

IN THE COURT OF APPEALS OF THE STATE OF OREGON

OLIVIA CHERNAIK, a minor and resident of Lane County, Oregon; LISA CHERNAIK, guardian of Olivia Chernaik; KELSEY CASCADIA ROSE JULIANA, a minor and resident of Lane County, Oregon; and CATIA JULIANA, guardian of Kelsey Juliana,

Plaintiffs-Appellants,

v.

JOHN KITZHABER, in his official capacity as Governor of the State of Oregon; and STATE OF OREGON,

Defendants-Respondents.

Lane County Circuit Court
Case No. 16-11-09273
Judge Rasmussen

CA No. A151856

MOTION – OTHER

**PLAINTIFFS-APPELLANTS’ MOTION – OTHER
FOR CERTIFICATION TO THE SUPREME COURT**

Pursuant to ORS 19.405 and Oregon Rule of Appellate Procedure 10.10, Appellants – two Oregon youth and their mothers – respectfully request that this Court certify their appeal to the Oregon Supreme Court. This appeal raises the question whether the Lane County Circuit Court has jurisdiction to hear Appellants’ case alleging that Governor Kitzhaber is violating the Public Trust Doctrine by failing to sufficiently combat climate change in the State of

Oregon. Appellants present two reasons why certification to the Oregon Supreme Court is appropriate.

First, expeditious review of this matter is imperative because the more time that passes the more difficult it will be for the Governor and Oregon's administrative agencies to make the necessary reductions in carbon dioxide emissions needed to protect public trust resources in our State.

Second, review of this case initially by the Supreme Court will preserve judicial resources and contribute to the expeditious resolution of Appellants' claims. This appeal presents several potentially precedent-setting questions, as well as issues critical to the ability of Oregon citizens, and here the youngest generation, to compel the State's compliance with the Public Trust Doctrine. Thus, it is likely this case will find its way to the Oregon Supreme Court regardless of the outcome in the Court of Appeals. Therefore, review by the Supreme Court in the first instance would preserve judicial resources.

Appellants present the following arguments and the accompanying declaration of world-renowned climate scientist Dr. James Hansen in support of their request for certification to the Supreme Court. Attached hereto and incorporated herein as Exhibit 1 is the declaration of Dr. James Hansen.

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I. BACKGROUND

A. *Our Changing Climate Requires Prompt Attention.*

This case was filed on May 4, 2011 by two Oregon youth and their mothers concerned that state officials are failing to reign in carbon dioxide emissions and are thereby failing to protect critical natural resources the State holds in trust for its citizens under the Public Trust Doctrine. Amended Complaint at 1. The international scientific community is in broad agreement that carbon dioxide emissions must be reduced – and must be reduced quickly – in order to protect the livability of our planet for current and future generations.

Currently, our atmosphere contains approximately 392 parts per million carbon dioxide. Declaration of Dr. James Hansen ¶ 7. The scientific community is calling for a reduction of carbon dioxide in our atmosphere to 350 parts per million by 2100. *Id.* ¶ 11. These reductions are necessary to protect our climate and atmosphere from certain tipping points – *i.e.*, changes to our atmosphere and ecosystems that will result in even further releases of greenhouse gases leading to further warming of the climate. Once our climate passes beyond these tipping points, we will not be able to change course and reverse the process. *Id.* ¶ 5.

These climatic tipping points are events that will amplify feedback loops and spur further rapid changes to our climate. Declaration of Dr. James Hansen

¶ 5. Arctic sea ice is a current example. As sea ice in the Arctic region melts and recedes, greater expanses of darker ocean are exposed to the atmosphere. *Id.* The ocean absorbs more of the sun's energy than does sea ice, therefore, the melting of sea ice can increase ocean temperatures and contribute to the further acceleration of ice melt, thereby creating a feedback loop. *Id.* This feedback loop will spur further climate change. Indeed, this feedback loop, without any additional greenhouse gas emitted to our atmosphere, will result in the Arctic soon being ice-free in the summer. *Id.* Because of these types of feedback loops, we must prevent the climate from passing critical tipping points. This is the only way to ensure that our global average temperatures do not continue to increase beyond a point that is sustainable for our economies and ecosystems as we know them today.

