

January 31, 2020

# Climate Change Class Action Dismissed as Non-Justiciable

Thomas McInerney, Julia Schatz, Michael Theroux

Bennett Jones LLP

+ Follow

Contact



Bennett Jones

After much legal wrangling since the claim was launched against the U.S. federal government and the Office of the President of the United States in 2015, the U.S. Court of Appeals for the Ninth Circuit recently dismissed the youth-led class action in *Juliana v. United States*.

The plaintiffs, ranging in age from 9 to 21, claim that the government has violated their constitutional rights to a "climate system capable of sustaining human life". To redress this specific violation, they sought an order from the court requiring the government to develop a plan to phase out fossil fuel emissions and draw down excess atmospheric CO<sub>2</sub>.

## The Majority Decision: Climate Change a Political Matter

The lawsuit was dismissed with the Court finding that the issue of the appropriate response to climate change is a political issue that should be dealt with by the legislative and executive branches of government instead of the courts.

The government's key argument was that the plaintiffs lacked standing to pursue their constitutional claims. In order to establish standing—which would put the dispute within the power of a federal court—the plaintiffs needed to establish several elements, including redressability. This element itself has two requirements: that the relief the plaintiffs are seeking is substantially likely to redress their injuries and is within the district court's power to award.

Judge Andrew D. Hurwitz, writing for the majority, was skeptical that the first requirement of redressability had been met, particularly given the plaintiffs' concession that their requested relief alone would not solve global climate change (although they asserted it might ameliorate their injuries to some extent). The majority highlighted that the plaintiffs' experts made it clear during the proceedings that reducing the global consequences of climate change will take far more than the actions of any single government.

The majority also concluded that the second prong of the redressability test was not met, stating, "it is beyond the power of an Article III court to order, design, supervise, or implement the plaintiffs' requested remedial plan" to decrease fossil fuel emissions and combat climate change. He further noted that, "Not every problem posing a threat—even a clear and present danger—to the American Experiment can be solved by federal judges".

The majority took the plaintiffs' evidence about the environmental and human damage created by climate change in its most favourable light. Despite this and for the reasons set out in his decision, Judge Hurwitz concluded his reasons by stating, "[W]e reluctantly conclude... that the plaintiffs' case must be made to the political branches or to the electorate at large". The majority relied on the non-justiciability, or political questions doctrine, emphasizing the division of powers in the U.S. between the legislative, executive and judicial branches.

### **The Dissent: An Asteroid Barreling Toward Earth**

Judge Josephine L. Staton dissented, writing that the U.S. government accepts the need for a concerted response to climate change, "yet presses ahead toward calamity". Further noting, "[I]t is as if an asteroid were barreling toward Earth and the government decided to shut down our only defenses... the government bluntly insists that it has the absolute and unreviewable power to destroy the Nation".

Judge Staton stated that in her view, the plaintiffs' claims are justiciable because they seek to enforce the basic principle that the U.S. Constitution, "does not condone the Nation's willful destruction". She wrote that granting the plaintiffs' relief would provide meaningful redress once the injury at issue was properly defined. The injury at issue, according to Judge Staton, is not climate change writ large but climate change beyond the threshold point of no return. With that redefinition, she noted that the significance of every emission reduction is magnified and meets the redressability test.

### **More Climate Change Class Actions on the Way**

Since the filing of *Juliana*, numerous youth-led climate change class actions have been launched against governments in the United States, Canada and around the world.

In Germany, three lawsuits were filed recently against both Chancellor Angela Merkel's government and the German Parliament by climate change activists. In one case, plaintiffs claim that the country's climate policy to meet its 2030 target for reducing greenhouse gas emissions are insufficient, contravening a constitutional right to human dignity.

In [New Charter Litigation Seeks Stable Climate System](#) (October 28, 2019), we commented on the *La Rose* case, where the plaintiffs alleged violations of section 7 and 15 of the Canadian Charter of Rights and Freedoms by the government's inaction.

In November 2019, seven Ontario residents ranging from 12 to 24 years old launched a constitutional challenge against the provincial government, for what they claim is inaction on climate change. This is the first case against a Canadian province over climate change, although two lawsuits have been filed against the federal government. The focus of the Ontario Application is the 2030 greenhouse gas reduction target set by the province in its *Cap and Trade Cancellation Act, 2018*.

 Send

 Print

 Report

---

## RELATED POSTS

- [Are Climate Change Claims Based on Charter Rights Justiciable? Canadian Courts Render Conflicting Decisions](#)
- [Canada Proposes New Plan to Invest \\$15 Billion in Climate Action, Raise Carbon Price to \\$170/Tonne](#)
- [Federal Government Releases Revisions to Strategic Assessment of Climate Change](#)

---

## LATEST POSTS

- [Canada Announces the Critical Minerals List](#)
- [Important New Guidance from the Court of Appeal on TSX Majority Voting Rules, Reasonable Expectations](#)

[See more »](#)

---

DISCLAIMER: Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.

© Bennett Jones LLP 2021 | Attorney Advertising

---

### WRITTEN BY:

Bennett Jones LLP



Contact

[+ Follow](#)



Thomas McInerney

[+ Follow](#)



Julia Schatz

+ Follow



Michael Theroux

+ Follow

**PUBLISHED IN:**

Article III

+ Follow

Class Action

+ Follow

Climate Change

+ Follow

Constitutional Challenges

+ Follow

Due Process

+ Follow

Environmental Policies

+ Follow

Fossil Fuel

+ Follow

Greenhouse Gas Emissions

+ Follow

Lack of Authority

+ Follow

Oil & Gas

+ Follow

Standing

+ Follow

Trump Administration

+ Follow

more ▾

**BENNETT JONES LLP ON:**

