

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

AJI P., a minor child by and through
his guardian HELAINA PIPER, et al.,

Plaintiffs,

v.

STATE OF WASHINGTON, et al.,

Defendants.

No. 18-2-04448-1 SEA

**AMENDED¹ OPINION AND
ORDER GRANTING
DEFENDANTS' RULE 12(C)
MOTION FOR JUDGMENT ON
THE PLEADINGS**

INTRODUCTION

Both sides in this case agree that anthropogenic climate change caused by increased greenhouse gas emissions poses severe threats to our environment and requires urgent governmental action. *See, e.g.* Compl. ¶¶55-142; Answer ¶¶ 55-142. This court also agrees that climate change is a serious problem that calls for a swift

¹ This Amended Opinion restores formatting (such as italics) that was lost in the first e-filed Opinion. There are no other changes.

response. As the U.S. Supreme Court stated over a decade ago, a “well-documented rise in global temperatures has coincided with a significant increase in the concentration of carbon dioxide in the atmosphere. Respected scientists believe the two trends are related.” *Massachusetts v. EPA*, 549 U.S. 497, 504 (2007). The Supreme Court further noted: “The harms associated with climate change are serious and well recognized.” *Id.* at 521.

The destruction caused by climate change has significantly increased—as has the need for prompt and effective responses—in the years since *Massachusetts v. EPA*. As this opinion is written, the devastating effects of climate change are raging around the world:

The disruptions to everyday life have been far-reaching and devastating. In California, firefighters are racing to control what has become the largest fire in state history. Harvests of staple grains like wheat and corn are expected to dip this year, in some cases sharply, in countries as different as Sweden and El Salvador. In Europe, nuclear power plants have had to shut down because the river water that cools the reactors was too warm. Heat waves on four continents have brought electricity grids crashing.

And dozens of heat-related deaths in Japan this summer offered a foretaste of what researchers warn could be big increases in mortality from extreme heat. A [study last month in the journal PLOS Medicine](#) projected a fivefold rise for the United States by 2080. The outlook for less wealthy countries is worse; for the Philippines, researchers forecast 12 times more deaths.

Somini Sengupta, *2018 Is Shaping Up to Be the Fourth-Hottest Year. Yet We’re Still Not Prepared for Global Warming*, NEW YORK TIMES, Aug. 9, 2018, available at <https://nyti.ms/2O11TVF>.

Although both sides to this case agree that climate change is an urgent problem, they disagree on what action should be taken and how quickly it must be done. The question before the court at this juncture is whether this court is an appropriate forum in which to address these issues.

The court concludes the issues involved in this case are quintessentially political questions that must be addressed by the legislative and executive branches of government. These issues cannot appropriately be resolved by a court. Defendants' motion for judgment on the pleadings is GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs are twelve young Washingtonians, under the age of 18. Compl. ¶¶ 1, 12-24. Plaintiffs' 72-page complaint describes in considerable detail the extent and dangers of climate change. For example, Plaintiffs allege:

Climate change is human-caused, primarily from burning fossil fuels, and is already dangerous. Climate change results from excess levels of GHG pollution, deforestation, and degradation of soils. Climate Change Impacts are already injuring and irreversibly destroying human and other natural systems, causing loss of life and pressing species to extinction. The time to reverse the dangerous situation is quickly dwindling. Scientists do not know precisely when we will pass a point of no return, but they agree we are nearing a critical threshold of locking in climate danger for generations to come.

Complaint, ¶ 55. Plaintiffs suggest the State of Washington should strive to achieve a 96% reduction of CO₂ by 2050, and assert that “[i]n order to retain a reasonable chance to preserve a stable climate system, the state needs to transition almost completely off of natural gas and gasoline and diesel fuel within the next 15 years,

and then generate 90% of its electricity from carbon-free sources by 2030.” *Id.*, ¶ 114. Plaintiffs complain that “the State's current target to reduce emissions 50% by 2050 [adopted by the Legislature in RCW 70.235.020] is *grossly inadequate*, maintains dangerous dependency on fossil fuels, and will put young people in the difficult position of being forced to choose between heated homes and stable coastlines; between expensive climate adaptation or energy rationing.” *Id.*, ¶ 207 (emphasis in original).