As discussed by Dr. Hansen, the scientific community has recommended that we need to reduce carbon dioxide in the atmosphere to 350 parts per million to avoid these catastrophic tipping points. Declaration of Dr. James Hansen ¶ 11. Returning our atmosphere to 350 parts per million by 2100 requires a halt to any increases in carbon dioxide emissions *this year – 2012 –* and a six percent reduction each year thereafter until approximately the middle of the century. *Id.* ¶ 12.

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As Dr. Hansen explains, if emissions had been curtailed in 2005, then only a 3.5 percent annual reduction would have been necessary. Declaration of Dr. James Hansen ¶ 17. However, if the government delays making emissions reductions until 2020, for example, then 15 percent annual reductions will be required to protect our atmosphere. *Id.* Each year the government delays making the necessary reductions, the situation grows more dire and the annual reductions necessary to protect our trust resources increase. Time is, therefore, of the essence.

In Oregon, the effects of climate change are already taking their toll on our natural resources. According to the State, Oregon's average temperature is warmer, Oregon's spring snowpack has been reduced by 20% (which means less water is available in the summer), sea level is rising an inch every 15 years, and our oyster fisheries are already being impacted by ocean changes linked to climate change. Peter Clark, *et al.* Scientific Census Statement on the Likely Impacts of Climate Change on the Pacific Northwest (2004).¹

Moreover, Oregon's Climate Change Research Institute predicts even more serious impacts to Oregon's natural resources in the decades to come. The Institute predicts a reduction in Cascade snow packs of 50 percent by mid-

¹ Available at: http://ir.library.oregonstate.edu/xmlui/bitstream/handle/1957/113/climate_change_consensus_statement_final.pdf?sequence=1

century and reduced summer precipitation, which will result in significant decreases in summer stream flows and water supply. Amended Complaint ¶ 29. These impacts to our water supply will have ramifications for Oregon’s \$1.6 billion per year agricultural industry. *Id.* Increasing sea levels of at least two to four feet and greater storm intensity will erode Oregon’s coasts and cause flooding, loss of beach areas and coastal wetlands, and inundation of coastal infrastructure. *Id.* Unnatural wild fires and new and increased pests and diseases are also anticipated. *Id.* These impacts illustrate the indisputable link between our atmosphere and our fresh water supply. Indeed, water in the atmosphere constitutes .04 percent of all fresh water and rivers constitute .006 percent of all fresh water on Earth according to the U.S. Geological Survey.²

B. *A Brief Summary of This Lawsuit.*

In response to the on-going and increasing impacts to Oregon’s natural resources from climate change, this case alleges that Governor Kitzhaber has failed to protect public trust resources – water, submerged lands, shorelines, wildlife, and our air – by failing to implement necessary reductions in emissions of carbon dioxide in Oregon. The Public Trust Doctrine provides that the sovereign can neither abdicate natural resources, nor allow for their substantial

² USGS Water Science for Schools, How much water is there on, in, and above the Earth? (available at: <http://ga.water.usgs.gov/edu/earthhowmuch.html> (last visited on August 1, 2012)).

impairment. *Morse v. Or. Div. of State Lands*, 285 Or 197, 203, 590 P2d 709 (1979); *Ill. Cent. R.R. Co. v. Illinois*, 146 U.S. 387, 453 (1892).

In Oregon, the Doctrine is recognized in our common law, statutes, and constitution. *See Or. Shores Conservation Coalition v. Or. Fish & Wildlife Comm'n*, 62 Or App 481, 493, 662 P2d 356 (1983) (“The state, as trustee for the people, bears the responsibility of preserving and protecting the right of the public to the use of the waters [for navigation, fishing and recreation].”); *Morse*, 285 Or 197, 203, 590 P2d 709, 712; *Kalmiopsis Audubon Soc’y v. Div. of State Lands*, 66 Or App 810, 820, 676 P2d 885 (Or. Ct. App. 1984); ORS 537.525(5) (declaring “that the right to reasonable control of all water within this state from all sources of water supply belongs to the public, and that in order to insure the preservation of the public welfare, safety and health it is necessary that” Oregon provide “[a]dequate and safe supplies of ground water for human consumption”); ORS 537.334(2) (recognizes “the public’s rights in the ownership and control of the waters of this state [and] the public trust therein”); Or Const, Art VIII, § 5(2) (lands owned by the State “must be managed for the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management”).

