

ORAL ARGUMENT NOT YET SCHEDULED

No. 13-5192

**UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

ALEC L., *et al.*,
Plaintiffs – Appellants
v.

GINA McCARTHY, *et al.*,
Defendants – Appellees,

THE NATIONAL ASSOCIATION OF MANUFACTURERS, *et al.*,
Intervenors for Defendants – Appellees

**On Appeal from the United States District Court
for the District of Columbia (No. 11-cv-02235 (RLW))**

**BRIEF OF FAITH GROUPS AS *AMICI CURIAE* IN SUPPORT OF
PLAINTIFFS-APPELLANTS SEEKING REVERSAL**

(See inside cover for list of *Amici*)

Katherine Anne Meyer*
Meyer Glitzenstein & Crystal
1601 Connecticut Ave., N.W.
Suite 700
Washington, D.C. 20009
(202) 588-5206; (202) 588-5041 (fax)

Counsel for *Amici Curiae*

On the Brief:
Jennifer Marlow WSBA #43260
Jennifer Barcelos WSBA #43879
Three Degrees Project
262 Studhorse Mountain Road
Winthrop, WA 98862
(503) 413-9524; (510) 205-0265

* Counsel of Record, and the only Counsel who is a barred member of this Court.

Full List of *Amici*:

Interfaith Moral Action on Climate

Interfaith Power and Light

The Green Zionist Alliance

The Institute Leadership Team of the Sisters of Mercy of the Americas

The Sisters of Mercy of the Americas Northeast Community Leadership Team

The Sisters of Mercy Northeast Justice Council

**STATEMENT REGARDING CONSENT TO FILE, SEPARATE BRIEFING,
AUTHORSHIP, AND MONETARY CONTRIBUTIONS**

All parties have consented to the filing of this brief.¹

Pursuant to D.C. Circuit Rule 29(d), counsel for *amici curiae* certify that a separate brief is necessary. To the best of the knowledge of *amici*, although other briefs *amicus curiae* supporting Plaintiffs-Appellants will be filed, none of them address international human rights or apply a human rights framework to the constitutional issues presented in this case. *Amici* represent diverse faith-based organizations serving vulnerable communities in the United States. *Amici* share a deep traditional and spiritual commitment to caring for the Earth, sustaining life on this planet, and increasing justice for people who are poor, marginalized, and vulnerable. Thus, *amici* are particularly well-suited to address the moral and human rights dimensions of this public trust case and to provide the Court with background on the important link between climate change and human rights.

Under Federal Rules of Appellate Procedure 29(c), *amici* state no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or its counsel made a monetary contribution to its preparation or submission.

¹ *See also* this Court's Order granting an unopposed Motion on October 29, 2013, extending the filing deadline for *amicus* briefs to November 12, 2013.

**CERTIFICATE OF INTERESTED PARTIES, RULINGS,
AND RELATED CASES**

A. Parties and *Amici*. Except for the following, all parties, intervenors, and *amici* appearing before the district court and in this Court are listed in the Brief for Plaintiffs-Appellants:

Interfaith Moral Action on Climate, Interfaith Power and Light, The Green Zionist Alliance, The Institute Leadership Team of the Sisters of Mercy of the Americas, The Sisters of Mercy of the Americas Northeast Community Leadership Team, and The Sisters of Mercy Northeast Justice Council are *amici curiae* in this appeal.

B. Rulings under Review. References to the rulings at issue appear in the Brief for Plaintiffs-Appellants.

C. Related Cases. References to related cases appear in the Brief for Plaintiffs-Appellants.

Dated: November 12, 2013

Respectfully submitted,

/s/ Katherine Anne Meyer
Katherine Anne Meyer*
Meyer Glitzenstein & Crystal
1601 Connecticut Ave., N.W.
Suite 700
Washington, D.C. 20009
(202) 588-5206
(202) 588-5041 (fax)

Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici curiae* Interfaith Moral Action on Climate, Interfaith Power and Light, The Green Zionist Alliance, The Institute Leadership Team of the Sisters of Mercy of the Americas, The Sisters of Mercy of the Americas Northeast Community Leadership Team, and The Sisters of Mercy Northeast Justice Council certify that they are not publicly held corporations, and that no corporation or other publicly held entity owns more than 10% of the stock of any of the *amici*. *Amici* have no parents, subsidiaries, or affiliates that have issued shares or debt securities to the public. Insofar as relevant to this litigation, the general purpose of the *amici* as faith-based organizations is to promote the Court's consideration of international human rights principles and standards as they relate to important moral and national issues such as climate change. All parties have consented to the filing of this brief.

