

IN BRIEF for Educators: Navigating Opinions and Orders in *Juliana v. U.S.*

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Judge AIKEN, U.S. District

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Primary source: Judge Aiken’s decision on Trump administration’s “*motion for judgment on the pleadings*” (MJP) and “*motion for summary judgment*” (MSJ)
www.ourchildrenstrust.org/court-orders-and-pleadings

What is this about?

The “*Motion for Judgment on Pleadings*” seeks to dismiss key harms claimed by youth plaintiffs and on which their case is based. The “*Motion for Summary Judgment*” seeks to dismiss all or part of their case, depending on the Court’s decisions in the MJP. Both motions seek to prevent the case from going to trial.

The issues raised in the two motions are related. Judge Aiken chose to address all of the issues before the court in a single opinion and order to minimize confusion.

Many of the arguments raised by the federal defendants are similar to those raised previously in other “*motions to dismiss*” the youth plaintiffs’ case before trial. However, a higher standard of legal review applies to the MJP and the MSJ.

Essentially, the Court must pre-try the case to examine the factual strength and legal basis of the plaintiffs’ evidence. Then the Court must decide whether to deny or grant each issue raised by federal defendants.

Ultimate Civics support materials for educators

The youth-driven climate cases in federal and state courts were mostly filed by youth between the ages of 8 and 19. The cases present a teachable moment for youth to learn about their rights, the court system, and how to use their rights to defend what they love.

Ultimate Civics developed *Activating My Democracy* lessons (g6–12) to inspire youth to become engaged citizens. Lessons 2 and 6, in particular, were developed to help students understand how to use their rights to defend what they love. These lessons draw on current events (2) and the youth-driven climate cases (6). All lessons use the C3 Framework for Social Studies State Standards, and all materials are free: www.ultimatecivics.org/

“IN BRIEF for Educators” was developed to extend these lessons and learning in real-time as the climate cases proceed through federal, state, and international courts. A support vocabulary is included at the end.

Quick guide to issues in Opinion and Order

I. Motion for Judgment on the Pleadings	11-27
A. Motion to Dismiss Trump as a Defendant with Prejudice	12-19
B. Motion to Dismiss for Failure to State a Claim under the Administrative Procedures Act	19-25
C. Motion to Dismiss on Separation of Power Grounds & Request for Court to Reconsider Its Nov. 2016 Decision Denying This Very Same Motion	25-27
II. Motion for Summary Judgment	28-59
A. Standing	30-45
i. Injury in Fact	30-34
ii. Causation	35-41
iii. Redressability	41-45
B. Failure to State a Claim under the Administrative Procedures Act	45
C. Separation of Powers	45-48
D. Due Process Claims	48-54
i. Fundamental Right to an Environment Capable of Sustaining Human Life	48-49
ii. State-Created Danger Theory	49-54
E. Public Trust Doctrine*	54-55
F. Plaintiffs' Remaining Claims	55-59
III. Request to Certify for Interlocutory Appeal	59-61
Conclusion	62

* This section draws from the Nov. 2016 Opinion and Order, p. 36-51:
www.ourchildrenstrust.org/court-orders-and-pleadings

I. A. Motion to Dismiss Trump as a Defendant with Prejudice

At issue: Federal defendants argue that the President is not necessary to provide relief to fix the harms claimed. Also, they argue that the President’s presence violates the “*separation of powers*,” meaning that the Court would be overstepping its designated powers and responsibilities.

Plaintiffs assert complete relief may not be possible without the President as a defendant. Plaintiffs cite numerous “*Executive Orders*” and Presidential memos to show that the President is promoting and encouraging fossil fuel use and expansion of fossil fuel infrastructure (p. 15). Presidential directives are carried out by agencies and others within the executive branch.

Court opinion: Under a new rule, courts must dismiss a sitting President if it is likely that the plaintiffs’ injuries can be remedied through relief against “some inferior governmental official (or group of officials)” (p. 13).

The Court concluded that, “... because lower governmental officials are charged with executing the challenged presidential policies, equitable relief against President is not essential to [fixing the harm]” (p. 16).

Regarding prejudice, the Court “cannot conclude with certainty that President Trump will never become essential to affording complete relief” (p. 18).

