

Activating My Democracy

- HIGH 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 grades 9-12
First 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 Turner Foundation, Inc.

Riki Ott, PhD

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.

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.

Enduring Understanding for Civics Grades 9-12*

- Critique relationships among governments, civil societies, and economic markets in shaping people’s lives. (D2.Civ.6.)
- Analyze how people use and challenge local, state, and national laws to address a variety of public issues. (D2.Civ.12.)
- Evaluate public policies in terms of intended and unintended outcomes, and related social outcomes. (D2.Civ.13.)
- Analyze historical, contemporary, and emerging means of changing societies, promoting the common good, and protecting rights. (D2.Civ.14.)

*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?
- 1. What is legal “standing” and why is it important?
- 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. In a constitutional rights case, what are examples of remedies for harms?
- 3. In the youth climate case, what are specific examples of remedies for harm?
- 4. How are youth plaintiffs using courts to defend their rights?

Learning Objectives

Students can:

- Describe why people seek judicial relief and how to bring a case to court.
- Describe how cases proceed through the court system.
- Describe how a protected class and new fundamental rights are determined and give examples.
- Explain the basic principles of the Public Trust Doctrine.
- Describe examples of remedies for harm in constitutional rights cases and, specifically, in the youth climate case.
- Describe legal strategies being used by youth plaintiffs to defend their rights and intended outcomes.



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 Core Vocabulary
 - » 1 Support Vocabulary
 - » 1 ACTIVITY “Statement of standing” for role play
 - » 1 blank name tag
- Open space for role play ACTIVITY

“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



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
- 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”
- Multi-color 3x5-inch index cards

Preparation

- Review power point notes and slides 22–27, including teaching guides for activities and vocabulary
- Arrange tables in groups of 4 to 6 students
- Place on tables as resources
 - » 2 copies of Core Vocabulary
 - » 2 copies of Support Vocabulary
 - » 12 index cards in 2 different colors
- Give each student:
 - » 1 copy of U.S. Constitution
 - » 1 ACTIVITY “You be the Judge!”
 - » 1 ACTIVITY “Remedies: A wish list”

Session 4: Game-changing state cases

Materials

- Power point notes and slides 28–39
- 5 single-sided copies of “Core vocabulary”
- 5 single-sided copies of “Support vocabulary”
- 1 single-sided copy per student

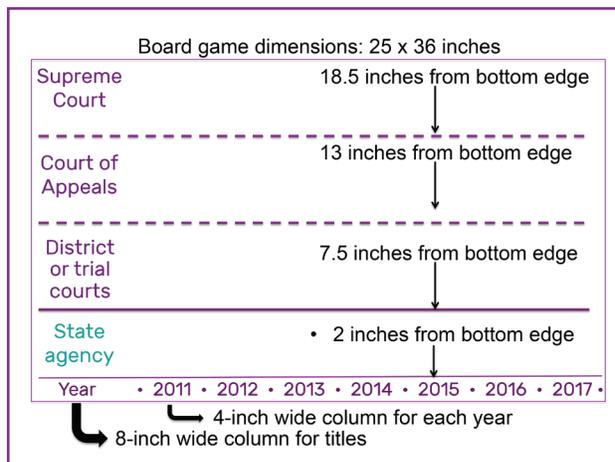
“Climate change is the defining issue of our time. The actions those in power take and decisions they make today, will determine the kind of world future generations will inherit.”

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



of ACTIVITY 9, “Exploring Legal Strategies”

- 1 single-sided COLOR copy of ACTIVITY 8, 5-state set of “Board game cards”
- 5 small envelopes for game card sets and 5 3x5-inch color index cards
 - » Label 1 envelope for each state: ALASKA, COLORADO, MASSACHUSETTS, NEW MEXICO, and WASHINGTON
- Create game sets
 - » Separate game card sheets by state (gray graphic on cards)
 - » Cut each sheet apart separately and remove any extra (blank) game cards
 - » Place remaining game cards and 1 color index card into appropriate envelope
- 5 sheets of paper 25 by 36 inches
 - » Create 5 Game Changer game boards as shown in diagram



Preparation

- Review power point notes and slides 28–40, including teaching guides for activities and vocabulary
- Arrange tables in 5 working groups
- Place on table:
 - » 1 Game Changer game board
 - » 1 envelope containing ACTIVITY game set
 - » 2 copies of Core Vocabulary
 - » 2 copies of Support Vocabulary
- Before starting ACTIVITY on slide 31, hand out:
 - » 1 copy per student of ACTIVITY, “Exploring Legal Strategies”



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.