The relief Plaintiffs seek is sweeping in scope. Among other requests, Plaintiffs ask the Court to:

Declare that Defendants’ systemic policy, practice, and customs described herein have materially caused, contributed to, and/or exacerbated climate change, in violation of Plaintiffs’ fundamental and inalienable constitutional rights to life, liberty, property, equal protection, and a healthful and pleasant environment, including a stable climate system that sustains human life and liberty, and other unenumerated rights, including the right to be free from unreasonable risk of harm, and the right to reasonable safety;

Declare that Defendants have placed Plaintiffs’ in a position of danger with deliberate indifference to their safety in a manner that shocks the conscience such that Defendants’ ongoing act of omission in not reducing Washington’s GHG emissions consistent with rates that would avoid dangerous climate interference further violates Youth Plaintiffs’ fundamental and inalienable constitutional rights to life, liberty, and property, to be free from unreasonable risk of harm to personal security, and to a stable climate system that sustains human life and liberty;

Declare that RCW 70.235 authorizes dangerous levels of CO2 emissions in violation of Plaintiffs’ inalienable and fundamental constitutional and Public Trust rights and is therefore partially facially invalid;

Order Defendants to prepare a complete and accurate accounting of Washington's GHG emissions, including those emissions caused by the consumption of goods and services within the state;

Order Defendants to develop and submit to the Court by a date certain an enforceable state climate recovery plan, which includes a carbon budget, to implement and achieve science-based numeric reductions of GHG emissions in Washington consistent with reductions necessary to stabilize the climate system and protect the vital Public Trust Resources on which Plaintiffs now and in the future will depend;

Retain jurisdiction over this action to approve, monitor and enforce compliance with Defendants' Climate Recovery Plan and all associated orders of this Court.

Compl., pp. 70-72.

Defendants' Answer to the Complaint acknowledges the serious threats of climate change, but denies many of Plaintiffs' allegations as unsupported, exaggerated, and untrue. Answer, ¶¶ 55-142. The Answer also asserts several affirmative defenses to Plaintiffs' claims. *Id.*, p. 32.

Defendants have moved for judgment on the pleadings under CR 12(c), seeking dismissal of all claims as a matter of law.

ANALYSIS

I. *Standard of Review.*

Washington courts treat a motion for judgment on the pleadings identically to a CR 12(b)(6) motion to dismiss for failure to state a claim. *P.E. Sys. LLC v. CPI Corp.*, 176 Wn.2d 198, 203, 289 P.3d 638 (2012). For both, the purpose is to determine whether a plaintiff can prove any set of facts justifying relief. *Id.* The

only difference is one of timing: a CR 12(b)(6) motion is filed before the answer, whereas a CR 12(c) motion is filed after the pleadings are closed. *Id.* For the motion, any facts well-pled are deemed true. *See Bailey v. Town of Forks*, 108 Wn.2d 262, 264, 737 P.2d 1257 (1987). Dismissal is appropriate where the complaint sets out a claim either not recognized or is directly contrary to Washington law. *See, e.g., Haysy v. Flynn*, 88 Wn. App. 514, 518, 945 P.2d 221 (1997).

II. Plaintiffs' Claims Are Nonjusticiable.

The relief sought by Plaintiffs would require the Court to usurp the roles of the legislative and executive branches of our state government. Plaintiffs ask the court to order and oversee the development of a far-ranging climate action plan that would involve a complex regulatory scheme. Any climate action plan and regulatory regime would require the assessment of numerous costs and benefits, balancing many interests, and resolving complex social, economic, and environmental issues. This policy-making is the prerogative and the role of the other two branches of government, not of the judiciary.

“[C]ourts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws.” *Rouso v. State*, 170 Wn.2d 70, 75 239 P.3d 1084, 1086-87 (2010) (quoting *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963)). The Legislature has enacted climate goals in RCW 70.235.020. “It is not the role of the judiciary to second-guess the wisdom of the legislature.... The court has no authority to conduct its own balancing of the pros and cons....” *Id.* “It is the role

of the legislature, not the judiciary, to balance public policy interests and enact law.” *Id.* at 92.

Plaintiffs’ claims are nonjusticiable – they present political questions that must be resolved by the political branches of government. If the court addressed the issue posed by the Plaintiffs and ordered the relief they seek, it would violate the separation of powers. *See Baker v. Carr*, 369 U.S. 186, 209-217 (1962); *Brown v. Owen*, 165 Wn.2d 706, 712, 206 P.3d 310 (2009). This court “is not equipped to legislate what constitutes a ‘successful’ regulatory scheme by balancing public policy concerns, nor can [it] determine which risks are acceptable and which are not. These are not questions of law; [this Court] lacks the tools.” *Rouso*, 170 Wn.2d at 88.

III. *There is No Fundamental Constitutional Right to a Clean Environment.*

To avoid the problem of nonjusticiability, Plaintiffs attempt to frame a constitutional claim. They assert a constitutional right to “a healthful and pleasant environment, which includes a stable climate system that sustains human life and liberty.” Compl., ¶¶ 149-173, 196-207, p. 70. There is no such right to be found within our State Constitution. Plaintiffs ask the court to follow *Juliana v. United States*, 217 F. Supp. 3d 1224, 1233 (D. Or. 2016), in finding a previously unrecognized right to a “stable climate system.” Pls.’ Opp’n at 5-6. This Court declines to do so. As one federal court has recently observed, *Juliana* is an outlier.