TABLE OF CONTENTS

STATEMENT REGARDING CONSENT TO FILE, SEPARATE BRIEFING, AUTHORSHIP, AND MONETARY CONTRIBUTIONS.....	iii
CERTIFICATE OF INTERESTED PARTIES, RULINGS, AND RELATED CASES.....	iv
CORPORATE DISCLOSURE STATEMENT.....	v
TABLE OF CONTENTS.....	vi
TABLE OF AUTHORITIES.....	viii
GLOSSARY.....	xi
IDENTITIES AND INTERESTS OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT.....	4
ARGUMENT.....	4
I. THE IMPACTS OF CLIMATE CHANGE THREATEN HUMAN RIGHTS.....	4
II. THE COURT’S INTERPRETATION OF THE PUBLIC TRUST DOCTRINE IMPLICATES WIDELY ACCEPTED PRINCIPLES OF INTERNATIONAL LAW.....	6
A. International Environmental Law	6
B. International Human Rights Law.....	6
1. The Universal Declaration of Human Rights.....	7
2. The International Covenant on Economic, Social, and Cultural Rights.....	9

3.	The Convention on the Rights of the Child.....	10
III.	INTERNATIONAL LEGAL PRINCIPLES OFFER PERSUASIVE SUPPLEMENTAL AUTHORITY TO GUIDE THE COURT’S INTERPRETATION OF THE PUBLIC TRUST DOCTRINE.....	11
A.	Ratified Treaties.....	12
B.	Customary International Law.....	14
C.	Non-Ratified Treaties.....	17
	CONCLUSION	20
	CERTIFICATE OF COMPLIANCE WITH RULE 32(a)	21
	CERTIFICATE OF SERVICE.....	22

TABLE OF AUTHORITIES²

CASES

<i>Comm. of U.S. Citizens Living in Nicar. v. Reagan</i> , 859 F.2d 929 (D.C. Cir. 1988).....	15
<i>Filartiga v. Pena-Irala</i> , 630 F.2d 876 (2d Cir. 1980).....	15–16
* <i>Graham v. Florida</i> , 560 U.S. 48 (2010).....	17–18
* <i>Oyama v. California</i> , 332 U.S. 633 (1948).....	16
<i>McKesson Corp. v. Islamic Republic of Iran</i> , 539 F.3d 485 (D.C. Cir. 2008).....	15
<i>Medellin v. Tex.</i> , 552 U.S. 491 (2008).....	15
<i>Mora v. N.Y.</i> , 524 F.3d 183 (2d Cir. 2008).....	15
* <i>Roper v. Simmons</i> , 543 U.S. 551 (2005).....	12–14, 16
* <i>The Paquete Habana</i> , 175 U.S. 677 (1900).....	12, 14

CONSTITUTIONAL PROVISIONS

*U.S. CONST., art. VI, § 2.....	6, 11
---------------------------------	-------

STATUTES

28 U.S.C. § 1350 (1976).....	15
------------------------------	----

RULES

Federal Rules of Appellate Procedure

Fed. R. App. P. 26.1.....	v
---------------------------	---

² * Authorities upon which we chiefly rely are marked with asterisks.

Fed. R. App. P. 29(c).....	iii
Fed. R. App. P. 29(d).....	21
Fed R. App. P 32(a).....	21

TREATIES AND INTERNATIONAL DOCUMENTS

Committee on Economic, Social & Cultural Rights, <i>Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15</i> (2002), U.N. DOC. E/C.12/2002/11 (Jan. 20, 2003)	9, 19
*Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990)	10, 17–19
*HUMAN RIGHTS COUNCIL, <i>Preliminary Report: Report of the Independent Expert on the Issue of Human Rights Obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment</i> , U.N. Doc. A/HRC/22/43 (Dec. 24, 2012) (<i>prepared by John H. Knox</i>).....	11
*International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).....	12–14
*International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 999 U.N.T.S. 3 (entered into force Jan. 3, 1976).....	8, 10, 17, 19
Memorial of the United States, United States Diplomatic and Consular Staff in Tehran (United States v. Iran), 1980 I.C.J. 3 (May 24, 1980).....	17
Proclamation of Teheran, Final Act of the International Conference on Human Rights, U.N. DOC A/Conf. 32/41 (1968).....	15
Restatement (Third) of Foreign Relations Law §102(2) (1987)	14
S. EXEC. DOC. L. 92d Cong., 1 st Sess. (1971).....	17
Special Rapporteur on the Right to Food, <i>Interim Report on the Right to Food, transmitted by Note of the Secretary-General</i> , U.N. Doc. A/65/281 (Aug. 11, 2010) (by Olivier De Schutter).....	10

