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p. 39, n. 1: Add at the end of the note.

Updating the Frank article with some post-2012 developments is Michael C. Blumm & Zachery A. Schwartz, *The Public Trust Doctrine Fifty Years After Sax and Some Thoughts on its Future,* 44 Pub. Land & Res. L. Rev. 1, 26-48 ((2021). An early, overlooked critical review of the Sax's book was A. Dan Tarlock, *Defending the Environment: A Strategy for Citizen Action, by Joseph L. Sax (Book Review),* 47 Ind. L. Rev. 406, 409 (1972) (noting, *inter alia,* that one effect of Sax's vision of the public trust was to shift the burden of proof to the proponents of development rather than the objectors); *see also* Gerald Torres, *Joe Sax and the Public Trust,* 45 Envtl. L. 379, 386-91 (2015) (emphasizing Sax's contributions to the understanding of the social function of property and to increasing the democratic legitimacy of the non-judicial branches of government); Holly Doremus. *In Honor of Joe Sax: A Grateful Appreciation,* 39 Vt. L. Rev. 399 (2015) (collecting numerous tributes to Sax's scholarship, both before and after his death in 2014, and emphasizing his roles as an architect of early environmental law, his guidance as a teacher and mentor, and his enduring contributions to the takings puzzle).

p. 78, n. 8: Add a new paragraph to the note.

In *Lakefront: Public Trust and Private Rights in Chicago* (Cornell U. Press, 2021), Joseph Kearney and Thomas Merrill examine the *Illinois Central RR* case in the context of the public preservation of the Lake Michigan shoreline in Chicago. They find that the public trust doctrine played little role between the 1892 decision and the publication of Professor Sax's pioneering article in 1970, asserting that the public dedication doctrine was of greater significance. They observe that the railroad was allowed to maintain ownership of all land it filled and document the extensive public and private filling that took place along the shoreline before the last half-century. They complain that the public trust doctrine casts a shadow of uncertainty concerning future shoreline developments, overlooking the fact many property law concepts, such as nuisance and riparian rights, have similar uncertainties. Unlike decisions of a number of recent courts, the authors do not recognize the doctrine as imposing sovereign limitations on trustees, as they assume that the public trust doctrine, at least in Illinois, is subject to override by the state legislature. That certainly is not true in states like Pennsylvania, Arizona, and Nevada. For a critical review of *Lakefront*, see Michael C. Blumm, *The Public Trust Doctrine and the Chicago Lakefront,* 11 Mich. J. Envtl. & Admin. L. no. 2 (forthcoming 2022), https://papers.ssrn.com/sol3/papers .cfm?abstract_id=3926868.

pp. 98: Add a new note 1a.

On July 21, 2021, the Pennsylvania Supreme Court reaffirmed its 2017 *PEDF* decision and extended it to rental payments and other revenue streams received from oil and gas leasing on state lands. *Pennsylvania Environmental Defense Foundation v. Commonwealth*, 255 A.3d 289 (Pa. 2021). Although the Supreme Court employed essentially the same analysis as it did in the earlier case, its analysis of the cross-generational aspect of the Environmental Rights Amendment (ERA) is particularly striking. This analysis grows out of the fact that the ERA

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expressly requires the Commonwealth to "conserve and maintain" public natural resources for the benefit of present and future generations.

The Supreme Court reversed a 2019 Commonwealth Court decision holding that the state could spend one third of the rental payments and other nonroyalty shale gas income for purposes other than conserving and maintaining public natural resources—that is, it could spend this money any way it saw fit. *PEDF v. Commonwealth*, 214 A.3d 748 (Pa. Commw. 2019). As a practical matter, under this decision, that money would be spent for the present generation of beneficiaries. The court used a 1947 trust statute to arrive at this conclusion, reasoning that the ERA is like other trusts, which allow one third of the income from the trust to be distributed to life beneficiaries while the rest of the income remains in the trust corpus, to be distributed later to remaindermen. The Supreme Court decided that the text of the Environmental Rights Amendment does not allow the diversion of the public trust money in this way; it contains no express language allowing this result.

The Supreme Court also held that the "cross generational" nature of the beneficiaries of the trust, both present and future generations—forbade the expenditure of trust money for the present generation only. "Far from setting up any kind of conflict between these beneficiaries regarding profiting from trust assets, the express inclusion of generations yet to come in 'all of the people' establishes that current and future Pennsylvanians stand on equal footing and have identical interests in the environmental values broadly protected by the ERA." *PEDF v. Commonwealth*, 2021 WL 3073335, * 16. "The language unmistakably conveys to the Commonwealth that when it acts as a trustee it must consider an incredibly long timeline and cannot prioritize the needs of the living over those yet to be born." *Id.* * 17.

