

THE LEGAL



WINTER 2015

Placing the Planet in the Hands of the “Public Trust”

by Jodi L. Miller

Scientists have made dire predictions regarding the certainty of climate change and its potential catastrophic consequences globally. According to the Intergovernmental Panel on Climate Change (IPCC), by the end of the century global temperatures could rise between 2.5 and 10 degrees Fahrenheit and sea levels could rise as much as four feet.

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Unionizing College Athletes—Is Playing Football a Job?

by Phyllis Raybin Emert

The first college football game was played in 1869—right here in New Jersey. Rutgers beat Princeton six to four. Princeton won the second game of what was meant to be a three-game series. Unfortunately, that tie-breaker was never played because faculty from both schools complained the emphasis on football was detracting from the students' academics.

Still, college football was born and today has evolved into big business, collectively generating around \$6 billion in revenue per year, with some schools alone generating more than \$100 million. It seems times have changed, however, because today it is academics that aren't allowed to get in the way of winning football games.

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EPA Taking Lead to Combat Climate Change

by Cheryl Baisden

When it comes to greenhouse gases like carbon dioxide, there is just one thing people agree on—they do exist. We produce carbon dioxide when we breathe; it's a byproduct of many things in nature; but most significantly it's produced when fossil fuels like coal, oil and gas are used to generate electricity and heat and to fuel our cars.



“The debate isn't over whether they exist, it's about whether they have an impact on our environment,” said Marty Judge, a Cherry Hill-based environmental attorney. “Science shows that greenhouse gases function like a blanket, they trap in heat and contribute to global warming, which can cause rising ocean levels, extreme weather and other environmental changes. Some people don't believe global warming exists at all, and others believe in global warming but don't believe greenhouse gases contribute to it.”

While some Americans may be debating the causes of climate change, the scientific community is in agreement. Reports released by the Intergovernmental Panel on Climate Change (IPCC) are definitive that greenhouse gas emissions are causing the planet to warm.

The so-called debate, however, has prevented Congress from acting on the issue for years. As a result, President Barack Obama's administration has used its authority to bypass Congress and, under the authority of the Clean Air Act, develop Environmental Protection Agency (EPA) rules designed to substantially reduce greenhouse gas emissions from power plants by 2030.

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A question of authority

Although the Clean Air Act doesn't specifically mention greenhouse gases, it does grant the EPA authority to create new monitoring programs and regulations to address emergent pollution problems. Generally, the EPA sets air quality standards for various pollutants and monitors states to ensure they comply with their emissions levels. Its right to regulate greenhouse gases was confirmed in 2007, when the U.S. Supreme Court decided *Massachusetts v. EPA*.

"The case dealt with the question of whether or not the EPA had the authority to regulate greenhouse gases, and came down to whether greenhouse gases are defined as pollutants. The Court ruled that they were," said Judge. "The Court left it up to the EPA to determine when and how it would regulate those emissions."

As a result, in 2013 the EPA developed rules that would require state-of-the-art technology be used in the construction of new power plants in order to keep pollution levels at a minimum. In June 2014, additional new guidelines were announced for existing coal-burning power plants, which produce over a third of the country's greenhouse gases. Under the new rule, every state would have to meet specific emissions levels established based on its current emissions levels. How those targets would be met would be left up to the state and its power plants.

According to Judge, emissions reductions could be made by installing improved technology; switching plants to natural gas, which burns cleaner; closing old plants and replacing them with new, state-of-the-art plants; or establishing a "cap-and-trade" system where plants can buy and sell emissions credits.

"For states like New Jersey, with plants that don't use much coal, meeting the standards wouldn't be difficult," said Judge. "In states that rely heavily on coal, particularly cheaper types of coal, like many Midwestern states, there would

have to be changes made, and those changes would cost the power plants money, which would end up costing consumers in those states money."