U.N. Charter, 59 Stat. 1046 (1945).....	14, 16
*U.N. Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107 (entered into force Mar. 21, 1994).....	6, 14
U.N. Human Rights Council Res. 7/23, U.N. Doc. A/HRC/7/78 (Mar. 28, 2008).....	4
*Universal Declaration of Human Rights, G.A. RES. 217 (III) A, U.N. DOC. A/RES/217(III) (Dec. 10, 1948).....	7, 12, 14–17
Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980).....	17

OTHER AUTHORITIES

Donald Anton, <i>Is the Environment a Human Rights Issue?</i> , ANU COLLEGE OF LAW RESEARCH PAPER NO. 08-11 (2008).....	5
David Battisti and Rosamond Naylor, <i>Historical Warnings of Future Food Insecurity with Unprecedented Seasonal Heat</i> , 323 SCIENCE 24, Jan. 9, 2009.....	10
Hurst Hannum, <i>The Status of the Universal Declaration of Human Rights in National and International Law</i> , 25 G.A. J. INT’L & COMP. L. 287 (1996).....	15
Richard B. Lillich, <i>The Constitution and International Human Rights</i> , 83 AM. J. INT’L L. 851 (1989).....	12, 15
*NATIONAL CLIMATE ASSESSMENT DEVELOPMENT ADVISORY COMMITTEE, DRAFT CLIMATE ASSESSMENT REPORT, EXECUTIVE SUMMARY (2013).....	7–10

GLOSSARY

CRC	Convention on the Rights of the Child
Faith Groups	<i>Amici</i>
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
IMAC	Interfaith Moral Action on Climate
U.N. Charter	United Nations Charter
UNFCCC	United Nations Framework Convention on Climate Change
UDHR	Universal Declaration of Human Rights
Youth	Plaintiffs-Appellants, Alec L., <i>et al.</i>

IDENTITIES AND INTERESTS OF *AMICI CURIAE*

Amici (“Faith Groups”) represent six diverse faith-based organizations serving vulnerable communities across the United States. *Amici* join to support Plaintiffs-Appellants Alec L., *et al.* (“Youth”) in seeking reversal, and include:

Interfaith Moral Action on Climate (“IMAC”), formed in 2011 to bring communities of faith together with the purpose of awakening our nation’s leaders to their urgent moral obligation to act on climate change. As outlined in its 2013–2015 Strategic Plan, IMAC’s central goal is to move leaders in government to address climate change immediately. IMAC is uniquely situated to argue that international law and the public trust doctrine are grounded in moral values common to the faith traditions of the world, and that all law, especially when it is being extended into new areas, must be supported by and consistent with broadly held moral values;

Interfaith Power and Light, founded in California in 2000, is a unique network of 15,000 congregations nationwide that has engaged hundreds of religious leaders, educated thousands of people of faith about the moral and ethical mandate to address global warming, and helped pass landmark climate and clean energy laws in California. There are forty state affiliates, with ongoing efforts to establish programs in every state. Its mission includes advocating for vulnerable people and communities that are the most heavily impacted by climate change;

The Green Zionist Alliance, is a New York-based nonprofit founded in 2006 that works to educate over 2,000 people nationwide about environmental issues and promote actions that help people green their lives and communities, protect the climate for current and future generations, and advocate for those most negatively affected by climate change. By focusing on the environment while working from a pluralistic and multicultural Jewish base, the Green Zionist Alliance is helping to build a peaceful, just, and sustainable future for all;

The Sisters of Mercy of the Americas, is a congregation of nearly 4,000 vowed women religious with a commitment to persons who are poor, especially women and children. The Sisters live out this commitment through a network of educational institutions, healthcare facilities, and social service centers throughout the United States. At its General Chapter in 2005 and again in 2011, the Sisters of Mercy of the Americas expressed a commitment “to reverence Earth and work more effectively toward the sustainability of life,” which has led toward efforts to advocate for carbon-emission reduction measures and reduce the carbon footprint of its institutions;

The Sisters of Mercy of the Americas Northeast Community Leadership Team, represents approximately 1,000 sisters, Associates, and Companions of Mercy in six Northeast states. The community’s long history of health, education, and social justice ministries has recently expanded to include ecological issues

such as climate change. These leaders support the fundamental right of the children of the United States to clean air and a livable climate, and look to the Court to protect these rights on behalf of future generations; and

The Sisters of Mercy Northeast Justice Council, represents more than 500 Sisters, Associates, and Companions of Mercy in the Northeastern United States, and believes that the impacts of climate change in the United States and around the world—from flood to droughts to disease—disproportionately affect poor and vulnerable communities, especially women and children. The Northeast Justice Council supports actions that will contribute to a sustainable world for present and future generations.