Taken together, the two cases involve a lot of money. The state's Department of Conservation and Natural Resources received $1.2 billion from shale gas development on state lands between 2008 and 2020. Laura Legere, *Millions in State Forest Gas Lease Spending Ruled Unconstitutional by Pa. Supreme Court*, PITTSBURGH POST-GAZETTE, July 21, 2021, https://www.post-gazette.com/business/powersource/2021/07/21/state-forest-Marcellus-Shale-gas-lease-budget-unconstitutional-Pennsylvania-Supreme-Court/stories/202107210124.

pp. 98: Add a new note 1b.

From September 2016 through September 2020, Pennsylvania's Commonwealth Court issued 13 opinions that produced a holding on the ERA. These holdings involve a wide range of issues, and illustrate the many ways that the ERA is being invoked. John C. Dernbach, *Thinking Anew About the Environmental Rights Amendment: An Analysis of Recent Commonwealth Court Decisions*, 30 WIDENER COMMONWEALTH L. REV. 147 (2021). These cases are a fraction of the recent cases in which a plaintiff or petitioner has alleged a violation of the ERA.

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p. 98: Add a new note 1c:

For an argument that the duty of impartiality under trust law embeds environmental justice in Pennsylvania's constitutional public trust, *see* Jacob Elkin, *Note, Environmental Justice and Pennsylvania's Environmental Rights Amendment: Applying the Duty of Impartiality to Discriminatory Siting*, 11 COLUM. J. RACE & LAW 195 (2021).

p. 138: Add a new note 3a.

A Great Lakes controversy of considerable import concerns Enbridge Line 5 pipeline that conveys petroleum from western to eastern Canada, traversing the Straits of Mackinac (which divide the upper and lower peninsulas of Michigan and Lake Michigan from Lake Huron). The pipeline's easement dates to 1953. The Michigan governor wants the pipeline removed, since a recent study showed that a spill under the straits could jeopardize over 700 miles of shorelands. In 2019, the state filed suit to compel the decommissioning of the segment of Line 5 that runs under the straits, claiming that the pipeline is a public nuisance and violates the Michigan Environmental Protection Act since it may become a source of pollution. It is unclear if Line 5 could operate without the straits segment. The company sought to remove the case from state to federal court, but the state filed another suit in 2020 on public trust and easement violation grounds, seeking revocation of the pipeline's easement. Meanwhile, Canada submitted an amicus brief supporting Enbridge and asserting treaty rights against pipeline shutdowns between the two countries. These issues were unresolved as of this writing, but the state's use of the public trust doctrine affirmatively bears watching. *See* Robert Tuttle, *Michigan eyes Enbridge profits as Line 5 clash intensifies*, Bloomberg News (May 11, 2021), https://www.bnnbloomberg.ca/michigan-eyes-enbridge-profits-as-line-5-clash-intensifies-1.1602164. A 2022 report commissioned by Environmental Defense Canada concluded that shutting down Line 5 would not cause any significant increases in energy prices if the shutdown is managed properly. *See* Zahra Ahmad, *New report finds Enbridge Line 5 closure will cause little pain to Michigan*, Great Lakes Now (Feb. 16, 2022), https://www.greatlakesnow.org/2022/02/new-report-enbridge-line-5-closure-michigan/#:~:text=Gretchen%20Whitmer%20announced%20the%20state,treaty%20between%20the%20two%20countries.

p. 168, n. 5: Add 77 in place of the blank in the last sentence and strike "forthcoming," and add the following at the end of the note:

The Pennsylvania Supreme Court made use of a variety of trust law principles in its July 21, 2021 decision in *Pennsylvania Environmental Defense Foundation v. Commonwealth*, 255 A.3d 289 (Pa. 2021). The court reaffirmed the trust principles it had recognized in its previous decision in *Pennsylvania Environmental Defense Foundation v. Commonwealth*—prudence, loyalty, and impartiality, 161 A.3d 911 (Pa. 2017). The 2021 Supreme Court decision also relied on two other principles of traditional trust law while rejecting another.

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The Supreme Court overturned an earlier Commonwealth Court decision that allowed the state to spend one-third of the rental payments and other nonroyalty money received from oil and gas leases on state land in any way it wanted. In reaching this conclusion, as already explained in Note 1a of this Supplement on p. 98, the Commonwealth court relied on a 1947 trust statute that allows one third of the income from the trust to be distributed to life beneficiaries while the rest of the income remains in the trust corpus, to be distributed later to remaindermen. The 1947 statute should be applied, the Commonwealth Court reasoned, because the constitutional trust under Article I, Section 27 is like such a trust.