A total of 19 states produce more than half of their electricity using coal. Kentucky and West Virginia, according to the Energy Information Administration, produce 90 percent of their energy from coal-burning plants. Therefore, it should come as no surprise that these states have strongly opposed the new EPA regulations. The new regulations are subject to public comment and expected to be finalized in 2015.

Battle lines are drawn

"This latest assault on our economy by President Obama will destroy jobs here in Kentucky and across the country, and will hurt middle-class families by hiking their utility bills and straining their budgets. The excessive rule is an illegal use of executive power," said Republican Senator Rand Paul in a statement.

In California, where coal is not a predominant source of fuel, former Governor Arnold Schwarzenegger, also a Republican, sees things differently. "I applaud President Obama for using every tool at his disposal and not waiting for Congress or a new international treaty. California and nine Eastern states have used similar policies, including an effective cap-and-trade system, which can serve as a national model to help our country achieve the president's goals. The experiences of those states also prove that this is not a Democrat or Republican issue, it's a people issue," he said in a statement.

But in some ways politics do and will play a part in this ongoing battle, noted Judge.

"Most of the coal-burning states are in the Midwest and are Republican-led, which means those legislators naturally oppose the EPA regulations," he explained. "Since the last election gave Republicans control over both Houses, there will most likely be a strong move to block

implementation of the new rules. Maybe not in a direct way, but they can easily cut EPA funding and find other ways to slow down or stop the process."

The Supreme Court decides

Initiating a legal battle does not appear to be the way to go, since the U.S. Supreme Court predominately supported the EPA's authority to establish and enforce its new rules in June 2014.

In the case of *Utility Air Regulatory Group v. EPA*, the plaintiffs, an alliance of several dozen power companies and related groups, argued that the EPA's new rules run counter to the Clean Air Act's standards, and the agency's decision to raise those standards was an unauthorized use of power. Under the Clean Air Act, the EPA would have to apply its new standards to any facility that exceeded certain emissions levels outlined in the act. But those standards don't translate well for greenhouse gases, and would have placed facilities like schools under the new regulations, so the agency chose to raise the requirements to a higher level.

In a February 2014 hearing before the Court on the matter, Peter Keisler, a lawyer representing the plaintiffs, said the EPA granted itself "an exceptional and troubling degree of discretion to design its own climate change program."

Justice Elena Kagan countered that the EPA's policy change was designed "only to distinguish between major and minor emitters."

In the end, the Court found the EPA was authorized to set greenhouse gas standards as it saw fit for existing power plants, but not in all instances. The Court found that when an existing power plant made improvements or changes to its facility the EPA could impose its new rules. What it couldn't do was force power plants that are simply large greenhouse gas producers to upgrade their systems no matter what, according to Judge.

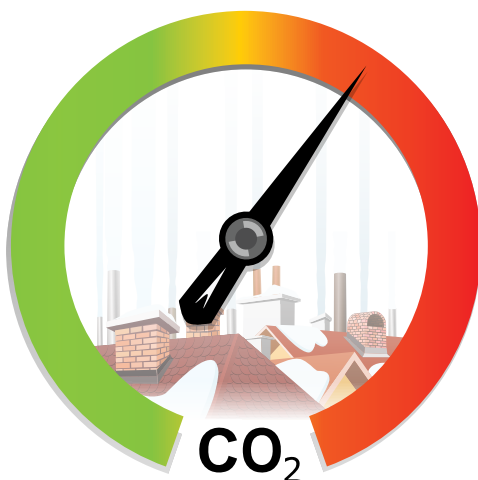
"It bears mentioning that EPA is getting almost everything it wanted

in this case," Justice Antonin Scalia said when he announced the ruling. "It sought to regulate sources that it said were responsible for 86 percent of all the greenhouse gases emitted from stationary sources nationwide. Under our holdings, EPA will be able to regulate sources responsible for 83 percent of those emissions."

A global outlook

Beyond the financial costs of the new EPA regulations, opponents of the measures have also voiced opposition to the U.S. choosing to take on what is actually a global problem.