COURT ORDER: Federal defendants’ motion to dismiss President Trump from this lawsuit is GRANTED. The dismissal is without prejudice (p. 19).

***** **FOR THE CLASSROOM** *****

Extend *Activating My Democracy* lessons with a **Critical Thinking Activity**.

1. Have students review one or each of the three examples of Executive Orders listed in the MJP on page 15 and below under RESOURCES. Determine what the order does and who is responsible for carrying it out.
2. Students deliberate whether it is possible to remedy harm caused by a president’s actions by limiting relief to actions of lower government officials.
3. How could sitting Presidents be held accountable for harm caused by their orders without violating the separation of powers? (Hint: See Issue II. A. iii.)

RESOURCES for Executive Orders

www.federalregister.gov/presidential-documents/executive-orders/donald-trump/2017

EO 13766: Jan. 24, 2017, Expediting Environmental Reviews and Approvals...

EO 13778: Feb. 28, 2017, ... Reviewing the “Waters of the United States” Rule

EO 13783: Mar. 28, 2017, Promoting Energy Independence and Economic Growth

I. B. Motion to Dismiss for Failure to State a Claim under the Administrative Procedures Act

At issue: Federal defendants assert that entire case must be dismissed because youth plaintiffs are challenging actions of federal agencies and so must bring their case under the “Administrative Procedures Act” (APA), the rules that govern how federal agencies must manage the government.

Court opinion: Plaintiffs are not challenging individual instances of harm from specific activities permitted by federal agencies. Rather, plaintiffs are challenging large-scale policy decisions concerning the overall harms caused by greenhouse gas emissions in the U.S. Plaintiffs claims are brought directly under the U.S. Constitution, rather than under the APA.

“The Supreme Court expressly rejected the argument that the APA provided the only available route to judicial review of agency action and inaction (p. 22). Higher courts have ruled “that challenges to federal agency action may... be stated as an APA claim or a constitutional claim” (p. 24). Plaintiffs’ claims simply do not fall within under the APA, because the APA contains no provisions to “seek wholesale improvement of [an agency] program” (p. 24, emphasis added).

COURT ORDER: Federal defendants’ Motion for Summary Judgment is DENIED on this issue (p. 62).

I. C. Motion to Dismiss on Separation of Power Grounds & Request for Court to Reconsider Its Nov. 2016 Decision Denying Same Motion

At issue: Federal defendants argue that any claim brought outside the APA’s framework is prevented by the separation of powers.

Court opinion: The Court rejected a similar motion to dismiss from the fossil fuel industry defendant “intervenors” in its November 2016 opinion and order. Courts are not allowed to reexamine an issue previously decided by the same court (p. 26).

Court have “an obligation not to overstep the bounds of its jurisdiction, but they have an equally important duty to fulfill their role as a check on any unconstitutional actions of the other branches of government” (p. 26).

COURT ORDER: Federal defendants’ Motion to Dismiss on Separation of Power Grounds and Motion to Reconsider its November 2016 decision are DENIED (p. 62).

***** **FOR THE CLASSROOM** *****

Extend *Activating My Democracy* lessons with a **Critical Thinking Question**.

- Can you deduce defendants’ legal strategy in these two motions to dismiss?

II. A. i. Standing - “*Injury*” in Fact

At issue: Federal defendants argue again that plaintiffs lack standing, because:

- their injuries are not concrete and individualized (p. 28);
- their injuries are generalized widespread environmental phenomena, which affect all other humans on the planet (p. 32); and
- their injuries are actual and imminent (about to happen) (p. 29).

Court opinion: Regarding the first concern, youth plaintiffs establish “*material facts*” relating harm to economic interests, aesthetic interests, and environmental well-being, as well as harm to personal health and well-being. Youth plaintiffs link material facts through expert testimony to fossil-fuel induced global warming.

Regarding harm affecting all humans, the Supreme Court “rejected the notion that injury to all is injury to none for standing purposes” (p. 32). Also, denying “standing to persons who are in fact injured simply because many others are also injured, would mean that the most injurious and widespread Government actions could be questioned by nobody” (p. 33).