But the Supreme Court expressly rejected the use of the 1947 statute in this context, and relied on two other principles of trust law to do so. First, the Court said, citing traditional trust law, it must interpret the trust according to its specific terms. Here, under the constitution, the state is obliged to conserve and maintain public natural resources; "[t]here is no language that indicates an intent to create an income entitlement" to the state. 255 A.3d at 311. Under the constitution, the Court said, present and future generations are not successive beneficiaries like life beneficiaries and remaindermen are. Rather, they are simultaneous beneficiaries. Thus, the court followed the trust principle that the text of the trust must guide its interpretation. Second, the court relied on the trust principle that a trustee is not allowed to make a profit from trust funds. "Pursuant to fundamental principles of private trust law, we cannot conclude that the Commonwealth, as trustee of the constitutional trust created for the conservation and maintenance of the public natural resources that are owned by 'all of the people,' can divert for its own use revenue generated from the trust and its administration." *Id.* at 313.

For a suggestion that the best way to fulfill the intergenerational equity at the center of the public trust doctrine is through a "directed trust," a doctrine increasingly accepted in the private trust world, see Lucia A. Silecchia, *A "Directed Trust" Approach to Intergeneration Solidarity in Amercian Environmental Law and Policy,* 45 Wm. & Mary Envtl. L. Rev. 377 (2021) (calling for "an entity" (not clear which) to review the actions and inactions of governmental trustees in the political branches of government; also raising the question of the obligations the present generation might have to preceding generations "for the sacrifices they made for the sake of posterity" (at 384).

p. 215: Add at the end of the note on the Nevada public trust doctrine.

For a brief comment on the *Mineral County* case, see Daniel Rothberg, *Nevada Supreme Court Says State Cannot Change Water Rights for "Public Trust," A Loss for Environmentalists, County Seeking to Bring More Water to Walker Lake,* The Nevada Independent (Sept. 18, 2020), https://thenevadaindependent.com/article/nevada-supreme-court-says-state-cannot-change-water-rights-for-public-trust-a-loss-for-environmentalists-county-seeking-to-bring-more-water-to-walker-lake. The case is back in the federal Decree Court, where the county is alleging that there are a variety of measures that the court can order short of reallocating vested rights to restore the trust resource of Walker Lake. *See* Michael C. Blumm & Michael Benjamin Smith, *Walker Lake*

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and the Public Trust in Nevada's Waters, 40 Va. Envtl. L. Rev. 1 (2022) (a more thorough review of the Walker Lake litigation).

p. 221, n. 5: Add to the end of the note.

For an overdue analysis of the role of the PTD in local government law, see Sean Lyness, *The Local Public Trust Doctrine,* 33 Geo. Envtl. L. Rev.__(forthcoming 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3812653.

p. 275, n. 5: Add 77 in place of the blank in the last sentence and strike "forthcoming,"

p. 293: Add a new note 3.

Professor Karen Bradshaw has proposed that the law should allow animals to own land, just as humans do. Under her proposal, animal ownership of land would be in trust, and managed by a human trustee for their benefit at an ecosystem level. Judges would help oversee the system, just as they do for other trusts, deciding whether the trustee is acting in the best interest of the animal beneficiaries. WILDLIFE AS PROPERTY OWNERS: A NEW CONCEPTION OF ANIMAL RIGHTS 3 (2020).

p. 295: Add a new note 1.

An empirical study of the application of the public trust doctrine by state fish and wildlife agencies in 13 states over two decades revealed significant gaps between the legal statements these agencies make about the public trust doctrine and their actual practice. Martin Nie, Nyssa Landres, & Michelle Bryan, *The Public Trust in Wildlife: Closing the Implementation Gap in 13 Western States*, 50 ENVTL. L. REP. 10909 (2020). The authors also make recommendations for improving implementation of the public trust.

p. 378: Add at the end of the first paragraph.

New evidence showed that in 2020, the global average temperature was 1.2 C above the pre-industrial baseline, and there was a 40% chance of exceeding the 1.5 C goal of lower target of the Paris Agreement on Climate Change in at least one of the next five years. World Meteorological Organization, *New climate prediction increase likelihood of temporarily reach 1.5 C in next 5 years* (May 27, 2021), https://public.wmo.int/en/media/press-release/new-climate-predictions-increase-likelihood-of-temporarily-reaching-15-°c-next-5 (annual update by the WMO).

p. 407, n. 3: Add to the end of the note.