As a guest teacher, secondary school students often ask me if I was their age, what is the most critical issue that I would be working on right now?

When this question popped up in Portland, Oregon, youth plaintiffs were challenging the U.S. government over its failure to protect the climate for their generation, and the first court hearing was in six weeks in Eugene, Oregon. I said I would learn about this case, and 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 Environmental School students did. At the students' and teachers' request, I created this lesson to explain why and how youth were using the court system to promote the common good – a healthy atmosphere and stable climate system – through a constitutional rights challenge.

2. How are youth using the courts to defend their rights?

The Sunnyside middle school students and teachers gathered on the steps of the U.S. District Courthouse in Eugene, Oregon, after the March 2016 hearing to display their banner that they created for the event.

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

<CLICK>

How are youth using courts to defend their rights?

Our essential questions for Part 1 are:

- Why do people seek judicial relief?
- What is legal "standing" and why is it important?

3. Climate kids & their team

Meet the "climate kids" – 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 that includes key players in a lawsuit and basic elements of a lawsuit. The other sheet is support vocab.

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/>

People who believe their rights are being infringed or violated by a government action may seek relief from harm in court – but only after they have exhausted administrative remedies.

In other words, people may use the court system as a last resort after first bringing their case to the state agency that is responsible for administering the law or regulations at issue. If the state agency fails to provide relief, then people may bring their complaint to court.

The Supreme Court currently hears about 70 to 80 cases a year of the 7,000 to 8,000 new cases filed annually. Civil rights cases – from race and gender discrimination to sexual orientation and disability discrimination – often involve setting new precedent.

These particular constitutional rights cases are game changers, in the sense that affirmative action by a court creates new law and social consequences.

RESOURCES

U.S. Supreme Court caseload

<https://www.supremecourt.gov/about/justicecaseload.aspx>

U.S. Supreme Court & Civil Rights
<http://civilrights.findlaw.com/civil-rights-overview/civil-rights-u-s-supreme-court-decisions.html>

4. Why the judiciary?

(If anyone asks, these youth plaintiffs are Miko, Aji, and Levi.)

Throughout U.S. history, people have used the power of the courts to defend their rights and to limit the power of a centralized government.

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

<CLICK>

These cases are about climate justice for the youngest generation. 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 recognize their rights to a healthy atmosphere and stable climate system and to 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:

<CLICK>

- 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.

<CLICK>

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.

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Class discussion guide

What are examples of economic wealth and claims of harm?

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

What are examples of environmental wealth and claims of harm?

- extended droughts
- extensive forest fires

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>

- dying fish from rising temps
- coral loss from ocean acidification

What are examples of social wealth and claims of harm?

- 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 are examples of political wealth and claims of harm?

- 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.



Statement of standing teaching guide

Personal values

Harm claimed

Aji

- Summer outdoor activities
 - Trips through and in the Cascades
 - Recreating in Puget Sound, enjoying natural beauty, eating local shellfish
 - Visiting grandparents in Montana and enjoying natural beauty of this region
 - Family and freedom to choose where to live
- High temperatures for long periods of time lessen enjoyment of and ability to do physical activities outdoors
 - More frequent and more intense wildfires endanger health and life
 - Ocean acidification and high temps are killing local sea life and causing shellfish to be toxic to humans
 - Forests killed by spruce bark beetles that thrive with warmer temps
 - Loss of ability to move back to New Mexico family due to water shortage

Alexander

- Family and family farmland of 7 generations ground identity and wellbeing; farm crops and animals are sources of revenue and food
 - Enjoying, hunting, and eating wildlife that lives on farm
 - Personal health
 - Hiking in northern Washington to enjoy glaciers and beauty of region; dreams of visiting other regions to view glaciers and natural beauty
- Record-setting heat waves limit his ability to work the farm and cause emotional stress; record drought harms farm crops and income
 - Wildlife also harmed by high temps, drought, and wildfires
 - Poor health from increased pollen counts and smoke from wildfires
 - Emotional trauma from witnessing damage to glaciers and ecosystem from climate change; trauma from fear of inability to fulfill dreams

Journey

- Family, cultural values grounded in land and sea; deep sense of stewardship and responsibility for present and future generations
 - Cultural activities taro and organic farming, fire dancing, Hula Hula
 - Food security from the sea
 - Swimming, snorkeling, canoeing, paddle boarding, biking on beach
 - Personal safety and health
- Rising temps and sea level harm land and sea, cultural activities, emotional security & ability to meet current & future needs
 - More intense & frequent storms, flooding & coastal erosion harm land & farm infrastructure, decrease harvest & activities to celebrate it
 - Ocean acidification, higher temps & change in ocean circulation threaten food security
 - Rising sea & less rainfall cause poor water quality & more shark activity



DISCLAIMER: Statement was adapted from the complaint in Juliana v. US. and is not intended to be an exclusive description of the values and harms claimed by youth plaintiffs.