"We can all agree that clean air is worth fighting for, but the president seems to imagine a bubble over the U.S., as if pollution from other countries that generate more and regulate less don't reach our environment. This reckless and



ineffective rule will have little or no impact on our environment, yet take a devastating toll on our economy," said Nebraska Senator Mike Johanns, a Republican, in a statement.

Interestingly enough, Judge explained, the U.S. has been dealing with a microcosm of this global problem within its own borders for years.

"The greenhouse gases produced in one state don't just stay in that state," he said. "A lot of New Jersey's pollutants, and a lot of the pollutants in the air in New England, actually travel here from the Midwest. We have been cleaning up Ohio's pollution for years, and as a result we have been incurring

the costs associated with that for decades, so arguing that we should only be responsible for the pollution we produce doesn't make sense."

Supporters contend the EPA's new policy could benefit the U.S. when the United Nations meets in Paris to discuss climate change in December 2015. "The decision by President Obama to launch plans to more tightly regulate emissions from power plants will send a good signal to nations everywhere that one of the world's biggest emitters is taking the future of the planet and its people seriously," Christiana Figueres, executive secretary of the U.N. Framework Convention on Climate Change told *The Los Angeles Times*. "I fully expect action by the United States to spur others in taking concrete action."

Global leadership

In a show of global leadership on the climate change issue, President Obama met with Chinese President Xi Jinping in November 2014, when they reached an agreement to reduce both countries' greenhouse gas emissions. The U.S. and China are the two largest emitters of CO₂, with China being number one. In the agreement, China pledged to reach peak carbon emission by 2030, with a goal to obtain 20 percent of its energy from zero-carbon emission sources. In return, the U.S. promised to reduce its emissions 26 to 28 percent below 2005 levels by 2025.

In Associated Press reports, David Sandalow, a former environmental official at the White House and the Energy Department, said, "This is, in my view, the most important bilateral climate announcement ever. It sends the signal the two largest emitters in the world are working together to address this problem."

The U.S.-China agreement is perhaps most significant in terms of other countries and their lack of movement on the issue.

Dave Griggs, director of the Monash Sustainability Institute at Monash University in Melbourne, told *Bloomberg Businessweek*, "There's no doubt, with the U.S. and

Football makes money for colleges on everything from ticket sales to television contracts to merchandising. In addition, the better the football team, the larger the alumni donations to the school and the higher the salaries of administrators, coaches, and staff. Mark Emmert, the president of the National Collegiate Athletic Association (NCAA) earned \$1.7 million in 2011 and the average salary for a head football coach in the five largest athletic conferences is approximately \$2 million.

In a *New York Times* op-ed piece, titled, “Serfs of the Turf,” Michael Lewis, a contributing writer at *The New York Times Magazine* and author of *The Blind Side: The Evolution of a Game*, wrote, “[football players]...unlike the other students on campus...have full-time jobs: playing football for nothing. Neglect the task at hand, and they may never get a chance to play football for money.” In Lewis’ view, “Everyone associated with it [football] is getting rich except the people whose labor creates the value.”

The reality is that less than one percent of college players go on to the NFL, and an even smaller number make big salaries if they get there. Many college football players don’t graduate and others are left with life-long injuries and chronic medical problems.

Northwestern players take action

In January 2014, dissatisfied football players at Northwestern University filed a petition with the National Labor Relations Board’s (NLRB) Chicago office requesting to form a union. The players claim they are employees of the University and receive no compensation other than their scholarships to cover the cost of tuition and room and board. The players want to unionize to have collective bargaining rights with the University, so they can obtain better benefits. They formed the College Athletes Players Association (CAPA), with the help of former Northwestern quarterback Kain Colter, and former UCLA quarterback Ramogi Huma, who was named CAPA’s president. CAPA’s legal bills are currently being paid by the United Steelworkers Union.

