



Juliana v. United States

Significance and Implications for a Trump Presidency



Introduction



Presentation Outline

1. Background

2. Procedural History

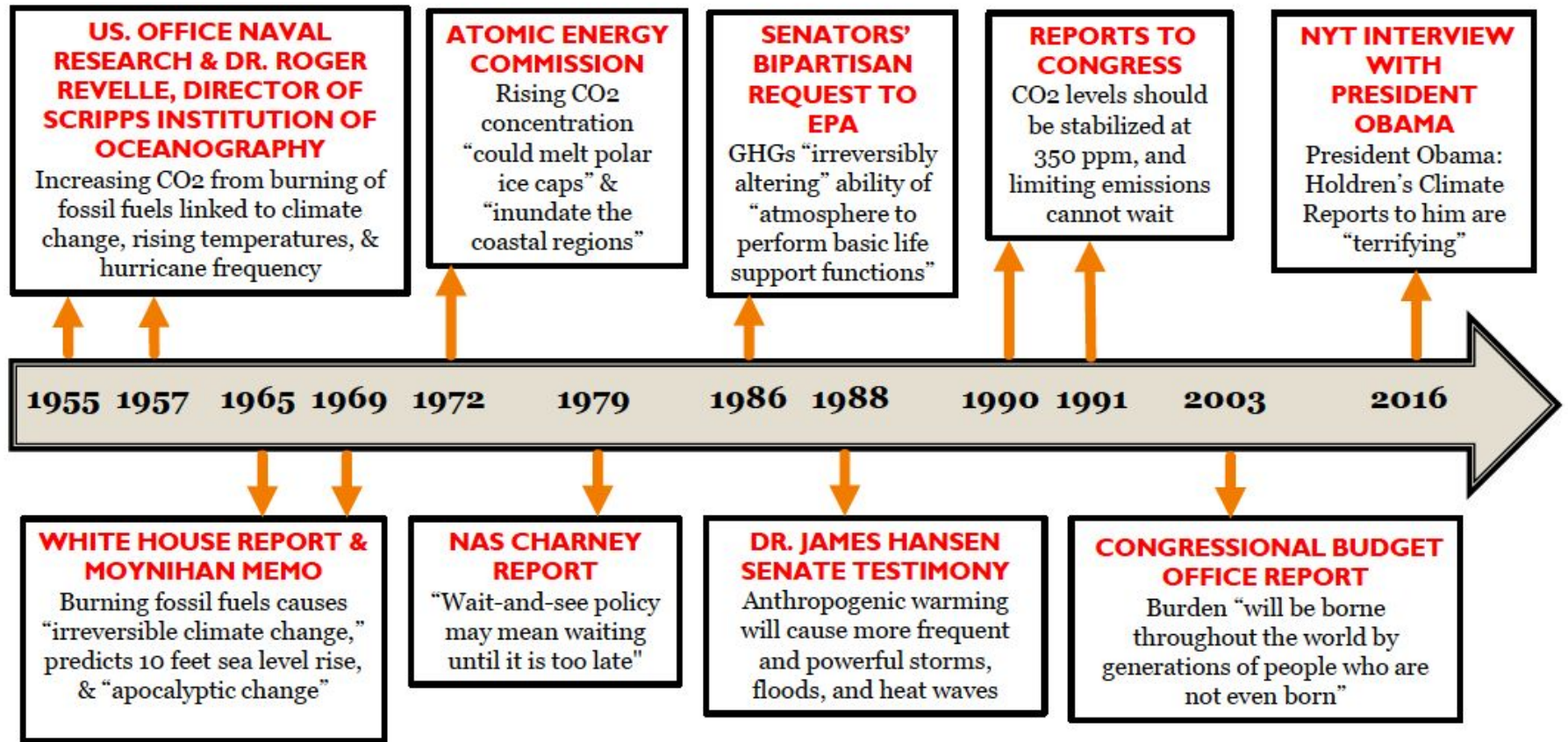
3. Judge Aiken Order and next steps

4. Commentary and Conclusions

1.1 Due Process Claim

“The ‘danger creation’ exception permits a substantive due process claim when government conduct ‘places a person in peril in deliberate indifference to their safety[.]’ ... **Plaintiffs purport to challenge the government's failure to limit third-party CO₂ emissions pursuant to the danger creation *DeShaney* exception.**” (p. 33)

U.S. GOVERNMENT'S LONG-STANDING KNOWLEDGE OF CLIMATE DANGER



Source: exhibit adduced by Plaintiffs during Motion to Dismiss hearings in *Juliana v. United States*

1.2 Public Trust Claim

“... the sovereign's public trust obligations prevent it from ‘depriving a future legislature of the natural resources necessary to provide for the well-being and survival of its citizens.’” (p. 37)

“The doctrine made its way to the United States through the English common law.” (p. 37)

“... plaintiffs assert defendants have violated their duties as trustees by nominally retaining control over trust assets while actually allowing their depletion and destruction... .” (p. 40)

1.3 Other Claims

- Violation of Equal Protection Clause

- Violation of Ninth Amendment
“Unenumerated Rights”

2.1. Timeline

- **12 August 2015:** Complaint Filed by 21 Young People and Dr James Hansen
- **12 November 2015:** American Petroleum Institute, American Fuel and Petrochemical Manufacturers and National Association of Manufacturers file Motion to Intervene and Motion to Dismiss
- **17 November 2015:** Defendants file Motion to Dismiss
- **10 March 2016:** Magistrate Judge Coffin hears oral arguments for both Motions to Dismiss
- **8 April 2016:** Magistrate Judge Coffin delivers Findings & Recommendations denying the motions to dismiss



2.2 Magistrate Judge Coffin's Decision

“The nascent nature of these proceedings dictate further development of the record before the court can adjudicate whether any claims or parties should not survive for trial. Accordingly, the court should deny the motions to dismiss.”

(Findings and Recommendations of Magistrate Judge Coffin, pp. 23-24)

2.3. Timeline

- **13 September 2016:** Judge Aiken hears oral arguments for both Motions to Dismiss
- **8 April 2016:** Judge Aiken delivers decision denying the motions to dismiss



3.1. Judge Aiken Order

“Exercising my ‘reasoned judgment,’ I have no doubt that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society. Just as marriage is the ‘foundation of the family,’ a stable climate system is quite literally the foundation ‘of society, without which there would be neither civilization nor progress.’” (p. 32, internal citations omitted)

3.2. Judge Aiken Order

“A deep resistance to change runs through defendants' and intervenors' arguments for dismissal: they contend a decision recognizing plaintiffs' standing to sue, deeming the controversy justiciable, and recognizing a federal public trust and a fundamental right to climate system capable of sustaining human life would be unprecedented, as though that alone requires its dismissal.” (p. 52)

“Federal courts too often have been cautious and overly deferential in the arena of environmental law, and the world has suffered for it.” (p. 52)

3.3. Next steps

- **28 November 2016:** Informal case management conference
- **15 December 2016:** Intervenor-defendants file answer to Plaintiffs' complaint
- **13 January 2017:** Federal defendants file answer to Plaintiffs' complaint
- **24 January 2017:** Plaintiffs' send notice of litigation hold and request for document preservation to Federal Defendants and Intervenor-defendants
- **7 February 2017:** Case management conference in Eugene, OR



4.1. Successful, “macro-level” climate litigation is no longer an anomaly



4.2. Climate change is a human rights issue that is ill-suited to conventional legal approaches



4.3. New approaches to climate litigation are proliferating



4.4. Conclusion