Concerns about the impact of climate change on vulnerable populations lie at the core of the diverse religious commitments of the Faith Groups. These commitments hold that seeking justice lies at the heart of human responsibility and is the responsibility of governing bodies. Justice demands meeting the essential material needs and conditions for human dignity, social participation, and human flourishing. Climate change is a fundamental threat to these ends. The quest for justice grounded in religious commitment thus implies moral and legal entitlements including protection of the atmosphere.

SUMMARY OF ARGUMENT

In recent practice, U.S. courts use international law predominantly to supplement interpretations of domestic constitutional, statutory, and common law norms. In an evermore global and interconnected world, the relevance of principles of international norms in U.S. law is increasing. The climate change case at bar has important implications for preserving the obligations of the United States to protect human rights. Universal principles of international law persuasively support the Court's interpretation that the scope of the public trust doctrine extends to include the atmosphere.

ARGUMENT

I. **THE IMPACTS OF CLIMATE CHANGE THREATEN HUMAN RIGHTS.**

In 2008, the United Nations Human Rights Council issued Resolution 7/23 stating that climate change “poses an immediate and far-reaching threat to people and communities around the world,”³ recognizing “that human beings are at the centre of concerns for sustainable development and that the right to development must be fulfilled so as to equitably meet the development and environmental needs of present and future generations,”⁴ and “that the world's poor are especially

³ U.N. Human Rights Council Res. 7/23 65–66 ¶ 1, U.N. Doc. A/HRC/7/78 (Mar. 28, 2008).

⁴ *Id.* at ¶ 7.

vulnerable to the effects of climate change. . . .”⁵ According to Judge Christopher Weeramantry, former Vice President of the International Court of Justice, “[t]he protection of the environment is . . . a vital part of contemporary human rights doctrine . . . [,] as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration [of Human Rights] and other human rights instruments.”⁶

Faith Groups respectfully draw this Court’s attention to the important link between climate impacts and human rights, and the diverse calls of faith-based communities for moral action on climate change that protects populations whose fundamental rights are most vulnerable to climate risks. The atmosphere’s protection under the public trust doctrine is consistent with widely accepted principles of international law, which should be considered as persuasive authority in deciding the Youth’s case.

⁵ *Id.*

⁶ Donald Anton, *Is the Environment a Human Rights Issue?*, ANU COLLEGE OF LAW RESEARCH PAPER NO. 08-11 (2008) (citing Gabcikovo-Nagymaros Project (Hung. v. Slov.), 1997 I.C.J. 7, 91–92) (separate opinion of Judge Weeramantry)), *available at* <http://ssrn.com/abstract=1126470>.

II. THE COURT’S INTERPRETATION OF THE PUBLIC TRUST DOCTRINE IMPLICATES WIDELY ACCEPTED PRINCIPLES OF INTERNATIONAL LAW.

A. International Environmental Law

The public trust doctrine plays an important role in promoting the obligations of the United States to provide a supportive environment necessary for the protection of common natural resources and human rights. The world’s most preeminent international climate agreement, the 1992 United Nations Framework Convention on Climate Change (“UNFCCC”),⁷ instructs the global community to apply the concept of the public trust doctrine to the issue of climate change. Article 3 of the UNFCCC outlines the principle that parties to the convention “should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.”⁸ Inclusion of the “future generations” language reflects that the authors of the agreement intentionally sought to insert the trust concept into the Convention’s guiding principles. Ratified by the United States (and 193 other countries), the UNFCCC demands adherence by the U.S. Constitution and provides supplemental authority for interpreting this

⁷ United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107 (entered into force Mar. 21, 1994) [hereinafter UNFCCC].

⁸ *Id.* art. 3.

case. U.S. Cons. art. VI, § 2 (declaring supremacy of the law and treaties of the United States).

B. International Human Rights Law

A number of relevant human rights instruments also provide instructive and persuasive authority for evaluating the public trust arguments of Youth as they assert fundamental constitutional rights in the face of the serious human rights impacts of climate change to them—impacts that substantially affect the vulnerable populations in the United States served by the Faith Groups.

1. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (“UDHR”), a sweeping document that places value on essential human rights and dignity in all persons, was adopted by the General Assembly in 1948 with the United States voting in favor.⁹ Article 3 declares that “[e]veryone has the right to life, liberty and security of person.”¹⁰ Protection of the environment—including the atmosphere—is necessary to protect this right to life. In the United States, the impacts of climate change are often most significant for communities that already face economic or health-related challenges.¹¹ The effects of climate change will be disruptive to

⁹ Universal Declaration of Human Rights, G.A. RES. 217 (III) A, U.N. DOC. A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR].

