

# **SUPREME COURT LIVE**

October 3, 2013

Barrow High School, Barrow

## **ORAL ARGUMENT CASE SUMMARY**

***Nelson Kanuk, et al.,***

*Appellants,*

v.

***State of Alaska, Department of Natural Resources,***

*Appellee.*

Supreme Court Case No. S-14776

***Disclaimer:*** *This summary of the case highlights the major issues raised but is not intended to be comprehensive. It has been prepared for educational purposes only by the Supreme Court LIVE program staff and does not reflect the input or views of any member of the court.*

### **OVERVIEW OF THE CASE**

This case looks at the role the judicial branch plays in government, specifically asking when a court should refuse to decide a case out of deference to the other branches. A group of children and their guardians sued the State of Alaska arguing that the State had not adequately addressed carbon emissions and global warming; they asked the court to order the State to protect the atmosphere using a doctrine that requires the State to protect the public's access to navigable waters. The trial court decided that it should not decide the case because resolving the case would require the court to make policy decisions better made by the legislature or the executive branch.

### **ATTORNEYS**

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### **QUESTIONS PRESENTED ON APPEAL**

1. Is the atmosphere a public trust resource subject to the public trust doctrine?
2. Is the question of the applicability of the public trust doctrine to the atmosphere and greenhouse gases a non-justiciable political question?
3. Do the plaintiffs have enough of an interest in the question to bring this lawsuit?

### **MAJOR AUTHORITIES TO CONSIDER**

#### **United States Supreme Court Case Law**

- ***Marbury v. Madison***, 1 Cranch 137 (1803).
- ***Baker v. Carr***, 369 U.S. 186 (1962).
- ***Zivotofsky v. Clinton***, 132 S.Ct. 1421 (2012).
- ***Illinois Central Railroad Co. v. Illinois***, 146 U.S. 387 (1892).
- ***Massachusetts v. EPA***, 549 U.S. 497 (2007).
- ***American Electric Power Co. v. Connecticut***, 131 S.Ct. 2527 (2011).

#### **Alaska Constitution**

- **Article VIII.** Natural Resources.

#### **Alaska Supreme Court Case Law**

- ***Abood v. League of Women Voters of Alaska***, 743 P.2d 333 (Alaska 1987).
- ***CWC Fisheries, Inc. v. Bunker***, 755 P.2d 1115 (Alaska 1988).
- ***Brooks v. Wright***, 971 P.2d 1025 (Alaska 1999).
- ***Trustees for Alaska v. State***, 736 P.2d 324 (Alaska 1987).

#### **Other Relevant Case Law**

- ***Native Village of Kivalina v. Exxon Mobil Corp.***, 696 F.3d 849 (9th Cir. 2012).
- ***Native Village of Kivalina v. Exxon Mobil Corp.***, 663 F. Supp.2d 863 (N.D. Cal. 2009).

## SUMMARY OF THE CASE

This is a case about global warming and regulation of greenhouse gases. Several children and their parents sued the State of Alaska in state superior court in Anchorage because they did not think the State was adequately addressing the problem of greenhouse gases and global warming. The children are called “Our Children” in the briefs, but they are not part of an organization with that name, such as Trustees for Alaska or the Sierra Club. According to Our Children, the best available science shows that global temperatures are rising because of greenhouse gas emissions. They allege that if the level of greenhouse gases in the atmosphere is not reduced immediately, there will be unprecedented environmental consequences. They are concerned that global warming has already caused damage to Alaska’s environment and that the damage will increase. They asked the trial court to decide that the atmosphere is a public trust resource that the State has an obligation to protect for the public and for future generations. They also asked the trial court to set specific limits on reducing carbon emissions in Alaska.

The State asked the trial court to dismiss the lawsuit. Dismissal of a lawsuit means that the court never actually decides the issues raised in the lawsuit. The State argued that the outcome the children were requesting was not something the court could decide because regulation of the atmosphere was something only the legislative and the executive branches of government could do. The State also argued that the atmosphere was not a public trust resource like waterways and that the children did not have enough of an individual interest in the issue to bring a lawsuit about it.

## DECISION BELOW

The trial court agreed with the State and dismissed the complaint. The trial court applied a doctrine called the political question doctrine and decided that the questions raised were not questions the courts could answer. The trial court looked mainly at two aspects of the political question doctrine: (1) whether there were judicially discoverable and manageable standards and (2) whether deciding the question required an initial policy determination that was not for a court to decide. In explaining its decision, the trial court looked at a decision from a federal trial court about global warming.

## LEGAL ISSUES GENERALLY

### Public Trust Doctrine

One of the questions presented in this case is whether the atmosphere is a public trust resource. The **public trust doctrine** comes from the **common law**, which is judge-made law with its origins in England. The public trust doctrine first applied to navigable waters and required the government to protect the public’s access to those waters. The public trust doctrine has been expanded in some places to include non-navigable waters and other natural resources. A **trust** is a way to hold property for someone else’s benefit; a trust can be used when property belongs to minors or people who are incapable of handling their own money. A person, known as a **trustee**, manages the property for the benefit of the person who actually owns it. In the public trust doctrine, natural resources

are the property that is metaphorically held in trust for the general public, and the government is the trustee that is supposed to manage natural resources for the benefit of the general public.