Following the Ninth Circuit opinion, in March 2021, the youth plaintiffs in *Juliana* moved to amend their complaint to adjust remedy they sought, asking only declaratory relief that

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the U.S. fossil fuel-based energy system is unconstitutional, emulating the strategy invoked in the *Brown v. Board of Education* school desegregation case. *See* Our Children's Trust, Press Release (March 9, 2021), https://static1.squarespace.com/static/571d109b04426270152febe0/t/6047b082456 ca3052391eb61/1615310978432/Motion+to+Amend+030921.pdf. In May, Judge Aiken ordered the attorneys in the case to convene for a settlement conference in June. Our Children's Trust, Press Release (May 13, 2021), https://static1.squarespace.com/static/571d109b04426270152febe0/ t/609d98700002ab3ea339fc91/1620940912551/PressRelease051321.pdf. (settlement conference scheduled for June 25). Seventeen states sought to intervene to block the settlement discussions. *See* Maxine Joselow, *17 states seek to block Juliana settlement,* E & E News (June 9, 2021), https://www.eenews.net/greenwire/2021/06/09/stories/1063734545. The Biden Administration, which has sought dismissal of the suit, opposed the states' motion to intervene. Maxine Joselow, *Biden Administration Fires Back at Red States,* E & E News (June 23, 2021), https://www.eenews.net/climatewire /2021/06/23/ stories/1063735537. No settlement transpired. At the time of this writing, the case awaits a ruling on the motion for amended complaint. For analysis of the *Juliana* appeal, see Mary Christina Wood, *On the Eve of Destruction": Courts Confronting the Climate Emergency,* 97 INDIANA L. J. 239 (2022).

P 408, n. 5. Add to the end of the footnote:

In 2022, a film, *Youth v. Gov*, was released on Netflix, chronicling the dramatic twists and turns of the *Juliana* litigation over seven years as the 21 youth plaintiffs seek government accountability for the growing climate disaster. *See* https://www.netflix.com/title/81586492.

p. 408, n. 6. Add to the end of the footnote:

For a spirited defense of the constitutionality of the claim in *Juliana,* see James R. May & Erin Daly, *Can the U.S. Constitution Accommodate a Right to a Stable Climate? (Yes, it Can)*, 39 U.C.L.A. J. Envtl. L. & Poly. 39 (2021), https://privpapers.ssrn.com/ sol3/papers.cfm?abstract_id=3716620 (maintaining that constitutional protections are not abrogated simply because threats to life and liberty are from decades of past governmental actions and inactions contributing to climate change).

p. 415, n. 1. Add to the end of the footnote:

The Washington Supreme Court ultimately refused to review the Court of Appeal's decision to dismiss the case, with two justices in vigorous dissent. *Aji P. v. State of Washington* (No. 99564-8), slip op. at 1 (Wash. S. Ct. Oct. 6, 2021). Chief Justice Gonzalez (joined by Justice Whitener) wrote in dissent:

This case is an opportunity to decide whether Washington's youth have a right to a stable climate system that sustains human life and liberty. We recite that we believe the children are our future, but we continue actions that could leave them a world with an environment on the brink

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of ruin and no mechanism to assert their rights or the rights of the natural world. This is our legacy to them described in the self-congratulatory words of judicial restraint. Today, the court declined the important responsibility to seriously examine their claims. *Id.* at 1.

Both dissenting justices found that declaratory relief would have provided a meaningful remedy, and that the Court shirked its obligations to review the youths' constitutional claims: Even though an 'issue is complex and no option may prove wholly satisfactory,' the judiciary should not 'throw up its hands and offer no remedy at all.' *McCleary v. State*, 173 Wn.2d 477, 546, 269 P.3d 227 (2012)," *Aji P.*, slip op at 3. Prior to the Court's ruling, former King County Superior Court Judge Hollis Hill urged the Washington Supreme Court to take review of the case, writing in an opinion editorial, "When the government denies the rights of the public, courts must step in, declare the law and order the political branches to comply with the constitution." Hollis Hill, *Let Youth Have Day in Court Over Climate Change*, Seattle Times (Oct. 1, 2021), https://www.seattletimes.com/opinion/let-youth-have-day-in-court-overclimate- change/ [https://perma.cc/PHB2-?RKM].

p. 416-17, n. 2.

Delete: "An appeal is pending before the Alaska Supreme Court. See Appellants' Statement of Points on Appeal, *Sinnok v. State of Alaska*, 3AN-17-09910CI, (Nov. 29, 2018), available at https://static1.squarespace.com/static/571d109b04426270152febe0/t/5c006c624d7a9c2d5799618e/1543531618994/Sinnok.Statement+of+Points+on+Appeal.Final.pdf; 2019 WL 4395368 (Alaska 2019)."