Appellants’ request several forms of relief. Specifically, Appellants request: a declaration that Respondents have an obligation to protect long

recognized public trust assets, Amended Complaint ¶ 48; a declaration that Respondents have violated their fiduciary duty under the public trust doctrine to protect those assets, *id.* ¶ 49; a declaration that the atmosphere is a trust asset, *id.* ¶ 47; an order requiring Respondents to undertake an accounting of trust assets on an annual basis, *id.* ¶ 50; an order requiring Respondents to prepare a plan to protect trust assets, *id.* ¶ 51; and a declaration that the best available science requires 6 % reductions per year of carbon dioxide emissions until at least 2050, *id.* ¶ 52.

In 2007, upon finding “[g]lobal warming poses a serious threat to the economic well-being, public health, natural resources and environment of Oregon,” the Oregon legislature passed House Bill 3543. Or Laws 2007, Ch 907, §§ 1-14 (codified in part as ORS 468A.200-.260). The bill declares a policy of reducing Oregon’s greenhouse gas emissions and establishes non-binding goals for these reductions that are to be met in 2020 and 2050. *Id.* It creates new entities to study the effects of climate change and recommends ways to reduce Oregon’s emissions. *Id.*

Today, the State has a Climate Action Plan that was prepared pursuant to Oregon’s Global Warming statute and designed to meet the goals of the Act. Amended Complaint ¶¶ 32, 35. These goals fail to protect trust resources from the harmful effects of climate change. *Id.* ¶ 32. The plan is not based on

existing climate science and will not ensure that the emissions reductions that climate scientists now say are necessary will happen. Even if the plan were sufficient to protect the atmosphere and other trust resources, by their own admission Respondents are not following it. *Id.* ¶ 36.

In 2008 and again in 2009, the State’s Global Warming Commission found that Oregon is failing in its efforts to meet the 2020 and 2050 goals. *Id.* In 2009, the Commission explained that “the state will likely fall well short of meeting its 2020 goal, and, by extrapolation, clearly is not on track to meet its 2050 goal.” *Id.* ¶ 36. Thus, this lawsuit was filed to compel the Governor to protect Oregon’s water and waterways, submerged and submergible lands, shorelines, wildlife, air, and the citizens who rely upon them from the harmful effects of climate change.

Respondents moved to dismiss this case on October 18, 2011. Before so doing, they stipulated with the Appellants that their motion to dismiss would not challenge the scope or application of the Public Trust Doctrine. Arguments along these lines were not presented in the State’s motion.

Instead, Respondents offered five grounds for dismissal in their motion. The trial court ruled on the first four grounds for dismissal finding that: “(1) the relief Appellants seek exceeds the Court’s authority under Oregon’s Declaratory Judgment Act; (2) Appellants’ claims are barred by sovereign

immunity; (3) Appellants’ requested relief violates the Separation of Powers Doctrine; and (4) Appellants’ suit presents political questions * * * .” *Chernaik v. Kitzhaber*, Order at 16 (April 5, 2012). The trial court declined to address whether it would exercise its discretion to deny relief under ORS 28.060. *Id.* In so ruling, the trial court touched upon the scope and applicability of the Public Trust Doctrine despite the Parties’ stipulation and resulting failure to brief those issues.³

II. STANDARD OF REVIEW

ORS 19.405 provides that:

When the Court of Appeals has jurisdiction of an appeal, the court, through the Chief Judge and pursuant to appellate rules, may certify the appeal to the Supreme Court in lieu of disposition by the Court of Appeals. The Court of Appeals shall provide notice of certification to the parties to the appeal.

ORS 19.405(1). The Oregon Supreme Court then has twenty days to decide whether to accept the certified appeal. ORS 19.405(2). As one commentator has noted, “[t]his procedure [of certification] appears to provide an effective

³ Other courts have been called upon to address whether the Public Trust Doctrine applies to the atmosphere, which is being harmed by climate change. In Texas, a district court concluded that the Texas Commission on Environmental Quality’s (TCEQ) determination that the Public Trust Doctrine is exclusively limited to the conservation of water is “legally invalid” and that “all natural resources” are protected under the Public Trust Doctrine, including the atmosphere. Letter Opinion, *Bonser-Lain v. Texas Comm’n on Env’tl. Quality*, No. D-1-GN-11-002194, *1 (Dist. Ct. Tex., July 9, 2012) (deferring to the TCEQ’s decision to deny plaintiffs’ petition for rulemaking while other ongoing litigation over greenhouse gas regulations ensues).

means to expedite decisions in cases where ultimate review by the supreme court is likely.” Norman J. Weiner & KY Fullerton, *Does Oregon's Appellate Court System Need Fixing?* 81 Or. L. Rev. 477, 493 (2002).

