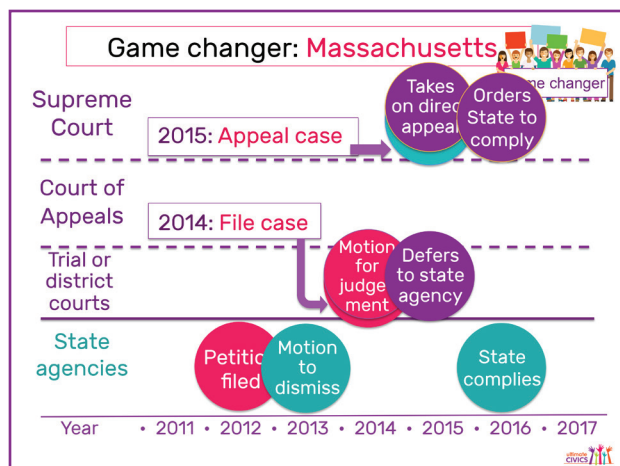
2014-15: The State refused to reconsider its denial. This gives the Court more reason to ensure due process for youth.

2016: The State refused repeatedly to comply with the Court orders, even to the point where the Court called a hearing for the State to explain why it was not in contempt of court – and should not be fined or penalized.

After giving the State plenty of time and reasons to comply, the Court invites a constitutional rights case as part of due process.

Status as of November 2017: Youth plaintiffs are planning to file a constitutional rights case before the end of the year.

36. Game changer: Massachusetts



See state guide.

Comments in MASSACHUSETTS case

2012-13: Unlike what happened in the other four states, Massachusetts youth did not file a constitutional rights case first, they petitioned a state agency for a new rule.

When the petition was denied, they did not

file a constitutional rights case. The youth filed a case against the dismissal.

2014-15: When the District Court deferred to the state agency's judgment – and science – on deciding to dismiss the petition, the youth appealed directly to the state's Supreme Court.

2016: When the Massachusetts Supreme Court ruled in favor of the youth, the Governor complied with the Court order to create and conduct a comprehensive energy plan – like the law required.

Massachusetts set a fine example for how the court system should step in and afford due process to plaintiffs when the executive branch is failing to meet its duties.

Status as of November 2017: Massachusetts is working on new rules for the energy plan.

RESOURCE

Records and updates of Massachusetts actions

<https://www.ourchildrenstrust.org/massachusetts/>

37. Reflections

Instructions



- On your Reflections sheet, take a few minutes to reflect and write.
 - » What are 3 "ah-hahs" – new things you learned about constitutional rights?
 - » What impressed you in these five stories or the federal climate case?
 - » What would you like to learn more about?
- Turn to a partner and discuss after about 3 minutes.



Class discussion guide

Open for class discussion.

Students might observe:

- State agencies always deny petitions for new rules, however, this can serve to strengthen constitutional rights cases.
- Plaintiffs have to prepare for setbacks.
- It seems like constitutional rights cases always find their way to the highest court.
- Massachusetts is the only state so far to decide in favor of youth plaintiffs and to take action.

Determine if any topics the students might like to learn more about may be good ideas for class extension projects.

38. Create a SMART action plan

The state and federal lawsuits are supported by hundreds of youth and are examples of youth taking action to reduce greenhouse gas emissions.

<CLICK>

Figure out what YOU want to do first. Then... create a game-changing action plan.

RESOURCES

YouCAN contact: Coreal
Coreal@OurChildrensTrust.org

YouCAN Campaign manual &
appendices
<https://www.ourchildrenstrust.org/learn-how-to-start-a-youcan-chapter>

Earth Guardians
<https://www.earthguardians.org/>

Start with a goal. You know how to do this!

<CLICK>

Education is always a strategy in an action plan. You need to educate yourself – and others once you figure out what you’re doing.

<CLICK>

If your state has any legal actions, you might support these actions. You might attend a court hearing like the Sunnyside Environmental School students did. But – come prepared with a banner and media statement!

<CLICK>

You could plan a local action – like starting or joining a YouCAN campaign – short for “Youth Climate Action Now.” This program was created by Our Children’s Trust as a way for youth to work with local governments to create and carry out local climate recovery plans.

<CLICK>

You could become a Green School and work to reduce greenhouse gas emissions right at your school.

Whatever you decide to do, create an action plan, and the next thing you know, you’ll probably have a lot of new friends who share your passion – and a road map to your goal!

39. Ultimate Civics! COVER SLIDE

Determine if students are ready for a class project or extracurricular activities to follow through in their interest area. By creating and implementing their own action plans, students will learn lifetime skills in civic engagement.



Vocabulary

Core Vocabulary

complaint: a document that starts a civil lawsuit and is filed by a person who claims to have suffered harm by the actions of another person

decision: a conclusion reached by a judge or jury after an evaluation of evidence

defendant: in a lawsuit, a person accused of causing the harm

plaintiff: in a lawsuit, a person who claims to have suffered harm caused by actions of another person

remedy: in a trial, the actions by a court of law to fix or make up for wrongful harm to the plaintiffs

standing: ability of a person to bring a lawsuit before a court to obtain judicial remedy or relief

trial: the judicial process of examining and determining facts and legal issues between parties in a civil or criminal lawsuit

Support Vocabulary

appeal: when a case is brought before a higher court to review a lower court's decision

beneficiaries under public trust doctrine: in a democratic society, citizens; present and future generations

Commonwealth: another name for some states

dismiss: a ruling by a judge to throw out all or part of a plaintiff's case

Executive Order: A presidential policy directive that interprets or puts into effect a federal law, constitutional requirement, or treaty

infringe: violate

intervenor: a person that the court allows to join an ongoing lawsuit when the decision in the case may affect that person's rights or property

jury: in a trial, a group of people who are selected and sworn to investigate matters of fact and to reach a decision or verdict



lawsuit: a legal case filed by one person against another and to be decided in a court of law

party: any person involved in a legal case; for example, plaintiffs, defendants, and intervenors are parties in a lawsuit

petition: a written application from a person to a governing body or public official to ask for relief

posterity: future generations of people

precedent: a legal ruling that sets a new standard for future cases

private property: property owned by private persons or entities

protected class: a group of people with a common characteristic who are legally protected from discrimination on the basis of that characteristic

public property: property owned by the government or held in trust by the government for the people

public trust doctrine: the principle that certain natural and cultural resources critical for survival are held in trust by governments, and that it is the duty of governments to protect and maintain these resources for the survival and benefit of present and future generations

remand: send back

rule-making: a process used by the executive branch to create or change rules or to put rules into effect

trust relationship: a special relationship that establishes a duty on Trustees to act for the care and benefit of Trust beneficiaries

trustees of public trust doctrine: in a democratic society, elected representatives in Congress and state legislatures