Replace deleted material with: The plaintiffs lost an appeal to the Alaska Supreme Court in a split 3-2 decision, gaining a strong dissent from Justices Peter Maassen and Susan M. Carney, who stated, "a balanced consideration of prudential doctrines requires that we explicitly recognize a constitutional right to a livable climate – arguably the bare minimum when it comes to the inherent human rights to which the Alaska Constitution is dedicated." *Sagoonick v. Alaska*, No. 7853 (S. Ct. Alaska, Jan. 28, 2022), slip op at 56, available at https://static1.squarespace.com/static/571d109b04426270152febe0/t/61f446dd70bea34900da27f4/1643398878199/2022.01.28+Sagoonick+v+State+of+Alaska.pdf. Justice Massen wrote that the public trust doctrine, as embedded in the state's constitution, "provides a right to a livable climate." Slip op. at 61.

Add to end of note: In 2022, lawyers for Our Children's Trust filed three new state climate trust cases on behalf of youth: *Layla H. v. Commonwealth of Virginia* (filed Feb. 9, 2022, see https://www.ourchildrenstrust.org/virginia); *Natalie R. v. State of Utah* (filed March 15, 2022, see https://www.ourchildrenstrust.org/utah); and *Navahine F. v. Hawaii Department of Transportation* (filed June 1, 2022, see https://static1.squarespace.com/static/571d109b04426270152febe0/t/62979ffa19b8082c7ecdf1ca/1654104084529/1+2022-6-1+Complaint-Summons.pdf).

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pp. 416-17, n. 3. Add to end of note:

It is worth considering Justice Walters' dissent in light of the strong dissents by Chief Justice Gonzalez and Justice Whitener in *Aji P.* (Washington ATL case, p. 415 n. 1), Justice Maassen and Carney in *Sagoonich* (Alaska ATL case, p. 416 n. 2), and the dissent by Judge Staton in the Ninth Circuit appeal of *Juliana* (p. 401). Do you think these judges are offering a roadmap for future decisions in each of their states that could turn in favor of the youth plaintiffs, particularly as the effects of climate crisis become more difficult to ignore? For commentary suggesting so, see Wood, 97 INDIANA L. J. at 258-69.

p. 417, add a new note 3a:

Our Children's Trust has managed to crack the door open in Montana, in *Held v. State,* albeit limited to declaratory relief on several discrete issues and no injunctive relief. Held v. Montana, Dist. Ct. Lewis & Clark County, Aug. 4, 2021, tinyurl.com/3jmzet6d.

Interestingly, their claims are based on constitutional environmental rights, and not on public trust. The Montana Constitution provides: "All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment…." Mont. Const. Art. II, § 3. Plaintiffs' complaint sought injunctive relief based on the Montana Constitution in the form of orders directing the defendants to prepare an accounting of Montana's greenhouse emissions and to develop and implement a remedial plan to reduce emissions "consistent with the best available science and reductions necessary to protect Youth Plaintiffs' constitutional rights from further infringement…." The Montana District Court denied injunctive relief, holding that ordering and overseeing the development of such a plan would force it to make policy judgments for which courts are not suited.

The District Court nonetheless allowed the request for declaratory relief to move ahead. Montana's Environmental Policy Act (MEPA), modeled on the National Environmental Policy Act (NEPA), requires a detailed environmental review of a wide range of proposals before they can be carried out. After the legislature created an exception to MEPA review for certain arsenic discharges, the Montana Supreme Court in a landmark 1999 opinion held that exception to violate the right to a "clean and healthful environment." *Montana Environmental Information Center v. Dep't of Envtl. Quality*, 988 P.2d 1236 (Mont. 1999). Similarly, the 16 youth plaintiffs in *Held* are seeking declaratory relief that the Montana legislature violated their right to a "clean and healthful environment" by adopting a significant climate change exception to MEPA. In the climate change exception, the Montana legislature directed that environmental review under MEPA may not include "actual or potential impacts that are regional, national, or global in nature." The state also adopted an Energy Policy that strongly favors fossil fuels.

Plaintiffs requested declaratory relief on the constitutionality of the climate change exception to MEPA and the Energy Policy. On the issue of standing, the District Court held that

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the Plaintiffs alleged sufficient facts to satisfy the state's prudential standing requirements for declaratory relief on these issues. If the Plaintiffs succeed, the court said it was prepared to issue a declaratory judgment that the climate change exception and/or Energy Policy are unconstitutional but would not decide how the political branches should address it.

On June 14, 2022, the Montana Supreme Court denied the State's request for a Writ of Supervisory Control seeking a delay in discovery. *State of Montana v. Montana First Judicial District Court*, OP 22-0315, June 14, 2022; https://casetext.com/case/state-v-mont-first-judicial-dist-court. Trial is expected in Summer 2023.

p. 417, add a new note 3b:

In a non-ATL case, the Hawai'i Supreme Court in March 2022 articulated the state Public Utilities Commission's responsibilities under the state's constitutional public trust doctrine. As part of its decision, the Court stated that the right to a "clean and healthful environment" under a separate part of the state's constitution—Article XI, Section 9—includes "a right to a life-sustaining climate system." *Matter of Maui Electric Co., Ltd.*, 506 P.3d 192, 203 n.11 (Haw. 2022). This latter point is essentially the same holding that the *Juliana* plaintiffs are seeking under the federal constitution and have thus far failed to achieve.