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Statement of standing teaching guide

Personal values

Harm claimed

Kelsey

- Fresh water sources for drinking, hygiene, and recreating
 - Marine and estuarine waters source of food and enjoyment
 - Diet of local seafood and food grown in family garden and locally in Oregon
 - Winter recreation: snowshoeing, cross-country skiing and snow camping
 - Summer recreation: rafting, swimming in rivers, canoeing on lakes, hiking
 - Family and future children
- High temperatures for long periods of time lessen enjoyment of and ability to do physical activities outdoors
 - More frequent and more intense wildfires endanger health and life
 - Ocean acidification and high temps are killing local sea life and causing shellfish to be toxic to humans
 - Forests killed by spruce bark beetles that thrive with warmer temps
 - Loss of ability to move back to New Mexico family due to water shortage

Miko

- Family, friends, homeland & home
 - Freshwater for drinking & recreating
 - Eating seafood and fish
 - Life, home, and country
- Homeland of Marshall Islands is at-risk from sea level rise; fear she may not ever be able to visit or return
 - Drought & low water levels cause harm
 - Ocean acidification & warming of ocean & rivers harm fish & sealife
 - Climate change impacts in new home (OR) cause mental & emotional trauma leading to actions to raise awareness, change lifestyle, and take actions to counter climate harm

Nathaniel

- Winter activities: cross-country skiing
 - Unusual ice storms
 - Personal & environmental health and cross-country running
 - Raising chickens & hunting wild foods
 - Fishing & eating salmon, especially kings
 - Enjoys seeing & visiting glaciers
- Reduced snowfall & shorter snow season limit activity & enjoyment
 - Widespread power outages & cold temps threaten safety & wellbeing
 - High summer temps & wildfires, intense smoke, increases asthma & allergies & limits ability breathe & run outdoors
 - Knowledge of harm to lifestyle, animals & ecosystems causes emotional harm
 - Sharp decline in salmon from warmer temps and lower personal use harvest
 - Higher temps cause rapid melt & retreat of glaciers



Statement of standing teaching guide

Personal values

Harm claimed

Sophie

- Mental health, sense of future, love of human civilization
 - Home and safety
 - Summer activities: track & tennis
 - Dreams and plans
 - Growing food in family garden
 - Physical health
 - Right to life, liberty & property
- Sense of urgency & anxiety over responsibility to compel government action on climate change to protect future humanity from climate impacts
 - Extreme weather events: Hurricane Sandy closed schools, hailstorms damaged home, floods cover roads, tornadoes threaten sense of security
 - Higher temps limit activity & enjoyment
 - Coastal cities where she had hoped to live at risk of flooding from rising sea levels; knowledge of impending harm causes emotional trauma & stress
 - Food crops rely on pollinators that are declining due to climate change & other factors
 - Now suffering pollen allergies caused or worsened by higher temps
 - Deep concern and anxiety over present & future harms from climate change

Victoria

- Mental & emotional wellbeing, sense of safety and security
 - Summer activities in New York
 - Personal health
 - Home
 - Life and future
- Experiences distress over climate change-driven superstorms & loss of personal security with power loss, school closure, loss of public transport
 - High temps limit activity & enjoyment
 - Increased pollen counts & season from higher temps make allergies worse
 - Sea level rise, storm surges & flooding threaten home on low-lying land
 - Threats to home, life & future from climate change cause mental & emotional trauma leading to actions to raise awareness of harm & actions to mitigate it



DISCLAIMER: Statement was adapted from the complaint in Juliana v. US. and is not intended to be an exclusive description of the values and harms claimed by youth plaintiffs.

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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. Do YOU have anything in common with the plaintiffs?

Reflections



- Turn to a partner and share.
- Allow about 2 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.

<CLICK>

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.

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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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/>



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.