¹⁰ *Id.* art. 3.

¹¹ *See generally* NATIONAL CLIMATE ASSESSMENT DEVELOPMENT ADVISORY COMMITTEE, DRAFT CLIMATE ASSESSMENT REPORT, EXECUTIVE SUMMARY (2013)

society and the rights protected under the UDHR, as our institutions and infrastructure have been designed for the relatively stable climate of the past, rather than the human-caused disrupted climate of today and tomorrow.¹²

Climate change “produces a variety of stresses on American society, impacting human health, natural ecosystems, built environments, and existing social, institutional, and legal agreements.”¹³ For example, sea level rise, in conjunction with coastal storms, has increased the risk of damage from storm surges, flooding, and coastal erosion along the shores of the United States. These hazards profoundly impact life, liberty, and security in economically and politically marginalized coastal communities.¹⁴ In the Southeast, for example, rising sea levels and storm surges pose risks to critical coastal infrastructure, including roads, rail lines, utilities, and port facilities such as U.S. naval bases, which support vulnerable coastal communities with secure means of mobility in the event that more frequent, intense weather events require evacuation.¹⁵

(projecting climate-related impacts for the United States with drafting and public review overseen by a sixty-person Federal Advisory Committee, the “National Climate Assessment and Development Advisory Committee”), <http://ncadac.globalchange.gov/download/NCAJan11-2013-publicreviewdraft-chap1-execsum.pdf> [hereinafter DCAR].

¹² *See id.*, lines 7–13, at 3.

¹³ *Id.*, lines 1–2, at 5.

¹⁴ *See* Am. Compl., A057-58, ¶¶ 94-96; A062-63, ¶ 111.

¹⁵ *See* DCAR, *supra* note 11, lines 23–27, at 4.

2. The International Covenant on Economic, Social, and Cultural Rights

The International Covenant on Economic, Social, and Cultural Rights (“ICESCR”),¹⁶ signed but not ratified by the United States, defines the right to water in Comment 15 as “a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.”¹⁷ The United States has witnessed record high temperatures, including a pattern of persistently high nighttime temperatures, which have led to widespread drought conditions and a series of public health crises linked to extreme heat events.¹⁸ In the Summer of 2011, for example, Texas and Oklahoma experienced over 100 days where temperatures soared above 100 degrees Fahrenheit and rates of water loss were double the long-term average, with the heat and depleted water resources causing \$10 billion in direct agricultural losses alone.¹⁹

¹⁶ International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 999 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR].

¹⁷ Comm. on Econ., Soc. & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15* (2002), ¶ 1, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf). See also IESCR, *supra* note 16, arts. 11 & 12.

¹⁸ See DCAR, *supra* note 11, lines 33–39, at 3.

¹⁹ See NATIONAL CLIMATE ASSESSMENT DEVELOPMENT ADVISORY COMMITTEE, DRAFT CLIMATE ASSESSMENT REPORT, GREAT PLAINS 672, lines 11–16 (2013),

Article 11 of the ICESCR also declares a “right to adequate food” for present and future generations, which requires international cooperation and harmony between human rights and environmental policies.²⁰ The yields of major U.S. grain crops are expected to decline by mid-century, threatening food security in the United States.²¹ Because our food system is reliant on imports, U.S. food security and commodity pricing—and impacts of pricing on the most food insecure—are especially vulnerable to the impacts of climate change on the availability and accessibility of food and water.²²

3. The Convention on the Rights of the Child

The Convention on the Rights of the Child (“CRC”)²³ places children at the center of the realization of universal human rights, enjoying near-universal ratification with the exception of only two countries, Somalia and the United States. *Roper v. Simmons*, 543 U.S. 551, 576 (2005). Article 27(1) recognizes the

<http://ncadac.globalchange.gov/download/NCAJan11-2013-publicreviewdraft-chap19-greatplains.pdf>.

²⁰ ICESCR, *supra* note 16, art. 11; *see also* Special Rapporteur on the Right to Food, *Interim Report on the Right to Food, transmitted by Note of the Secretary-General*, ¶ 2, U.N. Doc. A/65/281 (Aug. 11, 2010) (by Olivier De Schutter).

²¹ David Battisti and Rosamond Naylor, *Historical Warnings of Future Food Insecurity with Unprecedented Seasonal Heat*, 323 *SCIENCE* 24, Jan. 9, 2009 (stating general rule of thumb that a 10 degree Celsius increase in global average temperature will cause an average of a 10 percent decline in yields of major staple grains such as wheat and rice).