Article XI, section 1 of the Hawai'i Constitution provides in part: "For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State." "In essence," the court had stated in an earlier opinion, the constitution directs the state and its agencies to "assess and balance 'protection' and 'utilization' of public trust resources."

After the Hawai'i legislature set a goal of achieving 100% renewable electricity by 2045, Hawai'ian electric companies began to implement a plan for competitively bidding for grid-scale renewable electricity supplies. Under this competitive bidding process, the state Public Utilities Commission (PUC) approved an agreement by Maui Electric Co., Ltd. to purchase solar/battery electricity from a project operated by another company. A community group challenged this power purchase agreement, claiming as one of its reasons that the PUC had failed to fulfill its constitutional public trust duties. The court rejected this challenge.

Although the court had held in earlier opinions that the PUC was subject to the public trust, "we have not explored the dimensions of its trustee duties." The PUC's unique regulatory mission, the court said, is to ensure reliability of the state's electric system and ensure that electricity rates are "just and reasonable." The PUC must also consider the state's dependence on fossil fuels and "the fast-approaching 100% renewable energy goal." The court explained that these "considerations are intended to mitigate the unhealthy effects of climate change," which the constitutional right to a healthy environment guards against. In this way, the court said, the

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PUC must assess and balance protection and utilization of public trust resources. In addition, "when the proposed project poses a *reasonable* threat to public trust resources," the "PUC as trustee must further assess the threat." To approve a power purchase agreement like the one challenged here, the PUC "must affirmatively find that there is no harm to the trust resource or that potential harm is justified." For a threat to be reasonable, "there must be tangible evidence that reasonably connects the threatened harm to the proposed project."

The court held that there was abundant record evidence that the PUC had engaged in the detailed analysis and factfinding required under state law and the constitution. In addition, the Court reasoned, by helping to phase out fossil fuels, the agreement is consistent with the "right to a life-sustaining climate system." The court also held that the community group's claims that the solar/battery project threatened public trust resources were not backed by any credible evidence.

p. 492, n. 5. Add to end of note.

In Ecuador was the first nation to expressly recognize rights of nature in its 2008 constitution. Article I of the Constitution states, ""Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution." A proposed gold mining operation by a Canadian company in the Los Cedros Reserve is under challenge in the Constitutional Court. The affected area is one of the most biologically diverse habitats in the world, with nearly 12,000 acres of primary cloud forest safeguarding the headwaters of four important watersheds. Some observers believe that the court's decision will determine the future enforcement of the country's rights of nature. *See* Rebekah Hayden, *Rights of Nature in Ecuador,* Ecologist (Nov. 6, 2020), https://theecologist.org/2020/nov/06/rights-nature-ecuador. In December 2021, the court unanimously ruled (two judges abstaining) that mining operations pursued by the state mining company and its Canadian partner threatened the Los Cedros protected area's right to exist and flourish. The opinion stated, "[T]he risk in this case is not necessarily related to human beings… but to the extinction of species, the destruction of ecosystems or the permanent alteration of natural cycles.…" *See* Katie Surma, *Ecuador's High Court Affirms Constitutional Protections for the Rights of Nature in a Landmark Decision,* Inside Climate News (Dec. 3, 2021), https://insideclimatenews.org/news/03122021/ecuador-rights-of-nature/.

In Australia, a federal court ruled that the environment minister has a legal duty to not cause harm to the young people of the country by exacerbating climate change by approving mining projects, although the court dismissed a requested injunction of an expansion of a New South Wales coal mining operation on technical grounds. *See Australian teenagers' climate change class action opens "a big crack in the wall," expert says,* ABC News (May 26, 2021), https://www.abc.net.au/news/2021-05-27/climate-class-action-teenagers-vickery-coal-mine-legal-precedent/100169398. An appeals court reversed in 2022, unanimously siding with the government, although their lists of reasons differed: one judge saying that said elected officials should decide policy matters, even though there was "no dispute" in the case that climate change itself caused harm; another judge found "incoherence" between the law and the minister's obligations to act under a duty of care; a third expressed thought there was a lack of "sufficient

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closeness or directness" between the minister's decision to approve developments like coal mines and "any reasonably foreseeable" harm. *Australia climate change: Court overturns teenagers' case against minister,* BBC News (March 15, 2022), https://www.bbc.com/news/world-australia-60745967.