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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. For updates, check www.ourchildrenstrust.org.

9. Completion of pre-trial activities

Suggested stopping point for class.
Next: Trial activities

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>

10. Trial map: Claim 4 legal rights violated

Our essential questions in Part 2 are:

- What is a protected class and how is it determined?
- How are new fundamental rights recognized?
- What are the basic principles of the Public Trust Doctrine?

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 – or fails to recognize new rights.

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In *Juliana v. U.S.*, youth are claiming harm to four legal rights. 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.

<CLICK>

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.

<CLICK>

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."

<CLICK>

The Equal Protection Clause in the 14th Amendment was extended back to the Bill of Rights and became part of your 5th Amendment rights.

<CLICK>

Courts now recognize two types of due process.

- "Procedural due process" is your right to fair access to the court system and a fair process in that system.
- "Substantive due process" prevents the government from infringing on fundamental constitutional liberties. These concepts are in the support vocab.

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 substantive due process and equal protection as a "protected class."



RESOURCES

Rights not incorporated by 14th Amendment: 2nd Amendment, 3rd Amendment, and 5th Amendment right to be indicted by grand jury
<https://legal-dictionary.thefreedictionary.com/Substantive+Due+Process>

Reverse incorporation of equal protection
https://en.wikipedia.org/wiki/Bolling_v._Sharpe
<https://supreme.justia.com/cases/federal/us/347/497/case.html>

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?
 - » Youth have no voting rights and little opportunity to use their political influence over public officials.
 - » Youth are dependent upon adults for physical, mental, and social wellbeing.
 - » Youth are more vulnerable during childhood, because they have not fully developed mentally or physically.
 - » Youth 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 plaintiffs 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.

If the Timeline of Rights and Powers is posted in classroom, ask students:

- Can you find the most recent fundamental right that was recognized?
 - » Hint: Start backwards in the timeline and look for blue.
 - » 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.”

RESOURCES

U.S. Supreme Court & Civil Rights Decisions

<http://civilrights.findlaw.com/civil-rights-overview/civil-rights-u-s-supreme-court-decisions.html>

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>



16. Fundamental right: Stable climate system?

Youth plaintiffs in *Juliana v. U.S.* claim their 5th Amendment 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 it sets out the goals of the Constitution.

<CLICK>

Instructions



- Read the Preamble in partner teams.
- Identify the 6 goals set forth in the Preamble.
- Identify the 2 types of persons protected under the Constitution.

Class discussion guide

- WHO is protected by the Constitution?
 - » present generations: "We the People..."
 - » "... ourselves and our Posterity" – present and future generations
- What are the 6 goals of the Constitution?



- » form a more perfect Union
- » establish Justice
- » insure domestic Tranquility
- » provide for the common defense
- » promote the general Welfare
- » secure the Blessings of Liberty...

<CLICK>

- What's another word for "Welfare"?
 - » wellbeing; all forms of wealth, combined
- What is the definition of "Liberty"?
 - » freedom from government oppression; liberty refers to our protected freedoms, our constitutional rights
- Which of the goals in the Preamble help form and maintain 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.
- Discuss each question at your tables. Consider types of wealth and use examples from the standing activity.

For example, justice is about fairness. Are the areas most at risk from climate instability evenly distributed across class and race?

- Vote at your tables on each question.
- Be prepared to share your answers in about 5 minutes.

Class discussion guide

- Discuss each question.
- Then tally and record the votes on the white board.

Justice

- property damage from flooding from sea level rise, storm surges, or more intense storms
- health damaged or at risk from smoke from burning forests or by oil spills
- forced relocation because of water shortages from extended droughts or sea level rise or forest fires
- changes to way of life or culture from harm to land, ocean, wildlife,
- changes in food security from inability to grow food

Domestic Tranquility

- sense of security in home or community
- sense of wellbeing for individual or extended family members

Consider reading Jayden’s eyewitness account of the heavy flooding in August 2016 in southern Louisiana. See story in quote box.

General welfare

- Unstable climate system creates superstorms, extended drought, water shortages, large-scale forest fires, ocean acidification, and more, which all harm general wellbeing.

Blessings of liberty

- Unstable climate system threatens life, liberty, and property; due process; and equal protection.

Final question

- 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.
- » Check appropriate box.

If the students voted “no” to any of these questions, then the “jury” recognized the

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>



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.

“Climate change is a multiplier of injustice.”

