# Juliana v. United States, 6:15-cv-01517-TC (D.Ore. 11/10/2016)

## Who are the plaintiffs?

## Who are the defendants?

## What did the defendants do to injury plaintiffs?

## Why these defendants?

## What are their legal claims in intro summary?

## What are plaintiffs asking as a remedy?

## What does the judge say are the three questions before the court?

## Is climate change at issue?

## [14] Political Question

## What did Marshall tell us about political questions in Marbury?

## What are the 6 Baker factors?

## What was the political conflict in Nixon v. United States?

## What was at issue in Zivotofsky?

## Does the constitution address climate change in the text?

## Is climate regulation a fundamental power?

## What constitutional power is most federal climate regulation based on?

## Have the courts found that deciding commerce clause cases violates separation of powers?

## What area of response to climate change could implicate separation of powers?

## [27] What do the Second and Third Baker Factors address?

## Is the court being asked to make technical decisions about emissions limits or other fine points of regulation? What does the judge say the court is being asked to do?

## How did the court explain why that could be resolved “without any consideration of competing interests?”

## Do you see problems with this analysis?

## Defendants argue that the court would have to get into every environmental rule for the past 100 years. What does the judge say is all that the plaintiffs want, which the judge claims could be issues without directing any given agency to do anything?

## Do plaintiffs have to assert specific statutory violations to support their constitutional claims?

## Defendants argue that the complaint is inadequately pleaded because it does not provide enough detail about plaintiffs’ claims. What claim does the judge say obviates the need for detail?

## Why did the Judge address the 5th and 6th Baker factors, which had not been raised by the defendants?

## What did the judge rule on the political question issue?

## [42] II. Standing to Sue

## What is the Lujan standard?

## What did the lead plaintiffs assert as their injuries in fact?

## Why do defendants argue that these injuries are not sufficient for standing?

## Why does the court say these injuries are not type of “injury to all that is injury to none.”

## What test does the court use from Akins?

## Is this consistent with the majority in Mass v EPA?

## What about the imminence of the injury?

## What is the standard for an injunction?

## How do they meet this test in their complaint?

## [54] B. Causation

## What is plaintiffs’ causation argument?

## How is the procedural posture of this case different from Bellon, which reject causation against refineries as too attenuated?

## What stage are plaintiffs at?

## What does the judge have to do with their claims?

## How are the emissions in this case different from those Bellon?

## Does it matter that the causal chain alleged by plaintiffs here is conclusory at this point in the litigation?

## Which sectors in the US produce most of the emissions?

## Which agencies regulate these sectors and do they have the power to regulate GHGs emissions?

## [65] C. Redressability

## What are the plaintiffs requesting that would at least partially redress their claimed injuries?

## [72] III. Due Process Claims[6]

## What are plaintiffs due process claims?

## What fundamental right do plaintiffs assert to escape the rational relation test?

## How do plaintiffs argue that this is different from a right to be protected from pollution or climate change, which has been a loser in the courts?

## What does the court hold is the threshold for asserting a fundamental right as regards climate?

## Does the due process clause impose a duty for the government to act against private actors? (Note – DeShaney found no duty to provide child protective services.)

## What is the "danger creation" exception?

## What is the required nexus with government action?

## What is the knowledge requirement?

## What is the standard for the defendant’s state of mind? (Same as for prison health care claims.)

## What do plaintiffs allege that defendants did that meets the standard?

## How would you argue that the government does not cause the climate crisis, under the standard required by the law?

## [92] IV. Public Trust Claims

## What is the United States Supreme Court definition of the public trust doctrine?

## What example does the court give for a power that cannot be permanently given away to the private sector?

## What about prisons?

## What did Justinian tell us about the public trust?

## What about submerged lands? (Coastal, not rivers and lakes.)

## What was at issue in Illinois Central Railroad Company v. Illinois?

## Why did the Court say the state could not give away the rights to this land?

## What is the duty for government under the public trust doctrine?

## What are the three restrictions implied in the public trust doctrine?

## What do plaintiffs claim defendants have done that violates the public trust?

## What are the defendants arguments against plaintiffs’ theory?

## How is the court able to dodge the question of whether the atmosphere is a public trust asset?

## What lands that the feds own does the court point to as being a public trust asset?

## [107] B. Applicability of Public Trust to the Federal Government

## Does the court find a single United States Supreme Court case that holds that there is a federal public trust doctrine?

## How do defendants argue that a federal public trust doctrine would conflict with the Property Clause of the United States Constitution?

## Could the federal government transfer federal land to a state if there was a federal public trust doctrine?

## [122] C. Displacement of Public Trust Claims

## If there is a federal public trust doctrine, can it be abrogated by legislation?

## How does the court avoid the problem that creating a remedy for federal public trust doctrine violations would be making federal common law?

## How does finding that the public trust doctrine predates the constitution solve the problem, in the court’s view?

## How does the court characterize these public trust doctrine rights?