“College athletes need a labor organization that can give them a seat at the table,” Huma told *The New York Times* at the time of the filing. “This ends a period of 60 years when the NCAA has knowingly established a pay-to-play system while using terms like ‘student-athlete’ and ‘amateurism’ to skirt labor laws.”

The NCAA and Northwestern University assert the players are student-athletes, not employees, and receive a top-tier education in return for playing football. Administrators believe that the unionization of football athletes would destroy the amateur college sports program as we know it today, and have

serious consequences for other non-revenue generating sports.

At issue is whether the Northwestern players are employees under

the National Labor Relations Act (NLRA) and can engage in collective bargaining, a process where a labor union, representing employees, can negotiate with an employer regarding salary, hours, promotions, and benefits. The National Labor Relations Act first established the right of workers to unionize and engage in collective bargaining in 1935.

In March 2014, Peter Sung Ohr, the Chicago regional director of the NLRB, issued his decision, finding that “players receiving scholarships from the Employer are ‘employees’ under Section 2(3) of the [National Labor Relations] Act.” Ohr ordered an election to be held for all football players who received scholarships to determine if they want to unionize. The election was held in April 2014, but the votes were not counted because Northwestern University appealed Ohr’s decision to the full five-member board in Washington, D.C. The election results will only be counted and made public if the national NLRB rules in favor of the players. If the regional director’s decision is overturned, the votes will not be counted.

Case background

Northwestern University is a member of the Big Ten football conference. It is a Division I school with about 500 athletes who compete in 19 varsity sports for men and women. The Wildcats have participated in five bowl games under head football Coach Patrick Fitzgerald, who earns \$2.2 million per year. About 85 players on the football team receive scholarships, which amounts to approximately \$61,000 per year for each player. Northwestern’s football program generated more than \$30 million in 2012–13 and had about \$22 million in expenses. The profit of more than \$8 million went to supporting the University’s non-revenue sports.

A misconception in this case is that the Northwestern players seek to be paid for playing football. That is not true and in an interview with Salon, Kain Colter stated that the top priorities for CAPA would be medical protection that extends beyond a player’s eligibility, concussion research and reform and extended academic support, ensuring that players obtain degrees.

“The same medical issues that professional athletes face are the same medical issues collegiate athletes face, except we’re left unprotected,” Colter told *The New York Times*.

“The NFL has the NFLPA, the NBA has the NBAPA and now college athletes have the College Athletes Players Association.”

CAPA is also seeking guaranteed multi-year scholarships, because a player currently can lose his scholarship for any reason at any time (i.e., if he sustains an injury and cannot play), and an increase in financial aid, because current scholarships fall short of paying yearly expenses by more than \$3,000 (and players are generally not allowed to hold outside jobs).



Football vs. academics

In his decision, Ohr noted that football players at Northwestern are required to practice and work out daily, and usually put in a minimum of 40 to 60 hours a week on football-related activities. In addition, Ohr wrote, “players are prohibited from profiting off their image or reputation, including the selling of merchandise and autographs.” However, Northwestern and the Big Ten Conference can use “the player’s name, likeness and image for any purpose.”

The regional director’s decision stated that “players receiving scholarships to perform football-related services for the Employer [Northwestern] under a contract for hire in return for compensation are subject to the Employer’s control and are therefore employees within the meaning of the [National Labor Relations] Act.” Ohr explained that the players perform valuable services for Northwestern and the football scholarships are compensation for the athletic services performed during the season. Ohr wrote, “The scholarship players are truly dependent on their scholarships to pay for basic necessities, including food and shelter.”

Despite players’ earning four-year scholarships at Northwestern, the decision noted that “the Head Coach of the football team, in consultation with the athletic department, can immediately reduce or cancel the players’ scholarship for a variety of reasons...The scholarship is clearly tied to the player’s performance of athletic services as evidenced by the fact that scholarships can be immediately canceled if the player voluntarily withdraws from the team or abuses team rules...[T]he players... are under strict and exacting control by their Employer throughout the entire year. In addition, the coaches have control over nearly every aspect of the players’ private lives by virtue of the fact that there are many rules that they must follow under threat of discipline and/or the loss of a scholarship.”