Regarding actual and imminent, youth plaintiffs have submitted evidence “that fossil fuel emissions are responsible for most of the increase in atmospheric carbon dioxide, and that increasing carbon dioxide, in turn, is the main cause of global warming, and that atmospheric concentrations of greenhouse gasses, due to fossil fuel combustion, are increasing quickly...” and “are likely to continue to increase as global surface temperatures continue to rise” (p. 33).

Further, plaintiffs present evidence of extreme wildfires in the western United States and abnormally strong hurricanes in the southeastern United States and Gulf of Mexico..., all of which were [made worse] by climate change.” Further, plaintiffs offered evidence “that global sea level rise will continue unabated under current conditions” (p. 34).

For purposes of this case, “the declarations submitted by youth plaintiffs and their experts have provided “specific facts” of immediate and concrete injuries” (p. 34).

***** **FOR THE CLASSROOM** *****

Use *Activating My Democracy* lesson activities to support student understanding.

1. Explore the connections among values, wealth, and rights in Lesson 2 to give students a firm understanding of how to use our rights to defend what we love.
2. Conduct the role play activity on standing in Lesson 6, part 1. Challenge students to link harms to immediate and future injury and causation.

II. A. ii. Standing – “Causation”

At issue: Federal defendants argue that plaintiffs lack standing, because the harms claimed are not “fairly traceable” – clearly linked – to federal defendants’ actions and, instead, are the result of the independent action of third parties.

Regarding federal defendants’ actions, defendants admitted that “from 1850 to 2012, carbon dioxide emissions from the United States... comprised more than 25% of the cumulative global carbon dioxide emissions” (p. 37). Youth plaintiffs offered expert testimony that “the current national energy system, in which approximately 80 percent of energy comes from fossil fuels, is a direct result of decisions and actions taken by Defendants” (p. 40). Experts also link “subsidies” for fossil fuel companies to support the low cost and continued use of oil to plaintiffs’ injuries.

Regarding emissions, plaintiffs challenge direct emissions of federal defendants through their use of fossil fuels to power its buildings and vehicles. Plaintiffs’ experts provide evidence “that federal defendants’ actions... such as coal leasing and oil development” on public lands led to their injuries (p. 38).

Regarding third party emissions – the emissions that are caused and supported by federal defendants’ policies, youth plaintiffs’ experts provide evidence of federal leasing policies on National Forest lands and in the federally-controlled Outer Continental Shelf; timber harvest and livestock grazing on federally-controlled land; energy conservation standards for more than 60 categories of appliances and equipment (covering 90 percent of home use); Fuel Economy Standards set by the federal government for vehicles; federal licensing for offshore liquefied natural gas or oil import and export facilities; and interstate transport permits for fossil fuel and hazardous material; and more (pp. 37–40).

Plaintiffs “need not connect each molecule” of domestically-emitted carbon to their specific injuries to meet the causation standard... At this stage of the proceedings, plaintiffs have proffered sufficient evidence to show genuine issues of material fact remain on this issue. A final ruling... will benefit from a fully-developed factual record, where the Court can consider and weigh evidence from both parties” (p. 41).

***** **FOR THE CLASSROOM** *****

Extend *Activating My Democracy* lessons with a **Critical Thinking Activity**.

- Determine the total amount of federal subsidies to support fossil fuel use. How much we each pay to support fossil fuels? (Divide subsidy by U.S. population.)

RESOURCES

In the United States, see the Green Scissors Report: www.greenscissors.com
www.nytimes.com/2015/12/06/science/on-tether-to-fossil-fuels-nations-speak-with-money.html

II. A. iii. Standing - "Redressability"

At issue: Federal defendants argue again that plaintiffs lack standing, because the remedies sought by the plaintiffs are beyond the Court's authority to provide. Also, defendants argue that any remedy fashioned by the Court would not redress harms, because other entities contribute to continuing global warming.

Plaintiffs request "declaratory relief," a court declaration that their constitutional rights have been violated. Plaintiffs also request "injunctive relief," a court order for federal defendants to develop a plan "to bring their conduct into constitutional compliance." The Court "deems these just and proper" (p. 43).

Plaintiffs also offer evidence that their claims of harms could be redressed through actions of the federal defendants to, for example, phase out of greenhouse gas emissions within several decades; drawdown of excess atmospheric carbon dioxide through reforestation of marginal lands and agricultural practices; electrify with 100% renewable energies, the energy infrastructure in all 50 states (p. 43-44).