Lake v. City of Southgate, 2017 WL 767879 (slip op.) (E.D. Mich. 2017), fn. 3. Except for *Juliana*, “whenever federal courts have faced assertions of fundamental rights to a ‘healthful environment’ or to freedom from harmful contaminants, they have invariably rejected those claims.” *Id.*

Plaintiffs, like the court in *Juliana*, rely heavily on *Obergefell v. Hodges*, 135 S.Ct. 2584, 192 L.Ed.2d 609 (2015), for the proposition that courts can recognize new unenumerated rights. *Juliana*, 217 F. Supp.3d at 1249; Plaintiffs’ Opposition at 5–6 (citing *Obergefell*, 135 S.Ct. at 2598). Their reliance is misplaced. *Obergefell* involved a fundamental *individual* right – the right of a person to marry another person, a right deeply rooted in constitutional jurisprudence protecting personal freedom, and in history and tradition. *Id.* The purported right asserted by Plaintiffs is not analogous. There is no individual, personal right to a “stable climate system,” just as there is no personal, individual right to world peace, or economic prosperity, or any of a number of other desirable objectives.

Plaintiffs’ citation to *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012), is also unavailing. In *McCleary*, the Court interpreted and enforced a specific state constitutional mandate: the “paramount duty of the state to make ample provision for the education of all children residing within its borders....” *Id.* No specific constitutional mandate relates to this case.

A stable and healthy climate, like world peace and economic prosperity, is a shared aspiration – the goal of a people, rather than the right of a person. These

types of aims are the objectives of a polity, to be pursued through the political branches of government. They are not individual rights that can be enforced by a court of law.

IV. *Plaintiffs Have Not Raised A Cognizable Claim Under the Equal Protection Clause.*

Plaintiffs also invoke the Equal Protection Clause of Article 1, Section 12, of the Washington State Constitution. Their equal protection claim is without merit.

Plaintiffs allege that they, “as young people under the age of 18, are a separate suspect and/or quasi-suspect, class in need of extraordinary protection from the political process pursuant to the principles of equal protection.... Plaintiffs are an insular minority with no voting rights and little political power or influence over Defendants and their actions.” Compl., ¶ 188. They also assert, puzzlingly, that “Plaintiffs have immutable age and generational characteristics that they cannot change.” *Id.* They argue that they have been discriminated against as members of a protected class. Pls.’ Opp’n at 10.

Plaintiffs are not an “insular minority.” And age is not immutable. Each plaintiff, like every human, will grow older. Plaintiffs cannot prove any set of facts to establish that they have been discriminated against regarding climate change based on their age. Plaintiffs live in the same climate as everyone else. We are *all, regardless of age*, experiencing the harmful effects of climate change.

Plaintiffs are also not without power or influence. Although they cannot yet vote, they have influence over those who do, including their parents and guardians, and many others who are concerned about young people and the future they will face. No case has recognized people under the age of 18 as a protected class simply because they cannot yet vote. And Plaintiffs have many other rights, such as rights of free speech and assembly, through which they can advocate for political change. The court encourages Plaintiffs to continue to exercise those rights.

V. *Plaintiffs' Other Claims Must Also Be Dismissed.*

For the reasons stated in Defendants' motion and reply memorandum, all of Plaintiffs' other claims must be dismissed.

CONCLUSION

Defendant's motion for judgement on the pleadings under CR 12(c) is granted, and Plaintiffs' claims are dismissed with prejudice.

The court appreciates Plaintiffs' concerns about climate change, and their passion for and commitment to urgent action. The court hopes Plaintiffs will not be discouraged. As Harvard Professor of Psychology Steven Pinker has recently noted, "given the enormity of the climate change problem, it's unwise to assume we will solve it quickly or easily." STEVEN PINKER, ENLIGHTENMENT NOW – THE CASE FOR REASON, SCIENCE, HUMANISM, AND PROGRESS 154 (2018). But "humanity is not on an irrevocable path to ecological suicide." *Id.* There are good reasons for conditional (not complacent) optimism:

We have some practicable ways to prevent the harms and we have the means to learn more. Problems are solvable. That does not mean they will solve themselves, but it does mean that we can solve them *if* we sustain the benevolent forces of modernity that have allowed us to solve problems so far, including societal prosperity, wisely regulated markets, international governance, and investments in science and technology.

Id. at 154-55 (emphasis in original).

The young people who are the plaintiffs in this case can (and must) continue to help solve the problems related to climate change. They can be advocates, urging the legislature and the executive to enact and implement policies that will promote decarbonization and decrease greenhouse gas emissions, such as a carbon tax, the development of alternative energy sources (including nuclear energy), and international cooperation in climate regulations.² These are solutions that must be effected through the political branches of government, and not the judicial branch.

DATED this 14th day of August, 2018.

/s/ Michael R. Scott

Honorable Michael R. Scott
King County Superior Court Judge

² See PINKER (2018) at pp. 121-155, for details about these possible solutions.

King County Superior Court
Judicial Electronic Signature Page

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Judge/Commissioner: Michael Scott

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