In Alaska the public trust doctrine is related to part of the Alaska Constitution. **Constitutions** are another source of law. The United States has a constitution, and every state has its own constitution, which governs that state. Article VIII of the Alaska Constitution deals with natural resource management. Section 2 of Article VIII says, “The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.”

The parties in this case dispute whether the resources covered by the public trust doctrine can include the atmosphere.

***Children’s Position:*** The children argue that the public trust doctrine should be expanded to include the atmosphere. They say that the atmosphere, like many natural resources, is used and held in common by the public and must be protected so that the general public now and in future generations can continue to enjoy its use. They contend that air is not that different from water: air and water both circulate in the environment, can be contaminated or polluted, and are essential to life.

***State’s Position:*** The State argues first that the atmosphere is not listed in the Alaska Constitution, like water or minerals, so the court should decide that the atmosphere is not a public trust resource. It also contends that the atmosphere is different from water, particularly navigable water, because the State and the public cannot possess the atmosphere in the same way they can possess water or other natural resources like minerals or wildlife.

### **Political Question and Justiciability**

An important issue raised in this case is the role of courts in our system of government. The superior court decided that the question the children wanted the court to address was not **justiciable** because it was a **political question**.

Every court has authority to hear and decide certain types of cases; this authority is called the court’s **jurisdiction**. A court’s jurisdiction is usually defined in a constitution or in a **statute**, a law enacted by the legislature. The superior court is named in the Alaska Constitution, and it is the **trial court of general jurisdiction**. This means that unless there is a statute saying otherwise, the superior court is the court where a case starts.

Even if a court has jurisdiction over a case, it can decide that the case is not **justiciable**. **Justiciability** is a concept related to whether a court should decide a case because of judicial or constitutional constraints on the power of the courts. As a general rule, courts apply the law to the facts of a dispute that is brought to the court for resolution; courts try

to avoid writing abstract opinions about issues or about issues that do not need to be resolved.

One aspect of justiciability is the **political question doctrine**. The political question doctrine looks at whether the case presents an issue that a court cannot or should not resolve because of the court's relationship to the other branches of government. In *Baker v. Carr*, the United States Supreme Court set out six factors for courts to consider when they decide whether the issue is a political question. Two of them are that the Constitution assigned the issue to another branch of government and that the court cannot come up with a judicial standard for resolution of the case. An example of a political question is the question of what type of procedure a legislature should use when it holds hearings.

**Children's Position:** The children argue that the issue presented should not be considered a political question. They say they are asking the court to do what it has done in other cases — decide whether a specific natural resource is a public trust resource. They also contend that the court can look to other trust cases and public trust cases to find the standards needed to resolve the questions they present.

**State's Position:** The State argues that the question of regulation of natural resources is delegated to the legislature in the Alaska Constitution, so the issue is a political question. The State also argues that there are no clear standards to guide the court in deciding the optimal levels of greenhouse gases, and the court is not the appropriate branch of government to balance the different interests at stake in the global-warming debate. The State says that a court decision about greenhouse gases would not show respect for the political branches of government.

## **Standing**

The State is asking the Alaska Supreme Court to consider whether the children have **standing** to bring the case. **Standing** to bring a lawsuit means that a person has a direct interest that will be affected by the outcome of the lawsuit. Standing is related to justiciability. Courts resolve disputes, but the people involved in the dispute have to bring it to the court and ask the court for a decision. As an example, you cannot bring a lawsuit on your neighbor's behalf if your neighbor is injured in an accident; your neighbor has to bring the suit because he is the injured person.

The State argues that the children do not have enough of a personal interest in the case to be able to bring it to court. The State says the children are just like any other member of the public, so they do not have an injury that is particular to them that the court can address. The State also argues that the children cannot get relief from any action by the court, so the court should not consider the questions.

## QUESTIONS FOR STUDENTS TO CONSIDER

1. Do you think the atmosphere should be included in the public trust doctrine? How is the atmosphere different from navigable waters or wildlife? How is it the same? Do the state and federal governments regulate the atmosphere in any way? If they do, do you think this regulation affects whether the atmosphere should be considered a public trust resource?
2. Read *Baker v. Carr* or *Abood v. League of Women Voters of Alaska* and identify the factors courts look at to see whether the political question doctrine applies. Which of the factors (if any) do you think applies to this case? Why?
3. The children are basing their lawsuit on what they call the best available science. How does science influence public policy? Which branch of government do you think is best suited to deciding how science should be used in public policy and why?
4. In *Marbury v. Madison*, a case that was decided in 1803, the United States Supreme Court said it is “the province and duty” of the judicial branch of government “to say what the law is.” The Court decided in *Marbury* that it could declare a law unconstitutional. Do you think there is any tension between the political question doctrine and the idea from *Marbury v. Madison* that courts have the power “to say what the law is”? Explain your answer.
5. What should a court’s role be in deciding issues related to public policy? Why do people turn to the courts to resolve controversial issues like guns rights?
6. In *Greer v. Connecticut*, the United States Supreme Court noted the difference between public policy and private rights. What is the difference between a question of public policy and one of private right? Can you think of areas where there may be an overlap?
7. Evaluate the State’s argument that the children do not have enough of an injury to bring a lawsuit. How is the lawsuit different from a case brought by an environmental group?
8. What do you think is the children’s strongest argument on appeal? What do you think is their weakest argument? Explain.
9. What do you think the State’s strongest argument is? What do you think is its weakest argument? Explain.
10. If you were a justice on the Alaska Supreme Court, how would you decide this case? Explain.