Court opinion: Redressability "does not require certainty... it only requires a substantial likelihood..." (p. 42). Plaintiffs "have shown an issue of material fact that must be considered at trial on full factual record... (p. 42)

COURT ORDER: Federal defendants' Motion for Summary Judgment is DENIED on this issue (p. 62).

***** **FOR THE CLASSROOM** *****

Use *Activating My Democracy* lesson activities to support student understanding.

1. Use small group activity on remedies in Lesson 6, part 3, and resources below to explore relief in constitutional rights cases.
2. Use "Game Changer" activity in Lesson 6, part 4, to explore how cases move through the court system and court remedies in constitutional rights cases.

RESOURCES

EPA greenhouse gas emission limits: What they mean for state legislatures
<http://www.ncsl.org/research/energy/epa-greenhouse-gas-emission-limits-what-they-mean-for-state-legislatures.aspx>

EPA interactive map under Clean Energy Plan 2012: www.governing.com/gov-data/other/carbon-emissions-reduction-state-map-of-proposed-targets.html

50 states, 50 solutions, interactive map: thesolutionsproject.org/infographic/

II. B. Failure to State a Claim under the Administrative Procedures Act
II. C. Separation of Powers

Because the Court considered and denied the federal defendants' arguments on these issues in the MJP, the Court held the federal defendants were not entitled to summary judgment on these issues.

II. D. i. Due Process Claims – Fundamental Right to an Environment Capable of Sustaining Human Life

At issue: Defendants argue, again, “that there is no fundamental right to a climate system capable of sustaining human life” as plaintiffs claim (p. 28). Federal defendants argue that this issue is a purely legal question that can be decided before trial, because factual evidence is not necessary to resolve it.

Court opinion: The Court addressed these arguments in its November 2016 Opinion and Order and simply held that:

“where a complaint alleges ‘knowing government action’ is affirmatively and substantially damaging the climate system in a way that will cause human deaths, shorten human lifespans, result in widespread damage to property, threaten human food sources, and dramatically alter the planet’s ecosystem, it states a claim for a ‘due process’ violation. To hold otherwise would be to say that the Constitution affords no protection against a government’s knowing decision to poison the air its citizens breathe or the water its citizens drink” (p. 48, emphasis added).

COURT ORDER: Federal defendants’ Motion for Summary Judgment is DENIED on this issue (p. 62).

***** **FOR THE CLASSROOM** *****

Use *Activating My Democracy* lesson activities to support student understanding.

1. Conduct small group activity in Lesson 6, part 2, to determine whether the goals of the Constitution, as stated in the Preamble, can be secured without a new fundamental right claimed by youth plaintiffs.
2. Explore the Timeline of Rights and Powers activities in Lessons 3 and 4 to gain an understanding of new fundamental rights, protected classes, and power in the context of American history.

II. D. ii. State-Created Danger Theory

Note on this theory

"With limited exceptions, the Due Process Clause does not impose an affirmative obligation on the government to act..." (p. 49). "The 'danger creation' exception permits a '*substantive due process*' claim when government conduct 'places a person in peril in deliberate indifference to their safety'." (p. 50)

At issue: Defendants assert that plaintiffs cannot establish a "*state-created danger*" claim (p. 28).

Court opinion: Plaintiffs offer evidence and experts' opinions to demonstrate that the federal defendants knew of the dangers posed to humans by climate change for over 70 years (p. 51–53). Plaintiffs also provide evidence and experts' opinions to demonstrate that the federal defendants' actions do meet the standard of "*deliberate indifference*."

"To allow a summary judgment decision without cultivating the most exhaustive record possible during a trial would be a disservice to the case, which is certainly a complex case of 'public importance'... This analysis applies with equal force to all of the issues raised in federal defendants' [MSJ]" (p. 54).

COURT ORDER: Federal defendants' Motion for Summary Judgment is DENIED on this issue (p. 62).

***** **FOR THE CLASSROOM** *****

Extend *Activating My Democracy* lessons with a **Critical Thinking Activity**.