Ohr found, “it cannot be said the Employer’s scholarship players are ‘primarily students.’” He explained that the players spend more hours on their jobs as football players than they spend on their studies and declared that the relationship between the scholarship players and Northwestern University is “an economic one.”

Raising questions

Northwestern University’s request for review of the Chicago regional director’s decision by the full five-member NLRB in Washington, D.C. was granted in April 2014. The Board invited the filing of *amicus curiae* [friend of the court] briefs by interested parties to address the issues raised in the case. Members of the U.S. Senate Committee on Health, Education, Labor and Pensions and the U.S. House of Representatives Committee on Education and the Workforce submitted a brief to the NLRB in July 2014.

The brief states, “Congress never intended for college athletes to be considered employees covered by the Act, and doing so is incompatible with the student-university relationship.” The brief noted, “[P]rinciples developed for use in the industrial setting cannot be imposed blindly on the academic world... The nature of intercollegiate

athletic programs and its recognized value to multitudes of student-athletes...does not square with the purpose of the NLRA...Students participate in intercollegiate athletics because they want to, not because it is a ‘job.’”

At present, scholarships are not considered taxable income, and the brief raised the issue that “if a scholarship is considered compensation for work performed, then its value would be taxed.” The question then becomes whether the athletes would have to pay taxes on the tuition part of their scholarships if the players are considered employees. The Internal Revenue Service would either have to change the tax code, creating a tax exclusion for scholarships, or tax the athletes.

The brief also noted, “If college football players are... employees, participants in...other sports—and those who perform at events with them such as pep band members—are employees as well...” The brief concluded that the ruling raised many unanswered questions, such as: Could scholarship athletes bargain over rights, but non-scholarship athletes not be allowed to bargain? Could players bargain over practices, travel expenses, breaks, and training drills, or even negotiate academic standards? Will student-athletes be allowed to strike just before a bowl or playoff game?

A NLRB decision favorable to players would only apply to private universities such as Northwestern, which are governed by federal law. Public schools follow the labor laws of each individual state and such laws could be changed on a state-by-state basis. The congressional brief declared, “It would be unprecedented in American sports to have some teams populated with ‘employees’ covered by collective bargaining agreements, while other teams are not.” The brief noted that Northwestern was the only private university in the Big Ten conference, so if the NLRB affirmed the decision, Northwestern players would be the only ones to have collective bargaining rights and be considered employees. These collective bargaining inconsistencies could lead to “competitive imbalances” in the NCAA that could “profoundly change the nature of, interest in, and revenues derived from college sports.”

While the congressional brief clearly did not support the forming of a college players’ union, a May 2014 hearing of the House’s Education and the Workforce Committee revealed that some members of that committee were critical of the NCAA. Congressman George Miller, of California, said in his closing statement, “The list of grievances these players presented is a list that could have been presented five years ago, 10 years ago. And they haven’t been addressed... You can rail against unionization, but you better address the problem. This is college sports, not the NCAA...You can keep defending it, but I’d work on changing it.”

Moving forward

Bennet Z. Zurofsky, a Newark attorney whose practice is devoted to unions, employees and the Constitution, said, “The question before the NLRB right now is only whether to count the votes cast in the election to determine whether the players wanted to

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Climate change, however, is not just about rising temperatures, which can cause droughts, wildfires and massive weather events. It also affects many other issues, which may not be so obvious. Think, for example, how climate change affects our health, the economy and national security.