In Brazil, a class action filed in October 2020 by the Institute of Amazonian Studies against the federal government of Brazil seeks recognition of a fundamental right to a stable climate for present and future generations under the Brazilian Constitution. The Institute has asked for an order requiring the government—which has failed to prevent deforestation, as required by its own plans, and failed to adapt to climate by missing emissions targets established by federal statutes—to comply with national climate law. The case asks the court for an order requiring the federal government to comply with existing policies, reforest an area equivalent to what was deforested beyond the statutory limit, and allocate sufficient budgetary resources for this purpose. *See* http://climatecasechart.com/climate-change-litigation/non-us-case/institute-of-amazonian-studies-v-brazil/. After some procedural wrangling, a court suspended the environmental license of coal mining and power plan project until the alleged flaws of the environmental impact assessment can be addressed. The court also ruled that climate change guidelines must, indeed, be required in environmental impact assessments of thermal power plants and coal mining in Rio Grande do Sul. *See* Gedham Gomes & Luiz Gustavo Bezerra, Mayer-Brown Blog, https://www.mayerbrown.com/en/perspectives-events/blogs/2021/09/climate-litigation-in-brazil-new-lawsuit-seeks-to-bring-climate-change-discussions-to-the-core-of-environmental-licensing-of-carbonintensive-activities.

In Chile, whose voters opted for the drafting of a new constitutional in late 2020 by an overwhelming 78%, the constitutional convention that will draft the new constitution has been urged to adopt a public trust doctrine provision by an interdisciplinary group of scholars from both Chile and the U.S. *See* Carl Bauer, et al., *The Protection of Nature and a New Constitution for Chile: Lessons from the Public Trust Doctrine* (May 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3847110; Michael C. Blumm & Matthew Hebert, *Constiutionalizing the Public Trust Doctrine in Chile*, 52 Envtl. L. no. 4 (forthcoming 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4025564.

In Portugal, six youth plaintiffs sued 33 European Union member countries in the European Court of Human Rights in September 2020, alleging that the governments have violated their human rights by permitting activities that release greenhouse gases into the atmosphere, and these releases have harmed their physical and mental wellbeing, as Portugal is facing sea-level rise as well as chronic droughts and heatwaves. The plaintiffs requested that the court issue binding orders on 33 European countries to cut greenhouse gas emissions. The European Court of Human Rights in Strasbourg, France, has fast-tracked the lawsuit. *See Duarte Agostinho and Others v. Portugal and 32 Other States*, no. 39371/20, ECHR (2020), http://climatecasechart.com/climate-change-litigation/non-us-case/youth-for-climate-justice-v-austria-et-al/. *See* Joanna Kakissis, *These Portuguese kids are suing 33 European countries to force them to cut emissions,* NPR (Dec. 2, 2021), https://www.npr.org/2021/12/02/1058350093/climate-change-portuguese-children-

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lawsuit#:~:text=They%20argue%20that%20climate%20change,judgment%20could%20come%20next%20year.

The Ireland Supreme Court held that a national mitigation plan, adopted for the purpose of transitioning to a low carbon economy by the end of 2050, was neither sufficient to carry out climate goals or comprehensive enough to allow the public to evaluate these policy objectives. Although the plan was challenged as a violation of constitutional rights, the Court dismissed these claims because the plaintiff, Friends of the Irish Environment, is a corporate entity and not entitled to assert the right to life. However, the Court did not foreclose the possibility of a constitutional right to life existing in an environmental case when brought forth by a proper plaintiff. *See Friends of the Irish Environment v. Ireland*, [2020] IR 793 (Ir.), http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20200731_2017-No.-793-JR_opinion.pdf.; Isabella Kaminski, *Ireland forced to strengthen climate plan, in supreme court win for campaigners*, Climate Home News (July 31, 2020), https://climatechangenews.com/2020/07/31/ireland-forced-strengthen-climate-plan-supreme-court-victory-campaigners/.

In Germany, plaintiffs filed a lawsuit challenging provisions of a climate protection act and the government's failure to take adequate measure to reduce greenhouse gas emissions to limit an increase in global temperatures to well-below 2°C. The federal Constitutional Court held that the act was incompatible with the human rights enshrined in the German constitution, and these fundamental rights required the government to manage CO_2 reductions "in a forward-looking way." The court's reasoning discussed intergeneration justice and explained that the current generation could not consume large portions of the CO_2 budge while future generations experience the consequences of those actions. The court ordered the government to set emissions reduction goals by the end of 2022. *See Neubauer, et al. v. Germany*, BVerfGE, 1 BvR 2656/18, Mar. 24, 2021, http://climatecasechart.com/climate-change-litigation/non-us-case/neubauer-et-al-v-germany/. However, in 2021, the German Federal Constitutional Court, ruled that German states are neither obliged and may lack the competence to implement emission reduction-targets independent from the targets on the federal level. The result means that only the federal Republic of Germany is competent to regulatine GHG emission budgets. Whether the decision means that private parties are similarly immune from lawsuits is not clear. Markus Burianski, et al., *German Federal Constitutional Court Refuses to Hear Climate Activists' Complaints,* White & Case (Feb. 4, 2022), https://www.whitecase.com/publications/alert/german-federal-constitutional-court-refuses-hear-climate-activists-complaints.