1. Review the examples of evidence and expert opinions in this order that support the state-created danger theory (pp. 51–53).
2. What other evidence can you find to support or deny the youth plaintiffs' state-created danger claim?
3. After deliberating the evidence, discuss whether you agree with the Court's opinion.

RESOURCES

History and examples of state-created danger doctrine

www.hg.org/legal-articles/legal-doctrine-of-state-created-danger-and-police-liability-38300

II. E. Public Trust Doctrine

On November 10, 2016, Judge Aiken filed an extensive opinion and order to address the viability of the plaintiffs' public trust claims: www.ourchildrenstrust.org/court-orders-and-pleadings

At issue: Federal defendants argue that:

- the atmosphere is not a public trust asset;
- the federal government, unlike the states, has no public trust obligations;
- any common-law public trust claims have been displaced by federal statutes; and
- if there is a federal public trust, youth plaintiffs lack a right of action to enforce it.

Plaintiffs seek a court declaration that their public trust rights have been violated and a court order directing defendants to develop a plan to reduce carbon dioxide emissions.

Court opinion: Key findings and page numbers in this section refer to the November 2016 opinion and order. The Court begins with a brief primer on public trust claims (pp. 36–40).

"*Public trust*' refers to the fundamental understanding that no government can legitimately 'abdicate' [renounce] its core sovereign powers" (1879). The public trust doctrine rests on the fundamental principle that "[e]very succeeding legislature possesses the same jurisdiction and power with respect to [the public interest] as its predecessors" (1879) (p. 36).

Plaintiffs' public trust claims arise from the application of the public trust doctrine to essential natural resources. With respect to these core resources, the sovereign's public trust duties prevent it from "depriving a future legislature of the natural resources necessary to provide for the well-being and survival of its citizens" (37).

"The natural resources trust operates according to basic trust principles, which impose upon the trustee a fiduciary duty to protect the trust property against damage or destruction... The trustee owes this duty equally to both current and future beneficiaries of the trust" (p. 39).

A. Scope of Public Trust Doctrine Assets (pp. 40–42)

Court reviewed case law supporting the atmosphere as a public trust resource. For example, "The navigable waters and the atmosphere are intertwined and to argue a separation of the two, or to argue that [greenhouse gas] emissions do not affect navigable waters is nonsensical (Wash. King Cnty. Super. Ct. Nov. 19, 2015)" (p. 41).

Court held, 'it is not necessary at this stage to determine whether the atmosphere is a public trust asset because plaintiffs have alleged violations of the public trust doctrine in connection with the territorial sea" (p. 40). "Because a number of plaintiffs' injuries relate to the effects of ocean acidification and rising ocean temperatures, they have adequately alleged harm to public trust assets" (p. 42).

B. Applicability of Public Trust to the Federal Government (pp. 42–48)

The Court examined case law cited by federal defendants to support their claim and found, in each instance, that the defendants had either wrongly applied laws or taken them out of context.

For example, the Supreme Court found that "the public trust doctrine remains a matter of state law, subject as well to the federal power to regulate vessels and navigation under the Commerce Clause and admiralty power... (T)he contours of that public trust do not depend upon the Constitution. Under accepted principles of federalism, the States retain residual power to determine the scope of the public trust over waters within their borders..." (pp. 43–44, emphasis added).

The Court found case law supporting the youth plaintiffs' claims. For example, two federal courts - the district courts for the Northern District of California and the District of Massachusetts... held that the federal government has no public trust obligations under state law, but does take the [state public trust] land subject to a federal public trust. As the Mass. court explained, "[t]he trust is of such a nature that it can be held only by the sovereign, and can only be destroyed by the destruction of the sovereign" (p. 46).

The judge concluded: I can think of no reason why the public trust doctrine, which came to this country through the Roman and English roots of our civil law system, would apply to the states but not to the federal government" (p. 47).

C. Displacement of Public Trust Claims (pp. 48–49)

The Court examined case law cited by federal defendants to support their claim that "any common-law public trust claims have been displaced by a variety of acts of Congress, including the Clean Air Act and the Clean Water Act" (p. 48).

The Court found federal defendants wrongly applied the law, because "the Court did not have public trust claims before it and so it had no cause to consider the differences between public trust claims and other types of claims" (p. 49).