Dying from heat

According to data from the National Aeronautics and Space Administration (NASA), August 2014 was the warmest August on record and 2014 is on track to become the warmest year, edging out 2010. Researchers from Public Health England and the London School of Hygiene and Tropical Medicine conducted a study on heat-related deaths in England. The authors predicted that the country's heat-related deaths would increase 66 percent in the 2020s and 257 percent by the middle of the century. A report titled “Killer Summer Heat,” released by the Natural Resources Defense Council (NRDC), an environmental action group, predicts that more than 150,000 Americans could die by the end of the century from the excessive heat caused by climate change. The report cites a 2006 California heat wave that caused 655 deaths, 1,620 hospitalizations and more than 16,000 emergency room visits, which resulted in more than \$5 billion in costs.

After the storm

Healthcare costs are not the only economic factor related to climate change. The recovery cost from one catastrophic storm after another is staggering. The damage caused by Hurricane Sandy reached more than \$50 billion, making it the second-costliest hurricane after Hurricane Katrina, which caused \$108 billion in damages, according to the National Hurricane Center. The Center's report on Hurricane Sandy revealed that more than 650,000 homes were damaged or destroyed and 72 U.S. citizens lost their lives, with 87 more deaths attributed indirectly to Sandy by way of hypothermia due to power outages, carbon monoxide poisoning and accidents during the cleanup phase.

Securing the nation

National security may be the least obvious issue associated with a changing climate, but two separate military reports discussed the seriousness of climate change, which has the potential to be a catalyst for political unrest. In May 2014, the CNA Corporation Military Advisory Board, a government-funded military research organization, published a report that noted droughts in the Middle East and Africa caused by climate change are leading to conflicts over food and water, which escalates an already volatile region and creates more demand for U.S. forces in those regions. In addition, the report cited that the sea level rise in coastal regions such as India, Bangladesh and Vietnam leaves citizens of those regions vulnerable to being displaced, creating a new wave of refugees. In March 2014, the Pentagon's *Quadrennial Defense Review*

linked the effects of global warming, such as sea level rise and extreme weather patterns, to terrorism.

“These effects are threat multipliers that will aggravate stressors abroad, such as poverty, environmental **degradation**, political instability and social tensions—conditions that can enable terrorist activity and other forms of violence,” the review stated.

Secretary of State John Kerry told *The New York Times*, “Tribes are killing each other over water today. Think of what happens if you have massive dislocation, or the drying up of the waters of the Nile, of the major rivers in China and India. The intelligence community takes it seriously.”

Youth take action

Most affected by the consequences of climate change and the lack of action to address the problem, both nationally and globally, is the youth of today who will be dealing with these growing problems well into the future. To that end, in May 2011, Our Children's Trust, a non-profit organization based in Oregon, filed a federal lawsuit on behalf of five teenagers and two other non-profit organizations—Kids vs. Global Warming and WildEarth Guardians—which represent thousands of youth. The lawsuit, *Alec L. vs. McCarthy*, asked the court to require that federal agencies develop a comprehensive plan to not only prevent further increases in greenhouse gas emissions, but also compel the government to reduce emissions from the current 398 parts per million to 350 parts per million (where most climate scientists agree we need to be in order to sustain a livable planet) by the end of the century.

The legal argument that **plaintiffs'** attorneys presented is based on atmospheric trust litigation (ATL), a legal theory developed by Professor Mary Wood, who founded the University of Oregon School of Law's Environmental and Natural Resources Law Program. While ATL is **unprecedented**, it is based on two legal principles that are not—the Public Trust Doctrine and intergenerational justice. The Public Trust Doctrine dates back to sixth century Roman law and is the principle that the government has a duty to protect certain resources (air, water and the sea) for public use. Intergenerational justice, embodied in the Public Trust Doctrine, states, according to Our Children's Trust, “Current generations cannot continue on their destructive path and leave the planet damaged for future generations.”

