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Texas Judge Rules Air is Part of the Public Trust

But the ruling is largely symbolic and the legal ramifications unclear, legal experts say

by Huma Munir
Published on: Tuesday, July 17, 2012



PHOTO BY MONKEYATLARGE

Last week a Texas judge surprised many by ruling that air, like water, is part of the public trust. The ruling came in response to a lawsuit filed on behalf of several Texas kids, whose attorneys argue that the state of Texas has a duty to maintain a stable, livable climate on behalf of current and future generations. On the other side of the courtroom: the Texas Commission on Environmental Quality, which argued that water, but not air, is part of the public trust.

Travis County Judge Gisela Triana's ruling underscores the near-consensus scientific view that greenhouse gases are driving climate change and is a rebuke to Texas political leaders such as Rick Perry, who deny the science.

But several legal experts, including an attorney who worked on the case, said the ruling is largely a symbolic victory and that the legal ramifications are unclear.

"It's one state case in an orchestrated series of cases across the country," said law professor Mary Wood of the University of Oregon School of Law.

Wood said making air part of the public trust theoretically means that the government must protect the atmosphere. And by extension, it must protect the climate that humans depend on, she said.

Congress and the Obama administration have largely abdicated responsibility for tackling climate change, shifting the focus to the judiciary, Wood said.

"At this pivotal time when the opportunity to protect our climate is fast closing, our only hope now is the judicial branch," Wood said.

What's the next step after the ruling? No one really knows but making air part of the public trust could eventually lead to more stringent protections against air pollution and climate change, said law professor Gabriel Eckstein of Texas Wesleyan School of Law.

"The notion behind the public trust is that natural resources are so important to people, to the general public that they should have access to them," Eckstein said.

Public trust doctrine dates to 530 A.D., when the Roman Emperor Justinian dedicated the air, water and seashore to public use.

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In the context of water, the public trust confers the right of access to natural lakes and rivers, Eckstein said. Governments are entrusted to protect the water and supply the best quality water to the public. In the context of air, this could mean protecting the atmosphere from pollution and ensuring that everyone breathes quality air, he said.

"It's common sense. It's so common sense, we ignore it," Eckstein said. "We took it for granted with water for hundreds of years until we really began to have serious water pollution."

But Triana's ruling is just one small part of a much bigger legal morass. Texas and the EPA are locked in a number of high-profile lawsuits over new air pollution standards and greenhouse gas regulations. Those federal suits take preeminence over the ruling in Travis County. Triana, in fact, acknowledged that TCEQ's "refusal to exercise its authority" to regulate greenhouse gases was permitted.

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