

A landmark climate lawsuit against Trump is scheduled for trial next year. Here's what to expect

The Washington Post
07.05.2017

A trial date has finally been set for a groundbreaking, climate-change lawsuit being brought against the federal government after multiple hurdles in the past year threatened to prevent it from moving forward. Last week, U.S. Magistrate Judge Thomas Coffin ordered that the trial begin Feb. 5, 2018.

The order also permitted three fossil fuel industry trade associations, who had voluntarily joined the case last year as intervening defendants, to withdraw at their own request. This means the final showdown will take place only between the original plaintiffs and defendants – 21 youths, between ages 9 and 21, and the federal government, which they claim has violated their constitutional right to a healthy climate system by supporting the production of fossil fuels and emission of greenhouse gases. While the lawsuit was originally filed against the Obama administration, the Trump administration has now assumed the defense by default.

The case has already come a long way, with the court overturning a number of challenges since it was first filed in 2015. Last November, U.S. District Judge Ann Aiken denied motions to dismiss the case filed by the federal government and the intervening fossil fuel industry groups. More recently, she also denied the federal government's request to appeal that decision.

The last possible hurdle the case could face before moving to trial is a final petition filed by the Trump administration this month seeking a rare legal procedure known as a writ of mandamus, which calls for the U.S. Court of Appeals for the 9th Circuit to independently step in and review Aiken's original decision to deny the federal government's motion to dismiss the case. The writ of mandamus is widely considered a kind of

Practice Areas

Contamination, Toxic Torts, and
Environmental Justice

Environmental Law

Municipal & Public Entity
Litigation

A LANDMARK CLIMATE LAWSUIT AGAINST TRUMP IS SCHEDULED FOR TRIAL NEXT YEAR. HERE'S WHAT TO EXPECT

hail-Mary petition, one that is rarely invoked and even more rarely granted.

“The United States — in both the previous and current Administrations — has endeavored to bring to an end this improper case that seeks to give one federal court complete control over federal energy policy,” said Mark Abueg, a public affairs specialist with the Justice Department, in a statement emailed to The Washington Post. “We have taken our arguments to the appellate courts.”

The decision on whether to allow it now rests with the Appeals Court. But lead counsel for the plaintiffs Julia Olson, executive director of the advocacy group Our Children’s Trust, says it is unlikely to stop the case from moving to trial.

“I would say it would be extraordinary for the 9th Circuit to step in before there’s a full factual record in the case,” she said.

Assuming that doesn’t happen, the trial itself is likely to last about six weeks, according to Olson.

“That’s based upon our analysis that we will need three weeks to present our case,” she said. “And we’re assuming that typically both sides take an equivalent amount of time presenting their cases.”

Olson and co-lead counsel Philip Gregory, a partner with Cotchett, Pitre & McCarthy, will serve as the two primary lawyers for the plaintiffs. Lawyers from the Justice Department will represent the Trump administration — so far, there have been three primarily working for the defense, including trial attorneys Sean Duffy and Marissa Pirodato and senior litigation counsel Frank Singer, Olson said.

By allowing the case to move to trial at all, the court has acknowledged that the plaintiffs do, indeed, have a legal right to sue the federal government over their constitutional right to a healthy climate system — a right the plaintiffs argue is protected under the public trust doctrine, which holds that the government is responsible for preserving certain essential resources for the public good. In trial, they’ll be required to demonstrate the ways in which this right has been violated... *(To read the entire article, please click [HERE](#))*