²² *See* DCAR, *supra* note 11, lines 35–39, at 9.

²³ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [hereinafter CRC].

right of every child to maintain a “standard of living adequate for the child’s physical, mental, spiritual, moral, and social development.”²⁴ The CRC cites “dangers and risks” that environmental pollution poses to Parties’ obligations to provide children with healthy food and clean drinking water in order to fully realize the right of the child to the highest attainable standard of health.²⁵ Climate change poses considerable threats to the enjoyment of such rights by the young generations served by Faith Groups, including the ability of young people to engage in outdoor recreation activities, enjoy the nation’s rich biodiversity, and access clean and healthy food and water.

III. INTERNATIONAL LEGAL PRINCIPLES OFFER PERSUASIVE SUPPLEMENTAL AUTHORITY TO GUIDE THE COURT’S INTERPRETATION OF THE PUBLIC TRUST DOCTRINE.

Since the nation’s founding, international law and the opinions of the international community have informed and shaped the laws of the United States. Article VI of the U.S. Constitution provides that “... all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Cons. art.

²⁴ CRC, *supra* note 23, art. 27(1).

²⁵ *Id.* art. 24, ¶ 2(c). See also HUMAN RIGHTS COUNCIL, *Preliminary Report: Report of the Independent Expert on the Issue of Human Rights Obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment*, ¶ 23, U.N. Doc. A/HRC/22/43 (Dec. 24, 2012) (prepared by John H. Knox).

VI, § 2. In 1900, the Supreme Court pronounced: “International law is part of our law, and *must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending on it are duly presented for their determination.*” *The Paquete Habana*, 175 U.S. 677, 700 (1900) (emphasis added).

Since the Supreme Court’s pronouncement, the United States has played a critical leadership role in developing international law and promoting human rights—particularly since World War II. The norms and principles embodied in the most frequently cited international human rights agreements in U.S. courts—the International Covenant on Civil and Political Rights (“ICCPR”),²⁶ the most comprehensive international civil rights agreement that exists; and the UDHR—have deep U.S. roots. They “are in their essence American constitutional rights projected around the world.”²⁷

A. Ratified Treaties

The U.S. Supreme Court has found international human rights emanating from ratified human rights instruments, such as the ICCPR,²⁸ to be instructive on international norms when interpreting the U.S. Constitution. A leading example is

²⁶ The International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

²⁷ Richard B. Lillich, *The Constitution and International Human Rights*, 83 AM. J. INT’L L. 851, 852 (1989).

²⁸ The United States ratified the ICCPR in 1992.

Roper v. Simmons, 543 U.S. 551 (2005), where the U.S. Supreme Court considered the ICCPR, which protects the “inherent right to life”²⁹ of every human being, as instructive and supportive of its decision in holding that executing juveniles violates the Eighth and Fourteenth Amendments. Justice Kennedy wrote for the majority that:

It is proper that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty, resting in large part on the understanding that the instability and emotional imbalance of young people may often be a factor in the crime. See Brief for Human Rights Committee of the Bar of England and Wales et al. as *Amici Curiae* 10—11. The opinion of the world community, while not controlling our outcome, does provide *respected and significant confirmation for our own conclusions*. . . .

It does not lessen our fidelity to the Constitution or our pride in its origins to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom.

Roper, 543 U.S. at 578 (emphasis added). The “overwhelming weight” of international opinion on climate change and the duty of governments to protect rights threatened by greenhouse gas emissions, along with time-honored principles of human rights, while not controlling, do provide “respected and significant confirmation” of the claims brought by Youth. *Id.* Fundamental obligations to refrain from arbitrary deprivation of life, a key question in *Roper*, are no less

²⁹ ICCPR, *supra* note 26, art. 6(1) (“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”).

applicable in circumstances similar to the case at bar, where the deprivation of life involves the environment. Additionally, the UNFCCC's climate regime, as ratified by the United States and 193 other states "for the benefit of present and future generations of humankind,"³⁰ evidences an "overwhelming weight" of support for protection of the atmosphere under the norms and principles of intergenerational equity formalized under U.S. law by the public trust doctrine. *Roper*, 543 U.S. at 578.

Here, as in *Roper*, principles of ratified international law are not cited as enforceable sources of law, but rather as an important source of instructive guidance relevant to the interpretation of constitutional norms. Although Youth's claim may not give rise to a direct violation as in *Roper*, fundamental human rights obligations, including the "inherent right to life,"³¹ are not lessened merely because the rapidly deteriorating environment is the source of their threat.