Under the Oregon Rules of Appellate Procedure, the “Court of Appeals may consider any motion, petition or other matter presented by a party pending the acceptance or denial of acceptance of the certification * * * .” ORAP 10.10(3). Thus, Appellants provide the following arguments in support of certification.

III. ARGUMENT

In the interest of expediting resolution of this appeal, Appellants respectfully request that Chief Judge Haselton and the other honorable members of the Oregon Court of Appeals certify this case to the Oregon Supreme Court for the following reasons.

A. *This Matter Necessitates Prompt Review, if Effective Relief is to be Provided for Respondents' Legal Violations.*

First, Appellants Ms. Juliana (age sixteen), Ms. Chernaik (age twelve), and their mothers appeal the dismissal of their case on jurisdictional grounds. They request expeditious review of this appeal because of the dire need for Oregon to reduce carbon dioxide emissions before it is too late and climatic tipping points are passed from which our climate cannot recover. *Supra* at 2-4. As evidenced by Dr. Hansen’s declaration, if Oregon does not start making the

necessary reductions in carbon dioxide emissions now, it may not be possible to reduce emissions enough in the future or the required reductions may not be feasible from a socioeconomic standpoint. Declaration of Dr. James Hansen ¶¶ 11, 13-14.

These reductions in carbon dioxide emissions are needed to bring the level of carbon dioxide in our atmosphere to 350 parts per million by 2100. *Supra* at 2-4. This level of atmospheric carbon dioxide concentration is required to avoid our climate reaching the point of no return. *Id.* Unless efforts are made to reduce carbon dioxide emissions in Oregon soon, state officials will be unable to effectively combat climate change and preserve Oregon’s public trust resources – *i.e.*, our water, submerged lands, shorelines, wildlife, and air. Therefore, it is important that this case receive expedited consideration. If the Court agrees with Appellants that the State must take action to protect public trust resources, then that action must be taken immediately.

B. *Judicial Efficiency Favors Supreme Court Review in the first Instance.*

This case presents several precedent setting jurisdictional issues for resolution by the Court, including the scope of relief available under Oregon’s Declaratory Judgment Act and whether sovereign immunity, the Separation of Powers Doctrine, or the Political Question Doctrine foreclose judicial intervention in this matter. A ruling on such important legal issues is likely to

be brought before the Oregon Supreme Court, and it is therefore in the interest of judicial efficiency that the appeal in this matter be heard by the Oregon Supreme Court in the first instance.

Several jurisdictional issues are presented for resolution. The first question is whether Appellants can pursue their claims under Oregon's Declaratory Judgment Act. Not only will the ruling on this question help delineate the scope of the Act, but it will also impact the ability of citizens in this State, who are the beneficiaries of the Public Trust Doctrine, to enforce that trust. Courts have recognized that a trust, whether public or not, has little meaning if it is unenforceable by the beneficiary of the trust. *See Wood v. Honeyman*, 178 Or 484, 561, 169 P2d 131 (1946) ("A settlor who attempts to create a trust without court accountability in the trustee is contradicting himself. A trust necessarily means rights in the *cestui*, enforceable in equity." (quoting Bogert on Trusts and Trustees, § 972)).

The second question, is whether state officials and the sovereign can claim immunity from review of their failure to protect Oregonians' most essential natural resources under the Public Trust Doctrine. The sovereign is obligated to protect trust resources as an attribute of its sovereignty, but by the same token uses its sovereignty as a shield to Appellants' claims. As a general matter, officials are not immune from judicial scrutiny when they engage in

unlawful acts. *See Hanson v. Mosser*, 247 Or 1, 7, 427 P2d 97 (1967). Nor did Respondents cite to any cases where sovereign immunity was a barrier to review of a public trust claim. Nevertheless, the trial court found that Appellants' claims were barred by sovereign immunity. Thus, this case presents an issue of first impression and its answer is essential to the continued applicability of the Public Trust Doctrine in Oregon.

The third and fourth issues address whether the Separation of Powers Doctrine or the Political Question Doctrine bar Appellants' case. As the trial court noted, "[w]hile the Oregon Supreme Court has recognized the Political Question Doctrine, it is not clear whether this doctrine extends more, less, or the same freedom from judicial scrutiny as the Separation of Powers Doctrine standing alone." *Chernaik v. Kitzhaber*, Order at 15 (April 5, 2012).