The case has gone through various dismissals and **appeals** since 2011. In 2013, the U.S. Court of Appeals for the D.C. Circuit held that the Public Trust Doctrine applied to states but not the federal government. In October 2014, Our Children's Trust, on behalf of its youth-plaintiffs, petitioned the U.S. Supreme Court to review the D.C. Circuit Court's decision. The petition contended the decision of the D.C. Circuit Court was in conflict with decisions handed down by the Eighth, Ninth and 10th Circuit Courts of Appeals.

The plaintiffs believe that the right to a stable climate is a preservative fundamental right, a concept that Julia Olson, executive director and chief legal counsel for Our

Children's Trust, explained comes from voting rights cases. The U.S. Supreme Court has never heard a case regarding climate change; however, in a decision for a 1886 voting rights case, the Court found, "the political franchise of voting is...a fundamental political right, because [it is] preservative of all rights." Olson stated that the youth-plaintiffs and their attorneys believe that just like voting rights, "the right to a healthy atmosphere and stable climate system is a preservative fundamental right because without it, all of our other rights are in jeopardy."

In an *Oregon Quarterly* article, Kelsey Juliana, one of the plaintiffs in the case who is now 18, said, "The power of this lawsuit is that we're not of the same generation as the decision-makers. We're of the younger generation, telling them, 'Hey, listen, we know our future is already going to be more drastic and more unstable than yours is currently, so it's really your responsibility to fix it, because you made this mess and we're kids and we can't.'"

Denied review

Despite *amicus curiae* (friend of court) briefs submitted by more than 50 law professors contending that there is a federal public doctrine which obligates the government to protect essential natural resources, and urging the Court to review the case, in December 2014 the U.S. Supreme Court decided not to hear it. Olson acknowledged that the U.S. Supreme Court review was always a long shot. The Court only hears about one percent of the more than 10,000 cases it is asked to review. Still, plaintiffs were hoping that the conflict among the various circuit courts would entice the justices to hear the case.

In a press statement released after the Court's refusal, Alec Loorz, the lawsuit's lead plaintiff, said, "Climate change is the most urgent issue of intergenerational justice that perhaps our species has ever faced. I do not understand how our courts continue to absolve the federal government from responsibility to care for the only planet which we call home."

Loorz, who is now 20, but founded Kids vs. Global Warming when he was just 15 years old, went on to say, "What greater responsibility could federal officials have to young citizens and future generations than ensuring them a livable country? If the natural resources that we depend on for life are not protected, what other political issues even matter? This is more important than anything to members of my generation, and no matter how many times we are turned away, we will continue to fight. We will continue bringing claims to the courthouse steps until our voices are heard and action is being taken to protect our future. I do believe that one day we will find a judge who has the courage to issue the necessary orders and secure the rights of my generation to a healthy and stable climate system."

Our Children's Trust lawyers are already preparing lawsuits to bring before lower courts and have not ruled out petitioning the U.S. Supreme Court in the future.

State-by-state

At press time, there were pending lawsuits in six states (Alaska, Colorado, Massachusetts, New Mexico, Pennsylvania and Oregon) brought by youth-plaintiffs and Our Children's Trust. The organization's efforts in New Jersey involved filing a rulemaking petition with the New Jersey Department of Environmental Protection in May 2011. State officials denied that petition. According to Olson, New Jersey has good public doctrine law and her organization has plans to work with New Jersey youth in 2015 to "take action against state government for not having a climate recovery plan in place and not reducing carbon emissions according to what science says is needed."

In denial

Even in light of overwhelming evidence and the consensus of 97 percent of climate scientists, some in Congress remain skeptical over predictions about climate change, with many denying it is even a problem. Others, while not denying that climate change is happening, are focused on the enormous cost of taking any action to curtail it.

In September 2014, in his opening remarks at Climate Week in New York City, Secretary of State Kerry said, "It doesn't cost more to deal with climate change; it costs more to ignore it and put our head in the sand...You can make a powerful argument that it may be, in fact the most serious challenge we face on the planet because it's about the planet itself."