B. Customary International Law

Customary international law "is part of our law." *The Paquete Habana*, 175 U.S. at 700. Customary international law "results from a general and consistent practice of states followed by them from a sense of legal obligation." Restatement (Third) of Foreign Relations Law §102(2) (1987). The UDHR and the United

³⁰ UNFCCC, *supra* note 7, art. 3.

³¹ ICCPR, *supra* note 26, art. 6(1).

Nations Charter (“U.N. Charter”)³² are widely considered to be sources of customary international law.³³ The UDHR is thought to represent the “common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.”³⁴ Like the UDHR, the U.N. Charter promotes universal protection of fundamental human rights and freedoms.

U.S. Courts have relied on both the UDHR and the U.N. Charter to guide judicial decision making. In *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980),³⁵ a frequently cited case on the topic of the status of international law in U.S. Courts, the Second Circuit held that an act of torture directly violated the law of nations

³² United Nations Charter, 59 Stat. 1046 (1945) [hereinafter UN Charter].

³³ See, e.g., Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 G.A. J. INT’L & COMP. L. 287 (1995–6). See also Lillich, *supra* note 27, at 859–60.

³⁴ Proclamation of Teheran, Final Act of the International Conference on Human Rights, U.N. Doc A/Conf. 32/41 at 3 (1968).

³⁵ *But c.f. Mora v. N.Y.*, 524 F.3d 183 (2d Cir. 2008) (explaining that international law does not grant enforceable private rights to individuals, and that it could not enforce a treaty-based claim under the Vienna Convention (citing *Medellin v. Tex.*, 552 U.S. 491, 506 n.3 (2008)) (suggesting in dicta that U.S.-ratified human rights treaties that are considered “non-self-executing” under the self-execution doctrine do not provide individuals with a private right of action to sue in federal courts for treaty violations); see also *McKesson Corp. v. Islamic Republic of Iran*, 539 F.3d 485 (D.C. Cir. 2008) (relying on *Medellin* and holding that U.S.-Iran Treaty of Amity did not create a private right of action for any party under U.S. law); *Comm. of U.S. Citizens Living in Nicar. v. Reagan*, 859 F.2d 929, 937 (D.C. Cir. 1988) (“Article 94 of the U.N. Charter [concerning compliance with International Court of Justice decisions] simply does not confer rights on private individuals. Treaty clauses must confer such rights in order for individuals to assert a claim ‘arising under’ them.”).

under the Alien Torts Claims Act. 28 U.S.C. § 1350 (1976). Referencing international instruments such as the UDHR, the Court held that torture “violates universally accepted norms of international law of human rights, regardless of the nationality of the parties.” *Filartiga*, 630 F.2d at 878. In *Oyama v. California*, 332 U.S. 633 (1948), a U.S. Supreme Court case challenging the constitutionality of a California statute barring aliens from land ownership on account of race, Supreme Court Justices Murphy and Rutledge noted in a concurring opinion that the statute’s inconsistency with Article 55 of the U.N. Charter,³⁶ “is but one more reason why the statute must be condemned.” *Oyama*, 332 U.S. at 673.

Faith Groups recognize that Youth’s public trust claim alleges neither a right nor a remedy under international law; nor do Youth claim international consensus that its allegations are—like torture—prohibited under the law of nations. The applicability of customary international law in this case is more similar to the role international law played in *Roper* and *Oyama*. In both cases, the Supreme Court applied the relevance of international practice to address challenging questions. Likewise, here, international instruments provide instructive guidance that can assist the Court’s examination of how gaps in the current legal framework on climate change affect not only Youth but citizens most vulnerable to the impacts of climate change served by Faith Groups. The United States has

³⁶ UN Charter, *supra* note 32, art. 55.

affirmed the human rights “to life, liberty, and security of person” protected under Article 3 of the UDHR as among the entitlements that all states must guarantee.³⁷ These are among the fundamental human rights most at risk from direct climate change threats, with the communities served by Faith Groups at the highest risk of vulnerability to these threats should the Government continue to avoid its public trust obligations concerning the atmosphere.³⁸

C. Non-Ratified Treaties

In addition to ratified treaties and customary sources of international law, international human rights norms and principles emanating from treaties that the United States has not ratified—such as the ICESCR³⁹ and the CRC⁴⁰—have also guided judicial decision-making, even though these treaties are not binding in federal court.⁴¹ As a signatory to the ICESCR and the CRC, however, the United States is obliged to “refrain from acts which would defeat the object and purpose” of the treaties.⁴²

³⁷ Memorial of the United States, United States Diplomatic and Consular Staff in Tehran (United States v. Iran), 1980 I.C.J. 3, at 186 n.6 (May 24, 1980).

³⁸ See *supra* Part II.B.

³⁹ ICESCR, *supra* note 16.