**~ Jacqueline Patterson, Director
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)

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.
- Now take a breathe of air. Did you have to pay anyone for that?
 - » No.

This is an example of public property. You own part of every national forest, state park, public museum, and more.

- When you swim in the ocean, walk on a public beach, or boat on a river, you don’t pay anyone, because 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.

<CLICK>

Instructions



- Turn to a partner. Explain the Public Trust Doctrine to each other in your own words. Use your vocab 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.

Class discussion guide

Go through list together, calling out each resource, and asking for an answer.

- Are public schools critical to survival of humankind?
 - » No.
- 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>



- 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.
 - » Consider that no other planet in the known universe has an atmosphere that supports life.
 - » This will be argued in court.

<CLICK>

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/>



- 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 rights and to our survival.
 - » Earth’s atmosphere supports life, and we’ve yet to find another planet that does.
 - » 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

Our essential questions in Part 3 are:

- In a constitutional rights case, what are examples of remedies for harms?
- In the youth climate case, what are specific examples of remedies for harm?

<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.

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.

<CLICK>

Instructions



- Read each question, discuss it at your tables, and then vote.
- Allow about 5 minutes.

<CLICK>

Class discussion guide

- Roll up the screen and project directly onto white board.
- Tally the votes for each question 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).

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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>

- 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.

For example, if the judge or 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.

RESOURCES

Sunnyside Environmental School Climate Cohort, *LNG: Just Another Dirty Fossil Fuel* video

<https://www.youtube.com/watch?v=x8CQ9Qrei3c>

Anne Lee, profile film

<http://www.broweryouthawards.org/winner/anne-lee/>

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>

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.

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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>

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.



RESOURCES

Greenhouse gas 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>

Methane emissions and frack gas

https://www.eeb.cornell.edu/howarth/publications/f_EECT-61539-perspectives-on-air-emissions-of-methane-and-climatic-warmin_100815_27470.pdf

The goal is to reduce atmospheric carbon dioxide to below 350 parts per million by the year 2100 – or sooner.

Let's start with some evidence on greenhouse gas emissions and offsets.

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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 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.

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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.

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

For ideas on how to transition off fossil fuels, check out Stanford University's interactive energy portfolio map by state. It shows transition to 100 percent renewables is possible by 2050.

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.

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?

RESOURCES

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>

The Solution Project, Stanford University

<http://thesolutionsproject.org/infographic/#>

Schools Under 2C

<https://www.schoolsunder2c.org/>

- 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 – or sooner.

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.

Youth plaintiffs are requesting the Court to retain jurisdiction over the climate recovery plan to make sure the State meets the target dates.

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.



Our essential questions are:

- How are youth using courts to defend their rights?
- What are specific legal strategies and intended outcomes?

<CLICK>

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

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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?
 - » 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.

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If the appeals court does not agree with the lower court's ruling, the higher court has several options. It can affirm or deny a lower court's decision or "remand" it (return 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.

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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.

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Sometimes in exceptional cases, the Supreme Court will skip the appeals court and take the case directly from the district 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. Legal proceedings in 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. There are two legal strategies.

One option is to file a case against the state government in state courts like the youth



did in federal court against the federal government.

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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>

The second option is to petition for an administrative remedy through the executive branch – specifically, the state agency responsible for writing rules to control greenhouse gas emissions. Youth petitioners request the agency to update the state’s rules to reduce greenhouse gas emissions faster than required under existing laws.

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Once state agencies deny a petition, the youth may use the court as a last resort to remedy the harms claimed.

30. Game Changer: Mapping

To learn how the courts deal with complex issues that affect everyone in society, we will look at what’s happening with youth legal actions in five states – Alaska, Colorado, Massachusetts, New Mexico, and Washington.

To do this, let’s play a game called, “Game Changer.”

RESOURCES

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

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



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

We already know there are three players and three colors.

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The goals of the game are to:

1. Map the stories and find the game changers.
2. Explore legal strategies across states.



Game Changer instructions

- Each table has one envelope with game cards.
- Open the envelope, take out the game cards, and share them so everyone has some.

<CLICK>

- Look at one of their game cards. Each card has 3 position clues: WHO, WHAT, and WHEN.

<CLICK>

- WHEN is the clue for the horizontal position along the x-axis or timeline.
- Position yourself along the timeline of the game board in front of the year shown on your game card.