Instead the Court held: "Public trust claims are unique because they concern inherent attributes of sovereignty. The public trust imposes on the government an obligation to protect the *res* of the trust [trust property]. A defining feature of that

obligation is that it cannot be legislated away. Because of the nature of public trust claims, a displacement analysis simply does not apply" (p. 49, emphasis added).

D. Enforceability of Public Trust Obligations in Federal Court (pp. 48–51)

The Court located the source of the youth plaintiffs' public trust claims: "The public trust doctrine defines inherent aspects of sovereignty. The Social Contract theory, which heavily influenced Thomas Jefferson and other Founding Fathers, provides that people possess certain inalienable rights and that governments were established by consent of the governed for the purpose of securing those rights. Accordingly, the Declaration of Independence and the Constitution did not create the rights to life, liberty, or the pursuit of happiness – the documents are, instead, vehicles for protecting and promoting those already – existing rights" (50).

The Founding Fathers were also influenced by intergenerational considerations. They believed the inalienable rights to life, liberty, and property were rooted in a philosophy of intergenerational equity" (p. 50, footnote 13).

Although the public trust predates the Constitution, plaintiffs' right of action to enforce the government's obligations as trustee arises from the Constitution... [P]laintiffs' public trust claims are properly categorized as "substantive due process" claims. As explained, the Due Process Clause's substantive component safeguards fundamental rights that are "implicit in the concept of ordered liberty" or "deeply rooted in this Nation's history and tradition... Plaintiffs' public trust rights, related as they are to inherent aspects of sovereignty and the consent of the governed from which the United States' authority derives, satisfy both tests. Because the public trust is not enumerated [listed] in the Constitution, substantive due process protection also derives from the Ninth Amendment... But it is the Fifth Amendment that provides the right of action" (p. 50).

COURT ORDER: In this ruling, the Court declined to revisit its previous ruling and DENIED federal defendants' Motion for Summary Judgment on this issue (p. 62).

***** **FOR THE CLASSROOM** *****

Extend *Activating My Democracy* lessons with **Critical Thinking Questions**.

- Why do courts consider the public trust doctrine an inherent aspect of sovereignty?
- Why is the 5th Amendment the proper "right of action" to bring the youth plaintiffs' claim for a new fundamental right instead of the 9th Amendment?

Support inquiry with activities in Lesson 6, part 2, on fundamental rights and public trust resources and in Lesson 4 on the legal basis of several right to privacy laws.

II. F. Plaintiffs' Remaining Claims

At issue: Federal defendants assert that the youth plaintiffs' Ninth Amendment claims to a new fundamental right to a climate system capable of sustaining human life are no longer at issue (p. 55).

Court opinion: "Although federal defendants overstate their position..." the Court found that plaintiffs' claim "is not viable as a matter of law. The 'Ninth Amendment has never been recognized as independently securing any constitutional right, for purposes of a civil rights claim'" (pp. 55–56). It is "the Fifth Amendment that provides the right of action" for this claim, not the Ninth Amendment (p. 50).

COURT ORDER: Federal defendants' Motion for Summary Judgment is GRANTED on this issue (pp. 56, 62).

At issue: Federal defendants assert that the plaintiffs' Equal Protection claims as a "suspect or protected class" for youth and "posterity" or future generations are no longer at issue (p. 55).

Court opinion: "Both the Supreme Court and the Ninth Circuit have held that age is not a suspect class" (p. 57). The Court reasoned "it is the rare governmental decision that does not have *some* effect on children or posterity" (p. 58).

However, "strict scrutiny" is also triggered by claims of infringement of a fundamental right... [Youth] plaintiffs' equal protection claim rests on... [a violation of] their right to a climate system capable of sustaining human life – a right the Court has already held to be fundamental" (p. 58).

COURT ORDER: Federal defendants' Motion for Summary Judgment is GRANTED in part (protected class issue is dismissed) and DENIED in part (equal protection claim is valid) (pp. 56, 62).

***** **FOR THE CLASSROOM** *****

Extend *Activating My Democracy* lessons with **Critical Thinking Questions**.

- Explain why youth plaintiffs' claim to a new protected class did not survive the federal defendants' motion for summary judgment.
- Explain why youth plaintiffs' claim to a new fundamental right survived the federal defendants' motion for summary judgment.

