

# Who Speaks for the Earth?

The Supreme Court has the chance to answer this question. Will it?

Who Speaks for the Earth? - US News - Jeff Nesbit

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A potential Supreme Court case would designate the federal government as a trustee of the environment.

An interesting “friend of the court” brief was filed with the U.S. Supreme Court on Thursday, one that asks a provocative question: Who speaks for the Earth, and whose job is it to preserve it for the next generation that inherits it 15, 20 or 30 years from now?

It’s an especially important question in the United States right now because its military, economic and political policies and efforts impact the rest of the planet whether anyone likes it or not. Isolationism is nice in theory, but doesn’t actually work in reality.

Corporate CEOs speak for their company, their employees and, occasionally, their industry. But they are, mostly, looking out for their bottom line in three-month intervals to keep shareholders happy in between investor relation calls. They almost certainly don’t speak for the Earth. It isn’t their job to preserve it, and

we shouldn't expect them to.

Members of Congress don't look beyond their next elections. In the case of members of the House of Representatives, they have to start raising money from corporate PACs for re-election almost the day after they win the right to represent their districts. They certainly don't look out beyond a year or so. Senators have more time, but they, too, start focusing on re-election after just a few years. They certainly don't believe their job is to preserve something 20 or 30 years from now. Presidents have even more time – but it's finite. And once they leave office, the big stuff belongs to the next occupant of the Oval Office.

That leaves the Supreme Court as the last, best hope for anything beyond the narrow confines of short-term political thinking. They're appointed for life. The founders of democracy structured the Supreme Court for precisely the question posed by the groups on Thursday. It is *their* job to look out 10, 20 or 30 years to determine what's best for us.

Right now, the Supreme Court is considering any number of big issues that transcend our current state of politics in Washington – whether anyone who is gay should be able to marry anywhere in the United States, for instance, or whether the bedrock abortion rights ruling, *Roe v. Wade*, should be altered because a handful of states are challenging it in creative ways. These are big, transcendent issues, with a lot at stake.

But at their heart is the question: whose job is it to look past the narrow confines of the latest rage in politics? Whose job is it to preserve civil rights, democracy, our natural resources or our way of life? There aren't many obvious choices or candidates, but the Supreme Court is near or at the top of the list of possible candidates.

When I was an associate commissioner at the Food and Drug Administration during the first Bush administration, in the early 1990s, I asked a similar sort of question. Whose job was it to make sure that cigarettes weren't harming and killing people? Whose job was it to regulate the tobacco industry; to do everything within its purview to press for a safer consumer product that reduced harm? My answer, which I pursued relentlessly, was that it was the FDA's job - and I worked for years to convince my then-boss, David Kessler, to declare jurisdiction over the tobacco industry and jump start the tobacco wars.

That's the big sort of question posed to the Supreme Court Thursday by dozens of groups that would not ordinarily show up in a room together. Their amici curiae brief asks the Supreme Court to consider a case that represents the interests of children who will live on Earth years from now as adults. It is, needless to say, a novel request - but one that is designed to preserve a significant resource before it's too late for that generation to do something.

The case they hope the Supreme Court takes up is a review of a 2013 decision by the D.C. Circuit Court around the “public trust doctrine” – the idea that resources like air, water and the sea essential to our well-being are held in common to all of us and should be preserved. The public trust doctrine has been available in common law for centuries. The Supreme Court has used it several times – to protect national parks for future generations, for instance, or to insure that a White House doesn’t fully sell off resources that should rightfully be held in trust for the people as part of the public domain.

But no one, until now, has asked the Supreme Court to apply the public trust doctrine to the issue of preserving our basic right to a livable planet, which is what the issue of climate change is fundamentally about. Whose job is it to preserve Earth as a livable planet for a future generation that has no ability to intervene right now?

In 2013, the D.C. Circuit Court held that the public trust doctrine applies to states, but not to the federal government. The lower court ruled against a group representing the interests of young children that had asked the U.S. government to preserve a natural resource – our atmosphere – that is essential to a livable climate on Earth.

On Thursday, dozens of groups filed an amici curiae brief to a request for the Supreme Court to take up that 2013 decision (*Alec L. v. Gina McCarthy*), arguing that

*only* the federal government has the ability to enforce the public trust doctrine. The federal government is vested with inherent authority to protect natural resources – a legal concept the Supreme Court has affirmed – and is also uniquely situated to protect resources held in common by the nation’s citizens. An atmosphere that assures a livable climate on Earth is just such a natural resource that future generations will clearly require – and needs to be preserved now so that the planet’s climate remains viable for our children and future generations.

“The federal government’s violation of its obligation to protect the atmospheric resource under the public trust doctrine is endangering human health, harming the economy, undermining our nation’s food and water security, adversely impacting native nations and socioeconomically disadvantaged communities, threatening our national security, and creating challenges for state and local governments,” the groups wrote.

“When government fails to fulfill its trust obligations, citizens must be able to hold federal officials accountable to act in a manner consistent with their trust responsibilities. Because of what is at stake in this case, the questions presented deserve to be clearly addressed and resolved by this court,” they said.

The dozens of groups in this “friend of the court” brief represent an extraordinarily wide variety of interests -

economic, national security, government, faith, human rights, youth, conservation, labor, business, elder, and native – that collectively represent millions of Americans. One group is the Sisters of Mercy, representing thousands of vowed religious women committed to serving the poor, especially women and children. Other groups include the National Religious Coalition for Creation Care, Protect Our Winters (representing Winter Olympics athletes) and Gray Panthers, as well as representatives for cities such as Cambridge, Massachusetts, Olympia, Washington, Salt Lake City, Utah, Eugene, Oregon, and Chapel Hill, North Carolina, who want federal action to join with their local actions on climate change.

Jeff Sachs, the director of the Earth Institute at Columbia University, is a petitioner. So is Jim Hansen, the former NASA official and godfather of climate science; retired Vice Admiral Lee Gunn from the Center for Naval Analysis that has actively taken up the climate issue; and Mike MacCracken, who was the senior scientist for the U.S. Global Change Research Program during President Bill Clinton's administration and whose expert testimony was cited by the Supreme Court in the Massachusetts v. EPA case that unambiguously granted federal authority to regulate greenhouse gas emissions.

Considering that the current Supreme Court allowed Justice Clarence Thomas to set the framework of the Citizens United ruling – giving corporations emitting

greenhouse gases the ability to spend unlimited sums of political money to preserve their right to the status quo – it's difficult to imagine this court taking up this public trust doctrine case.

But you never know – especially if you don't ask the question in the first place. That was the lesson I learned when I relentlessly started asking a simple question – whose job is it to try to make sure cigarettes don't harm people? I concluded that it was the FDA's job, and others eventually answered that question in ways that didn't seem politically possible at the time.

So whose job is it to make sure that our children inherit a livable planet? The Supreme Court has an opportunity to take up that question.