<CLICK>

- WHO and WHAT are the clues for the vertical position along the y-axis.
- Place your game card in its x-y vertical position.
- If there are multiple cards in one position, arrange in chronological order with oldest date at the bottom.
- Stop and listen.

<CLICK>

- Once all the cards are in place, read the game cards in chronological order together to learn the story.
- When you identify the game changer, slide the color index card under that game card on the game board.
- In about 10 minutes or when all the teams are ready, we'll proceed with the last instruction.
- During activity, circulate amongst the teams to answer questions, as needed. Refer students to support vocab for new words.
- As students finish, distribute ACTIVITY sheets, "Exploring Legal Strategies."

31. Game changer: Exploring guide

Now everyone take an ACTIVITY sheet, "Exploring Legal Strategies."

<CLICK>

Instructions



- In your state, write the youths' legal strategies – case or petition – and key ruling to deny or affirm each action.
- Determine the status of the legal actions: ongoing, pending, over? And the WHAT: case or petition?
- As a team, go explore other states and repeat above activities.
- Return to your state when done and answer other questions on your activity sheet.

- Be prepared to share. When teams are ready, proceed.

<CLICK>

- As a team, check your answers with the answers on the slide.
 - » Circle any discrepancies. We will work through them during discussion.
 - » <CLICK> through slowly so teams can follow.
 - <CLICK 3, first action and ruling>
 - <CLICK 4, second action and ruling>
 - <CLICK 5, AK>
 - <CLICK 6, CO>
 - <CLICK 7, NM>
 - <CLICK 8, WA>
 - <CLICK 9, MA>

32. Game changer: Exploring

Class discussion guide



Youth start in court

- Which states approached the court first to remedy the harm?
 - » AK, CO, NM, WA

<CLICK>

- What was the key ruling in all of these states?
 - » Their petitions were denied.

<CLICK>

- Why?
 - » Youth are asking to change business-as-usual and people resist change, especially transformative (system) change.
 - » Further, there is resistance in AK, CO, and NM, because the oil and gas industry provides most of the operating revenue in these states.



State	Action	Ruling	Action	Ruling	Action	Ruling	Status
AK	file case in court	denied	petition state	denied	file rights case	n/a	ONGOING rights case
CO	file case in court	denied	petition state	denied	appeal petition to court	n/a	ONGOING petition
NM	file case in court	denied	petition state	denied	pending	n/a	PENDING action
WA	file case in court	denied	petition state	denied	appeal petition to court	court invites rights case	ONGOING rights case
MA	petition state	denied	appeal decision	court defers to state	appeal to Supreme Court	affirms youths' petition	OVER youth victory!

- » In WA, the agency felt it was following the law – even though it could make stronger rules to reduce GHG emissions faster.
- What did the youth in these states do after their initial court case and their petition were denied?
 - » Youth went back to court, but with different legal strategies.

<CLICK>

- What did youth in Alaska and Washington do?
 - » AK: Youth filed a rights case against the state.
 - » WA: Youth first appealed the state's decision to deny their petition to the court to overturn it. However, the court invited a constitutional rights-based case. WA youth switched strategies and filed a constitutional rights case against the state like in Alaska.

<CLICK>

- What did youth in Colorado do?
 - » CO: Youth appealed the state's decision to deny their petition to the court to overturn it, based on constitutional rights.

<CLICK>

- What are the legal options for youth in New Mexico at this point?
 - » As above, back to court with a constitutional rights-based case either to appeal the state's decision to deny the petition or to sue the state over violation of rights.

<CLICK>

Youth start with petition

- What did the MA youth do first? Youth petitioned the state agency responsible for the rules governing GHG emissions first.

<CLICK>



- What was the key ruling? Why?
 - » Their case was denied, because the agency felt it was following the law – even though it could make stronger rules to reduce GHG emissions faster.

<CLICK>

- What did the MA youth do next?
 - » After exhausting their prescribed administrative remedies, youth appealed the state’s decision to the court to overturn it, based on their constitutional rights.

<CLICK>

- What was the key ruling? Why?
 - » Their case was denied, because the district court deferred to the state agency and the agency’s science-based decision process.
 - » Youth appealed the lower court’s decision and the Supreme Court took the case.
 - » MA Supreme Court decided in the youths’ favor and ordered the state to address multiple sources of GHG emissions, set overall limits, and set limits that decline on an annual basis.
 - » Unlike what happened in WA, the MA governor and agencies complied with the order.