Support inquiry with activities in Lesson 6, part 2, on fundamental rights and protected class.

III. Request to Certify for Interlocutory Appeal

At issue: Federal defendants ask the District Court to certify any part of this opinion and order that denies any part of their motions for "*interlocutory appeal*." This an extremely rare appeal of a ruling by a trial court that is made before the trial itself has concluded.

Court opinion: In the November 2016 Order and Opinion, the Court already declined to certify those questions on issues raised on interlocutory appeal. "That denial is now the law of the case" (p. 59).

On issues newly-raised by federal defendants in these motions, like the Administrative Procedures Act, the Court found that "certifying a narrow piecemeal appeal on some of these legal issues would not materially advance this litigation" (p. 61). Instead, it would protract the litigation..." (p. 60) which "is precisely what the final judgment rule seeks to prevent" (p. 61).

COURT ORDER: Federal defendants' requests to certify this opinion and order for interlocutory appeal are DENIED (p. 62).

***** **FOR THE CLASSROOM** *****

Extend *Activating My Democracy* lessons with a **Critical Thinking Question**.

- Why is interlocutory appeal rarely used?
1. Review and discuss the three-part test courts use to determine when to use such an appeal: www.law.cornell.edu/wex/interlocutory_appeal
 2. Determine the legal rationale for each part. Consider: Only the lowest courts – the district courts – hear, fully develop, and evaluate the material facts of a case. The higher courts review on technical and legal grounds.

Support Vocabulary

Administrative Procedures Act: a federal law that governs the way that federal agencies manage the government and propose, change, or establish regulations

deliberate indifference: the conscious or reckless disregard of the consequences of one's actions or inactions

due process: a fundamental principle of fairness with equal opportunity and treatment in all legal matters

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

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

Executive Order: a presidential instruction that manages operations of the federal government and carries the force of law

interlocutory appeal: an extremely rare appeal of a ruling by a trial court that is made before the trial itself has concluded

intervenor: a person whom the court allows to join an ongoing court case because decisions in the case may affect that person's rights or property

material fact: evidence that is important or essential to a reasonable person to evaluate and deliberate an issue

motion to dismiss: a request to throw out all or part of a civil case, usually filed shortly after a case is filed and before any evidence is developed

dismissal with prejudice: dismissed permanently; over forever; can't be reopened and brought back to court

dismissal without prejudice: default ruling; dismissed temporarily; case can be refiled and brought back to court

motion for judgment on the pleadings: a request to dismiss all or part of a case based on the court's interpretation of law, rather than on the evidence

motion for summary judgment: a request to promptly dismiss all or part of a case without a trial, because there are no contested facts; requires judge to review facts

protected class: a group of individuals who are linked by a defining characteristic and who have been historically discriminated against based on that characteristic; a suspect class

public trust doctrine: a legal framework that certain natural and cultural resources are held in trust by the government for the people, and that the government has a fiduciary duty to protect and maintain these resources for the benefit and use of present and future generations

relief: the actions by a court of law to fix or make up for wrongful harm to the plaintiffs; a court-ordered remedy

relief, declaratory: a court judgment that establishes the rights of parties in the case without ordering anything be done or awarding damages

relief, injunctive: a court order that compels a party to do or to refrain from doing specific acts

separation of powers doctrine: a legal framework under the U.S. Constitution that divides powers and responsibilities among the legislative branch, executive branch, and judicial branch and, in so-doing, limits the powers of each branch

standing: the ability of a person to bring a case before a court to obtain judicial remedy or relief; to demonstrate standing to a court, a person must prove injury, causation, and redressability

injury: any harm done to a person by the acts or omissions of another

causation: the link between claims of misconduct and harm

redressability: the ability of a court to offer relief for an injury sustained by plaintiffs in a case

state-created danger doctrine: a legal framework in which the state can be held "liable" or accountable for the harm inflicted on a person by a third party, when the state's actions placed the person in jeopardy

strict scrutiny: the highest standard of judicial review used by courts to evaluate the constitutionality of governmental actions; to pass this standard, the legislature must have passed a law to further a 'compelling governmental interest' and must have narrowly tailored the law to achieve that interest

subsidy: money granted by the government to assist an industry or business to cover part of the costs of something to encourage its use