⁴⁰ CRC, *supra* note 23.

⁴¹ The U.S. has not ratified either treaty. Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980) [hereinafter Vienna Convention].

⁴² *Id.* art. 18. See also S. EXEC. DOC. L. 92d Cong., 1st Sess. at 1 (1971) (the Department of State recognizes the Vienna Convention as the authoritative guide to treaty law and practice).

In *Graham v. Florida*, 560 U.S. 48 (2010), the Supreme Court held that the sentencing of the sixteen-year-old Petitioner to life in prison without the possibility of parole, for a crime that did not involve homicide, violated the Eighth Amendment. The Court cited Article 37(a) of the CRC, noting its prohibition of life imprisonment without the possibility for release for juveniles, as supplemental authority. *Id.* at 2034. Citing *Roper*, 543 U.S. at 578, Justice Kennedy wrote for the majority that international sources of opinion as made evident by the CRC confirmed the Court’s own conclusions:

The State's *amici* stress that no international legal agreement that is binding on the United States prohibits life without parole for juvenile offenders and thus urge us to ignore the international consensus. See Brief for Solidarity Center for Law and Justice et al. as *Amici Curiae* 14-16; Brief for Sixteen Members of United States House of Representatives as *Amici Curiae* 40-43. These arguments miss the mark. *The question before us is not whether international law prohibits the United States from imposing the sentence at issue in this case. The question is whether that punishment is cruel and unusual. In that inquiry, ‘the overwhelming weight of international opinion against’ life without parole for nonhomicide offenses committed by juveniles ‘provide[s] respected and significant confirmation for our own conclusions. . . .’*

The Court has treated the laws and practices of other nations and international agreements as relevant to the Eighth Amendment not because those norms are binding or controlling but because the judgment of the world’s nations that a particular sentencing practice is inconsistent with basic principles of decency demonstrates that the Court’s rationale has respected reasoning to support it.

Graham, 560 U.S. 48 at 2034 (citation omitted) (emphasis added). Consistent sources of international opinion, such as the CRC, offer “respected reasoning” to

support a reading that the atmosphere falls under the public trust. *Id.* The protection of a healthy, supportive atmosphere for present and future generations under the public trust doctrine is consistent with the “object and purpose” of the CRC,⁴³ which guarantees the conditions necessary for children to maintain a “standard of living adequate for the child’s physical, mental, spiritual, moral, and social development.”⁴⁴ International sources of opinion, whether or not providing a right or remedy in U.S. Courts, provide support for the Court to interpret the public trust doctrine to include the atmosphere under the rationale that a healthy atmosphere is a prerequisite for protecting human rights “indispensible for leading a life of human dignity”⁴⁵ among Youth and other vulnerable U.S. citizens whose human rights are directly threatened by climate change.

Faith Groups emphasize that the greater impacts of the Court’s decision will fall most heavily upon the members of our society who, for social, economic, political, environmental, and cultural reasons are the most disadvantaged by climate threats and whose human rights to life, health, and property are most at risk from climate change should the Court determine the U.S. Constitution does not require protection of the atmosphere or that the atmosphere is outside the scope of the public trust.

⁴³ Vienna Convention, *supra* note 41, art. 18.

⁴⁴ CRC, *supra* note 23, art. 27(1).

⁴⁵ *See supra* note 17.

CONCLUSION

For the above reasons, Faith Groups urge the Court to reverse the Order of the District Court dismissing Youth's case.

RESPECTFULLY SUBMITTED this 12th day of November, 2013.

/s/ Katherine Anne Meyer
Katherine Anne Meyer
Meyer Glitzenstein & Crystal
1601 Connecticut Ave., N.W.
Suite 700
Washington, D.C. 20009
(202) 588-5206
(202) 588-5041 (fax)

Counsel for Amici Curiae

On the Brief:

Jennifer Marlow (WA Bar No. 43260)
Jennifer Krencicki Barcelos (WA Bar No. 43879)
Three Degrees Project
262 Studhorse Mountain Road
Winthrop, WA 98862
503.413.9524
jen@threedegreeswarmer.org
jeni@threedegreeswarmer.org

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(d) because it contains 4,637 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and Circuit Rule 32(a)(1).

I further certify that the attached *Amicus Curiae* Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 2007 14-point Times New Roman font.

Executed this 12th day of November, 2013.

/s/ Katherine Anne Meyer
Katherine Anne Meyer

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of November, 2013, I have served the foregoing *Amicus Curiae* Brief on all registered counsel through the Court's Case Management/Electronic Filing System (CM/ECF).

/s/ Katherine Anne Meyer
Katherine Anne Meyer

Counsel for Amici Curiae