

The Urgenda and Juliana Cases: Redefining the Notion of Environmental Democracy

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Abstract : Climate change cases used to take the form of statutory disputes rather than constitutional or common law disputes. This changed in 2015, with the Urgenda Climate case in the Netherlands (Urgenda Foundation v. The State of the Netherlands, C/09/456689/HAZA 13-1396) and, the Juliana case in the U.S. (United States v. U.S. District Court for District of Oregon, 17-71692, 9th Cir.). The two cases represent a new type of climate litigation, the claims brought against the federal government were in fact grounded in constitutional rights. The complaints used the Doctrine of Public Trust as a cornerstone for the lawsuits asserting that government's actions against climate change failed to protect essential public trust resources; thus, violating a generation's constitutional rights to life, liberty, and property. The Public Trust Doctrine –a quintessentially American legal concept-, reserved to the States by virtue of the 9th and 10th amendment of the federal Constitution, gives them considerable jurisdiction over natural resources and has been refined by a number of Supreme Court rulings. The Juliana case exemplifies the Doctrine's evolutionary nature because it attempts to apply it to the federal government, and establish a right to a climate system capable of sustaining human life as a fundamental right protected by a substantive due process. Furthermore, the flexibility of the Doctrine makes it permissible to be applied to a variety of different legal systems as in the Urgenda case. At the very heart of the lawsuits stands the question of who owns the Earth resources and, to what extent the general public can claim the services that the Earth provides as common property. By employing the widest possible definition of the Doctrine of Public Trust these lawsuits tried to redefine environmental resources as a collective right of all people. By doing case analysis, the paper explores how these cases can contribute to widening the public access to information and broadening the public voice in decision making as well as providing a precedent to equal access in seeking justice and redress from environmental failures.

Keywords : climate change, doctrine of public trust, environmental democracy, Juliana case, Urgenda climate case

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