<CLICK>

- Was the legal strategy in Massachusetts advantageous? Why or why not?
 - » It’s the way things SHOULD work, but rarely do because of entrenched attitudes among public officials and the public or because of political influence of oil and gas industry.
 - » Also note that the Massachusetts youth saved themselves a couple

of years by starting with an administrative remedy.

- » MA youth also built alliance with MA Consumers Energy Alliance. Consumers are voters. The MA court ruling and state compliance were aligned with MA voters’ will.

Teaching options

- Proceed directly to slide 38 and discussion of game-changing rulings.
- Proceed with in-depth discussion by state in slides 33–37.

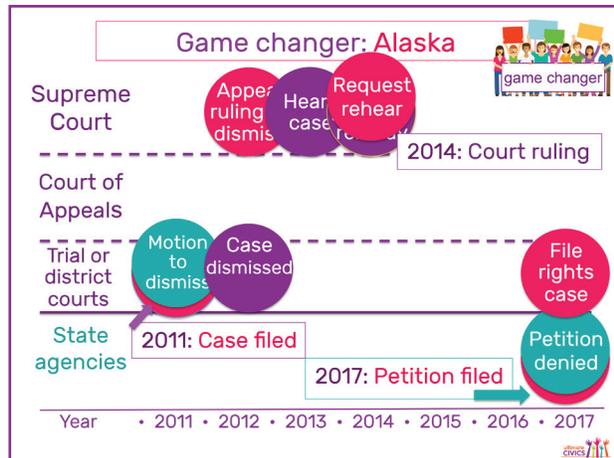
33. Game changer: Alaska

Class discussion guide for slides 33–37

- 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 discuss why it’s a game changer.
- Allow about 5 minutes per team.
- Encourage discussion.



See state guide.



Comments in ALASKA case

2012: 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 partially paid off. The Alaska Supreme Court affirmed the state's constitutional duty to protect the atmosphere – but it awarded no remedy for political reasons. Alaska gets 85 percent of its state revenue from oil taxes.

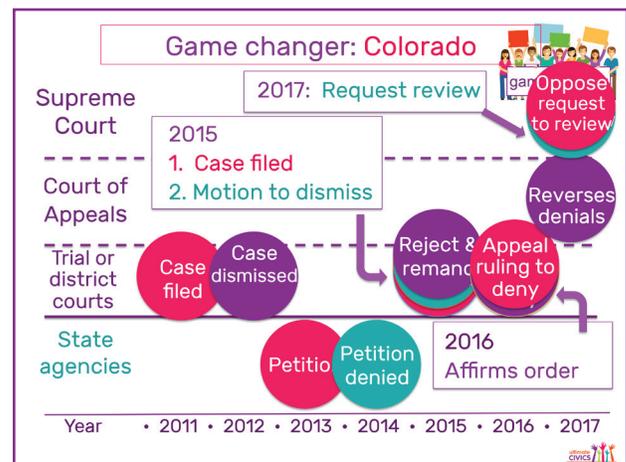
2017: What's the legal strategy with petitioning a state agency for a new rule to reduce carbon dioxide or greenhouse gas emissions? It seems these petitions always get denied.

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 atmosphere and stable climate system. The state's denial provides the basis for a constitutional rights case.

Status as of February 2018: Youth plaintiffs are waiting for the District Court to schedule their case for a hearing.

34. Game changer: Colorado

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.

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>



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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 February 2018: 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>

35. 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 its 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?

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 February 2018: Youth plaintiffs

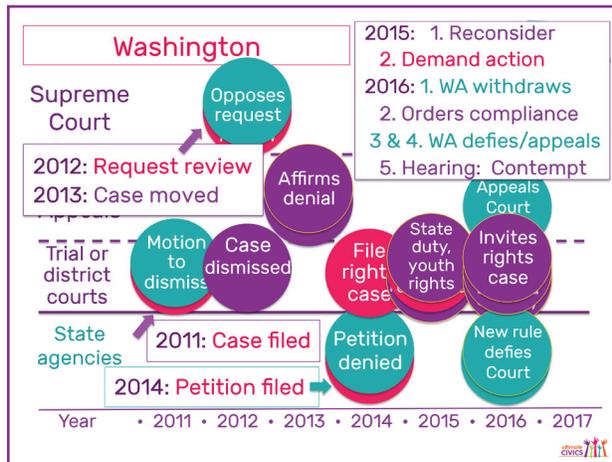


are likely to file a constitutional rights case with the District Court.

