

Cotchett firm's climate change lawsuit prompts dubious reaction

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Practice Areas

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Legal observers are skeptical about the chances of a lawsuit filed last week by Cotchett, Pitre & McCarthy LLP against President Barack Obama and a host of federal agencies that aims to force the government's hand to radically curb carbon dioxide emissions. The Burlingame firm - representing children, teenagers and prominent climate scientist Dr. James Hansen - alleges the federal government is violating the constitutional rights of children by failing to take action against climate change.

Philip L. Gregory, a principal at Cotchett Pitre and lead attorney in the complaint, said Congress and the U.S. Environmental Protection Agency have been aware of reports about the adverse effects of climate change for decades and have allowed carbon emissions to pass the recommended levels laid out in those reports.

Gregory said data given to Congress in 1990 and 1991 laid out plans to reduce carbon emissions to the point where the carbon dioxide levels in the atmosphere fall to 350 parts per million by 2015, but the federal government's failure to act means it will take significantly longer to reach that reduction level going forward.

The complaint called for the president to immediately institute a plan to lower carbon emissions to that level by the year 2100.

"The plans are going to have to be more severe and the time frame to get us there is going to be substantially longer," he said. "If we had started 20 years ago we could have hit the target by now."

But outside observers say the case is unlikely to gain much traction on its legal merits.

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Kevin Poloncarz, a partner in Paul Hastings LLP's environmental and energy practice who isn't involved in the case, said he found it unlikely that the plaintiffs truly expected to win the case, and that they were probably attempting to raise awareness about ongoing construction of a liquefied natural gas facility in Coos Bay, Ore., which is featured in the complaint.

Gregory said the case was filed in Oregon district court for that reason, but his firm very much expects to win. He compared the suit to the landmark U.S. Supreme Court cases *Brown v. Board of Education* and *Obergefell v. Hodges*, arguing that this was a situation where the plaintiffs - as minors who can't vote - had no other recourse but to ask the courts for relief on a nationwide basis.

He said federal agencies have issued their own reports indicating carbon emissions must be lowered to the 350 parts per million level, but have largely ignored them in practice.

"We're at 400 parts per million and rising," he said. "It's not going down, it's going up."

The plaintiffs wrote in their complaint that reaching their carbon emission goals would require a 6 percent annual reduction of carbon dioxide emissions. By contrast, the Clean Power Plan, a new set of carbon emission standards rolled out by the Obama administration earlier this month, calls for what amounts to a 2 percent annual reduction between now and 2030.

Richard M. Frank, director of the California Environmental Law and Policy Center at UC Davis School of Law, agreed that the plaintiffs face an uphill battle, as this sort of litigation is rarely successful, but added that the Obama administration shouldn't underestimate its opponents.

Frank said the Cotchett firm is known for taking on and winning cases that others would laugh at, and noted that Hansen, a former leader at the National Aeronautics and Space Administration and one of the world's most respected climate scientists, added credibility to the complaint.

But Frank said even that level of firepower may not be enough to convince a district judge to wade into what is usually viewed as a political battle.

"This lawsuit kind of runs counter to longstanding principle that judges will not intrude on the discretionary decisions of executive branch officials," he said.

Representatives from the U.S. Department of Justice and the EPA did not respond to requests for comment Friday.