

NINTH CIRCUIT MAY END "YOUTH" CLIMATE SUIT

Several young persons sued the federal government alleging violation of constitutional rights from federal action contributing to climate change. On December 26, 2018, a three-judge panel of the United States Court of Appeals for the Ninth Circuit accepted an interlocutory appeal of the district (trial level) court's ruling to deny the federal government's request for dismissal.



The 9th Circuit is a mid-level federal appellate court whose jurisdiction includes Oregon, where the case was filed. Interlocutory appeal allows an appellate court to consider an appeal prior to a full decision by the trial court. It is rarely used and requires both the trial judge and a three-judge panel of the appellate court to agree to the process.

Unusual Case and Unusual Procedural History

The suit was filed in 2015. Through the years, the government made several attempts to have the trial court dismiss the case or for appellate courts to order a stop to it. These attempts included an earlier request for the district court to agree to interlocutory appeal. None of those attempts had succeeded; however, in October 2018, the US Supreme Court gave a strong suggestion as to how the government could have the litigation ended in response to a request for mandamus. (Mandamus occurs when a higher court orders a lower court to take action in a procedure other than an appeal and is also extremely rare.) The Supreme Court denied a request for it to consider mandamus but strongly suggested mandamus by the 9th Circuit might be appropriate.

In an order on November 8, 2018, the 9th Circuit indicated it would consider the federal government's request for mandamus and also suggested the trial court reconsider its prior ruling denying interlocutory appeal.

In an order issued November 21, 2018, the district court agreed to permit interlocutory appeal. However, that order also said the district court stood by its earlier determination that interlocutory review was not appropriate. The November 21 order suggests the trial court strongly suspected the 9th Circuit would stop the case through mandamus if the trial court did not change its ruling and agree to interlocutory appeal.

A Dissent at the 9th Circuit

Two of the panel's judges ruled to accept the interlocutory appeal. One judge dissented, saying the trial court's order indicated the court felt compelled to agree to interlocutory appeal despite disagreeing the case was appropriate for this procedure, and thus was not a trial court's approval, as the law requires.

The opening brief is due February 1, 2019, and the answering brief is due February 22.