This case, therefore, implicates several precedential issues relating to a trial court's jurisdiction under the Declaratory Judgment Act, as well as issues which the trial court itself noted were unresolved based on existing precedent from the Oregon Supreme Court. *Chernaik v. Kitzhaber*, Order at 13 (April 5, 2012). The resolution of these issues will determine whether beneficiaries of the public trust have a means of enforcing the state's public trust obligation to protect critical natural resources from substantial impairment. This case will also establish important precedent regarding the ability of Oregon's courts to

resolve important issues of public policy, such as this one. Therefore, in the interest of judicial efficiency, and to avoid further harm to Appellants, public trust resources, and the economy of Oregon, this matter should be certified to the Oregon Supreme Court.

IV. CONCLUSION

For all the foregoing reasons, Appellants respectfully request that the Oregon Court of Appeals certify this case to the Oregon Supreme Court for efficient and timely resolution of the issues presented.

Respectfully submitted August 2, 2012.

/s/ Tanya M. Sanerib
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Honorable Judge Rasmussen

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EXHIBIT 1

**DECLARATION OF DR. JAMES HANSEN
IN SUPPORT OF PLAINTIFFS-APPELLANTS' MOTION FOR CERTIFICATION TO
THE SUPREME COURT REVIEW**

I, Dr. James Hanson, declare as follows:

1. I am providing testimony in my individual capacity and not as a representative of any institution in which I am affiliated. The information and opinions herein are not necessarily those of any institution in which I am affiliated or those of any party to the present litigation. This declaration is being offered as an aid to the Court's deliberations as to whether this case should be certified to the Oregon Supreme Court.
2. I direct the NASA Goddard Institute for Space Studies in New York City and am an Adjunct Professor of Earth Sciences at Columbia University's Earth Institute. I was trained in physics and astronomy in the space science program of Dr. James Van Allen at the University of Iowa. I received my Ph. D in physics in 1967. Since the mid-1970s, I have focused on computer simulations and studies of the Earth's climate for the purpose of understanding the human impact on the global climate. I was elected to the National Academy of Sciences in 1995.
3. In recent years, my research has focused on the danger of passing climate tipping points that would yield a different planet from the one on which civilization developed. As part of my work, I have outlined steps that are needed to stabilize climate, with a cleaner atmosphere and ocean.

4. Global climate change is a phenomenon that is already undermining human and natural systems, causing loss of life, and pressing species to extinction. Unless arrested by effective and immediate action, climate change will produce calamitous consequences for humanity and nature alike, as tipping points are reached and points of no return are crossed.
5. These tipping points include events such as the melting of Arctic sea ice or the defrosting of tundra, which each will set off a chain of events that cannot be reversed. Arctic sea ice reflects heat from our atmosphere while open water absorbs heat. As the ocean absorbs more heat, more ice will melt. Eventually this pattern will result in an ice free Arctic. The defrosting of tundra releases methane, another greenhouse gas, which will spur further climatic change.
6. Paleoclimate research I have conducted establishes that for most of the Holocene period – the period of the most recent 10,000 years – the Earth’s climate, though highly variable on a regional basis, has been characterized by reasonably constant mean global temperatures. This constancy enabled the Greenland and Antarctic ice sheets to remain in near mass balance, sea levels to be relatively stable, species to diversify, and civilization to develop. For a more thorough discussion of this process, *see* James Hansen et al, Scientific Case for Avoiding Dangerous

Climate Change to Protect Young People and Nature (attached to this Declaration as Exhibit 1).

7. The CO₂ concentration in the atmosphere, approximately 392 parts per million (ppm), is now at a level not seen on Earth for at least 3 million years. Unless CO₂ emissions are drastically reduced, carbon dioxide concentration in the atmosphere could reach 400 ppm by 2016.
8. The best available current science establishes that today's global mean temperature is already close to or into the dangerous zone.
9. Maintaining a climate that resembles the Holocene epoch, the world of a relatively stable climate system under which civilization developed, requires rapid reduction of fossil fuel CO₂ emissions and reforestation.
10. Atmospheric CO₂ concentrations passed the level that is estimated to be safe in the long term in approximately 1988. Global mean temperatures now exceed the Holocene peak and unabated fossil fuel emissions continue to drive the Earth increasingly out of energy balance.
11. Unless action is undertaken without further delay to return the atmospheric concentration of CO₂ to 350 ppm by 2100, Earth's climate system will be pressed toward and past points of no return. Effective action remains possible, but delay in undertaking sharp reductions in

emissions will undermine any realistic chance of preserving a habitable climate system.