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

36. 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

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

RESOURCE
 Records and updates of Massachusetts actions
<https://www.ourchildrenstrust.org/massachusetts/>

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.

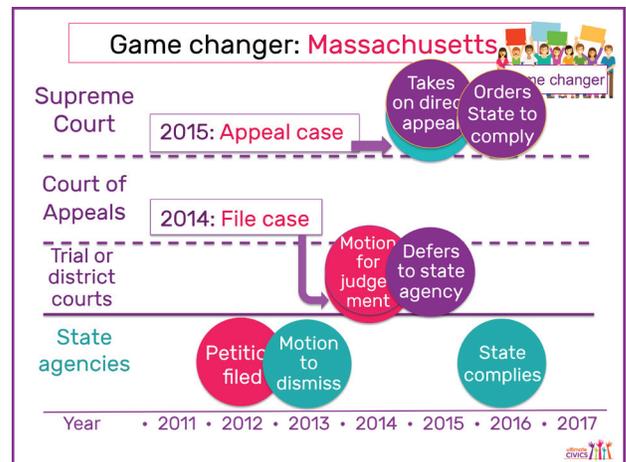
2016: The State refused repeatedly to comply with the Court orders, even to the point where the Court called a hearing for the State to explain why it was not in contempt of court – and should not be fined or penalized.

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 February 2018: Youth plaintiffs filed a constitutional rights case in late January 2018.

37. 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, youth appealed the state’s decision to the court, based on constitutional rights, including rights under the Public Trust Doctrine.

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 February 2018: Massachusetts is working on new rules for the energy plan.

38. Reflections

- If students haven’t already done so, ask each team to share their game-changing ruling.
 - » Presentation order: AK, CO, NM, WA, and MA
 - » <CLICK> after each state team shares.

<CLICK>

Instructions



- On the back of your ACTIVITY sheet, “Exploring Legal Strategies,” take a few minutes to reflect and write.
 - » List 3 “ah-hahs” about the five state stories?

» What would you like to learn more about?

- Discuss at your table after about 3 minutes.

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.

39. Game Changer: Contrasting

The state and federal lawsuits are supported by hundreds of youth and are creating opportunities for youth to take local action to reduce greenhouse gas emissions.

Here is why.

One reason is that the Massachusetts victory is about enacting and enforcing a climate recovery plan with annual reductions in greenhouse gas emissions. This affects every citizen and every government office from local to state.

Instead of just leaving the details of the plan up to the state, there is an opportunity for schools to engage local government to offer practical ideas and ways to help do their share to reduce GHG emissions.

The second reason is what happened in Pennsylvania. Let’s look.

<CLICK>

Like Massachusetts, youth filed a petition



with a state agency. Between 2011 and 2014, PA youth revised their petition three times – and were denied three times.

<CLICK>

After the third denial, youth plaintiffs changed legal strategies and filed a constitutional rights case, based on the Public Trust Doctrine.

<CLICK>

When the lower court and appeals court both dismissed the case, youth appealed to the Supreme Court to overturn these decisions and preserve their rights.

<CLICK>

However, in 2017, the Pennsylvania Supreme Court affirmed the lower courts' decisions and dismissed the youths' case.

<CLICK>

Pennsylvania receives most of its state revenues from the oil and gas industry.

<CLICK>

- What other strategies might the Pennsylvania youth consider to further their cause?

Instructions



- Discuss at your tables, then open to class discussion.

Essentially, the youth have the same options as the youth in Massachusetts and every other state. Nothing is holding people back from finding ways to reduce GHG emissions now.

When representative democracy fails, people often turn to street democracy to initiate critical and timely action (as discussed in Lesson 1).

40. What can we do?

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

Here are some ideas for creating your own game-changing action to reduce GHG emissions in your community. Use these as a starting point or start your own SMART action plan.

Once you commit to action, you'll probably have a lot of new friends who share your passion – and a road map to your goal.

41. 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.

RESOURCES

YouCAN Campaign

<https://www.ourchildrenstrust.org/learn-how-to-start-a-youcan-chapter>

Earth Guardians

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

Schools under 2C

<https://www.schoolsunder2c.org/>

Green Schools

<https://greenschoolsnationalnetwork.org/>



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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

procedural due process: prohibits the government from depriving individuals of legally protected interests without first giving them notice and an opportunity to be heard

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

substantive due process: prohibits the government from infringing on fundamental constitutional liberties

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