Regarding the United Nation's latest climate assessment released in November 2014, Secretary Kerry said, "Those who choose to ignore or dispute the science so clearly laid out in the report do so at a great risk for all of us and for our kids and grandkids."

Oklahoma Senator James Inhofe, one of the most vocal critics of climate change science and author of a 2012 book titled, *The Greatest Hoax: How the Global Warming Conspiracy Threatens Your Future*, told Fox News, "Those individuals from the far left, and I'm talking about the Hollywood elitists and the United Nations and those individuals, want us to believe it's because we're contributing CO2 to the atmosphere that's causing global warming. It's all about money. I mean what would happen to the Weather Channel's ratings if all of a sudden people weren't scared anymore?"

Senator Inhofe will likely be the next chair of the Senate's Environment and Public Works Committee in January. The committee is responsible for dealing with matters related to the environment and infrastructure.

Olson believes that Congress can't be counted on to fix the climate change problem and the court system is their best bet. "While President Obama has taken some steps to reduce our emissions, he has also done things that increase our emissions



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and when you add it all up, it just isn't enough and is far less than what the rest of the developed world is doing,” Olson said. “We all need to stand up and work hard for the solutions we know are out there and we're going to need help from our third branch of government.”

In a press statement Olson said, “The science is clear: if the atmosphere is not protected by the federal government now, it will be too compromised to be restored by future generations. The difference this case presents is that, unlike rights which, if denied to one generation can be remedied



by future generations, the right to a protected atmosphere can only be preserved by this generation. The judicial declarations of women's rights, gay rights and civil rights, after long struggles, allowed successive generations to correct the wrongs of prior generations. Because time has almost run out, the right to a healthy atmosphere can only be protected by this generation. If not remedied now, future generations will have no chance.”

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be represented by the union. If they are counted and the union prevails, then the University will be required to recognize the union and bargain with it over the terms and conditions of employment...The union will almost certainly be looking to the **precedents** created by the professional athletes' unions, but the University will almost certainly be arguing that the players' student status requires a much more limited scope of negotiations.”

The full NLRB has yet to issue a decision in this landmark case. If it upholds the regional decision, Northwestern University could appeal to federal court and if necessary to the U.S. Supreme Court. Once the appeals process is completed, if the decision is still in favor of the players, the results of the voting would then be tallied and the decision announced.

Zurofsky, who has been practicing law for more than 30 years, believes the NLRB will **affirm** Ohr's decision and allow the Northwestern football players to unionize.

“This case is a bit like ‘The Emperor's New Clothes.’ The football players are obviously employees of a very large business, but everybody has been afraid to say so out of fear of offending established power,” Zurofsky explained. “The regional director's decision is like the little boy in the story who finally asks why the Emperor is parading down the street with no clothes on.”

Zurofsky contends that if the players are allowed to unionize not much will change on the field. “The coach will still be the coach, calling the plays and deciding who plays, but the abuse and exploitation of players that too frequently characterize NCAA

Division I athletics will significantly decrease. Basically,” stated Zurofsky, “the law will require the management of athletic programs to respect the rights of the players as equals across the bargaining table rather than as **peons** whom they are free to treat in whatever manner they choose.”

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China taking this seriously, it really leaves other countries nowhere to go. They either follow suit or appear to be lagging behind.”

In addition, many climate change deniers used the excuse of China's **inertia** on the issue to do nothing as well. That excuse has diminished with this agreement.

New York Times columnist Paul Krugman wrote, “Needless to say, I don't expect the usual suspects to concede that a major part of the anti-environmental argument has just collapsed. But it has. This was a good week for the planet.”



affirm — to uphold, approve or confirm.

appeal — a complaint to a higher court regarding the decision of a lower court.

degradation — reduction.

inertia — sluggishness.

peon — a person kept in servitude until he or she has paid off a debt.

plaintiff — person or persons bringing a civil lawsuit against another person or entity.

precedents — examples or patterns.

unprecedented — unique or original.