In France, the municipality of Grande-Synthe filed a lawsuit against the French government for failing to address climate change and reduce greenhouse gas emissions required by domestic and international law, including the Paris Climate Accords and the European Convention on Human Rights. The Conseil d'Etat issued a decision holding that the French government had caused "ecological damage" by failing to adequately reduce greenhouse gas emissions. The court held the French government liable for the damage caused by its inadequate climate policies and its failure to meet its international commitments. *See Commune de Grande-Synthe v. France*, Conseil d'Etat, Grande-Synthe, Nov.19, 2020, 427301, http://

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climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2019/20190123_Not-Yet-Available_press-release-1.pdf.

In 2021, a Paris administrative court found the French state guilty of failing to meet its commitments to curb greenhouse gas emissions, a ruling that recognized the ecological damage linked to climate change and held the French state responsible for failing to fully meet its goals in reducing greenhouse gases. The court ordered the state to pay the symbolic sum of 1 euro in compensation for "moral prejudice", a common practice in France. *Paris court finds French state guilty in landmark lawsuit over climate inaction,* France 24 (March 2, 2021), https://www.france24.com/en/live-news/20210203-french-government-found-guilty-in-landmark-lawsuit-over-climate-inaction.

p. 527, n. 8. Add to the end of the note.

In November 2020, voters in Orange County, Florida approved a Rights of Nature amendment titled "Right to Clean Water, Standing and Enforcement" to the Orange County Charter, which recognized the rights of rivers, streams, and wetlands within Orange County. In April 2021, a case was filed on behalf of Orange County waterways to enforce their legal rights that would be harmed by defendant Beachline South Residential, LLC proposal to fill roughly 115 acres of wetlands for a residential and commercial development. The plaintiff water bodies sought injunctive and declaratory relief preventing the issuance of a wetland fill permit, maintaining that they have a right to exist and be protected under the law. *See* Complaint for Plaintiff, *Wilde Cypress Branch et al. v. Beachline South Residential, LLC*, Filing # 125602282 (Fla. Cir. Ct. Apr. 26, 2021), https://static1.squarespace.com/static/5e3f36df772e5208fa96513c/t/608837c15b1c8231ebfa7f28/1619539905869/Rights+of+Waterways+Legal+Complaint+April+26+2021.pdf. On July 6, 2022, the court dismissed the complaint, saying the lawsuit was preempted by a 2020 state statute that that said local governments could not grant legal rights to "a plant, an animal, a body of water, or any other part of the natural environment." The statute also prohibits local governments from granting people or political subdivisions "any specific rights relating to the natural environment." Katie Surma, *Two Lakes, Two Streams and a Marsh Filed a Lawsuit in Florida to Stop a Developer From Filling in Wetlands. A Judge Just Threw it Out of Court*, Inside Climate News, July 7, 2022, https://insideclimatenews.org/news/07072022/two-lakes-two-streams-and-a-marsh-filed-a-lawsuit-in-florida-to-stop-a-developer-from-filling-in-wetlands-a-judge-just-threw-it-out-of-court/.

In April 2021, the Supreme Court of Pakistan upheld a local zoning law that prevented the expansion of a cement plant because of the associated harmful environmental effects and the damage to groundwater supplies. In rejecting the cement company's challenges to the zoning law, the Court discussed the local government's obligation to take a precautionary approach, as codified in the IUCN World Declaration on the Environmental Rule of Law and "act in line with the principle of *in dubio pro natura*" (when in doubt, favor nature). Further, the Court highlighted the importance of the rights of nature and recognized that "the environment needs to be protected in its own right." Finally, the Court discussed the case in the context of climate change and intergenerational justice, recognizing the courts' role in protecting future generations

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from the harmful effects of climate change by upholding climate justice whenever possible. *D. G. Khan Cement Company v. Government of Punjab*, (2021) C.P.1290-L of 2019 (SC) at 1 (Pak.), http://climatecasechart.com/climate-change-litigation/non-us-case/d-g-khan-cement-company-v-government-of-punjab/.