12. The appellants' requested relief in this case, that the sovereign government defendants prepare an emissions reduction plan that includes a cap on CO₂ emissions at 2011 levels by 2012, and emissions reductions thereafter by a minimum of 6% annually, is consistent with the current scientific understanding of what is minimally needed to avert truly dangerous climate change and to preserve the physical status quo of a habitable climate system for future generations.
13. Further delay of meaningful action to address climate change vastly increases the risk of irretrievable damage to the climate system. Delaying action to return the atmospheric CO₂ concentration to approximately 350 ppm by the end of the century may doom the prospect of stabilizing the Earth's climate system and mitigating human suffering.
14. Action must be undertaken to restore the atmosphere's safe level of CO₂ concentration to 350 ppm to avert any avoidable additional warming that may drive the climate system past tipping points that would require humanity to transition to life on a very different planet.
15. There are two primary reasons to draw down CO₂ concentrations to 350 ppm. First, a substantial share of any additional infusion of CO₂ lasts in

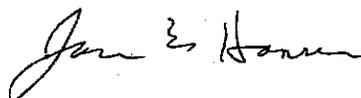
the atmosphere for centuries (and while there, continuously acts to further heat the planet). Accordingly, Earth's temperature response to the "radiative forcing" effect of the higher atmospheric CO₂ concentration is a function of not only recent emissions but the persisting share of prior emissions. Second, as a consequence of the long-lived nature of CO₂ and the fact that human derived emissions have already caused a substantial overshoot of the long-term safe atmospheric concentration level, any substantial delay in undertaking effective action would render it impossible to return the atmospheric CO₂ concentration to 350 ppm within this century.

16. An abrupt cessation of all CO₂ emissions, whether in 2012, 2020 or 2050 is unrealistic, in part because industry, other business, and consumers alike need time to retool and reinvest in emission-free alternatives to fossil fuels. Accordingly, I have worked with others to propose a glide path to secure an atmosphere whose CO₂ concentration is no higher than 350 ppm. The plan requires emission reductions of 6% annually, coupled with a program of reforestation to remove CO₂ from the atmosphere. This will achieve the goal of restoring the atmosphere to approximately 350 ppm if the plan is commenced without delay, and then adhered to.

17. To demonstrate the urgency of the issue at hand, the required rate of emissions reduction would have been about 3.5% per year if reductions had started in 2005, while the required rate of reduction, if commenced in 2020 will be approximately 15% per year. Therefore, the critical component of any emissions reduction program is the date at which the phase out of fossil fuel emissions begins.
18. It is my professional opinion that government action to reduce emissions in line with our best scientific knowledge is urgently required. In particular, the failure to commence CO₂ reductions without further delay, and to undertake other measures consistent with the prescription stated herein, would consign our children and their progeny to a very different planet, one far less conducive to their survival.

I swear under penalty of perjury of the laws of the State of Oregon that the foregoing is true and correct.

DATED this 1st day of August, 2012,



Dr. James Hansen

CERTIFICATE OF FILING

I hereby certify that on August 2, 2012, I filed **PLAINTIFFS-APPELLANTS' MOTION – OTHER FOR CERTIFICATION TO THE SUPREME COURT** with the Appellate Court Administrator via the ECF filing system.

By: /s/ Tanya M. Sanerib
Tanya M. Sanerib, OSB No. 025526
Of Attorneys for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2012, I served certified true copies of **PLAINTIFFS-APPELLANTS' MOTION – OTHER FOR CERTIFICATION TO THE SUPREME COURT** on:

Oregon Attorney General
Office of the Solicitor General
400 Justice Building
1162 Court Street NE
Salem, OR 97301-4096

John J. Dunbar
Oregon Department of Justice
1515 SW Fifth Avenue, Suite 410
Portland, OR 97201

Of attorneys for Defendants-Respondents

By mailing full, true and correct copies in sealed, first-class postage-prepaid envelopes, with the United States Postal Service to the addresses shown, and deposited with the United States Postal Service in Portland, Oregon, on the date set forth below

Dated: August 2, 2012

By: /s/ Tanya M. Sanerib
Tanya M. Sanerib, OSB No. 025526
Of Attorneys for Plaintiffs-Appellants

CERTIFICATE OF FILING/CERTIFICATE OF SERVICE