

No. 18-36082

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KELSEY CASCADIA ROSE JULIANA, et al.,
Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA, et al.,
Defendants-Appellants.

On Appeal from the United States District Court
for the District of Oregon (No. 6:15-cv-01517-AA)

**BRIEF OF BUSINESS *AMICI CURIAE* IN
SUPPORT OF PLAINTIFFS-APPELLEES**

Toby J. Marshall
TERRELL MARSHALL LAW
GROUP PLLC
936 N. 34th Street, Suite 300
Seattle, Washington 98103
Telephone: (206) 816-6603
tmarshall@terrellmarshall.com

Counsel for Business Amici

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 29(a)(4)(A), *Business Amici* provide the following disclosures: Guayaki Sustainable Rainforest Products, Inc. (“Guayaki”) discloses that it is a corporation formed in California and has no parent companies. No publicly held corporation has 10% or greater ownership in Guayaki. Royal Blue Organics discloses that it is a partnership formed in Oregon and has no parent companies. No publicly held corporation has 10% or greater ownership in Royal Blue Organics. Organically Grown Company discloses that it is a corporation formed in Oregon and has no parent companies. No publicly held corporation has 10% or greater ownership in Organically Grown. Bliss Unlimited, LLC, doing business as Coconut Bliss, discloses that it is a corporation formed in Oregon and Lochmead Dairy, Inc. is its parent company. No publicly held corporation has 10% or greater ownership in Coconut Bliss. Hummingbird Wholesale discloses that it is a corporation formed in Oregon and has no parent companies. No publicly held corporation has 10% or greater ownership in Hummingbird Wholesale. Aspen Skiing Company, LLC (“ASC”) discloses that it is a limited liability company formed in Colorado and has no parent companies. No publicly held corporation has 10% or greater ownership in ASC. Protect Our Winters (“POW”) discloses that it is a nonprofit corporation, which is classified as a 501(c)(3) organization under the Internal Revenue Code, and has no parent companies. No publicly held corporation

has 10% or greater ownership in POW. The National Ski Areas Association (“NSAA”) discloses that it is a nonprofit corporation, which is classified as a 501(c)(6) organization under the Internal Revenue Code and has no parent companies. No publicly held corporation has 10% or greater ownership in NSAA. Snowsports Industries America (“SIA”) discloses that it is a nonprofit corporation, which is classified as a 501(c)(4) organization under the Internal Revenue Code, and has no parent companies. No publicly held corporation has 10% or greater ownership in SIA. The American Sustainable Business Council (“ASBC”) discloses that it is a nonprofit corporation, which is classified as a 501(c)(4) organization under the Internal Revenue Code, and has no parent companies. No publicly held corporation has 10% or greater ownership in ASBC.

STATEMENT PURSUANT TO FED. R. APP. P. 29

Business Amici received the consent of all parties to file this brief. No party or counsel thereof contributed to writing this brief, and no person other than Business Amici, and Counsel for Business Amici contributed funds specifically intended to fund preparation or submission of this brief.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT ii

STATEMENT PURSUANT TO FED. R. APP. P. 29 iii

TABLE OF CONTENTS..... iv

TABLE OF AUTHORITIESv

IDENTITY AND INTERESTS OF THE *AMICI CURIAE*.....1

SUMMARY OF ARGUMENT5

 I. Climate Change is already harming businesses in a myriad
 of ways.....6

 II. Bold federal action to address climate change is needed and
 will have a positive economic impact on businesses12

CONCLUSION20

CERTIFICATE OF COMPLIANCE WITH RULE 32(g)(1)21

CERTIFICATE OF SERVICE22

TABLE OF AUTHORITIES

OTHER AUTHORITIES

American Sustainable Business Council, Who we Are and What we Do, http://asbcouncil.org/about-us#.XHmQFC2ZPOQ (last accessed March 1, 2019)	20
CDP, Our Vision and Mission, https://www.cdp.net/en/info/about-us	19
National Ski Areas Association, <i>Climate Challenge Annual Report 17</i> (2018), available at: http://www.nsaa.org/media/340465/AR2018FINAL.pdf	17
National Ski Areas Association, <i>Sustainable Slopes Annual Report</i> (2018), available at: http://www.nsaa.org/media/340465/AR2018FINAL.pdf	16
Outdoor Industry Association, <i>The Outdoor Recreation Economy 18</i> (2017).....	11
The Climate Collaborative, https://www.climatecollaborative.com/ (last accessed February 28, 2019)	15
The RE100, About Us, there100.org/re100	19
U.S. Global Change Research Program, <i>Fourth National Climate Assessment, Volume II</i> (2018).....	passim
World Business Council for Sustainable Development, www.wbcds.org/Overview/About-us	18

IDENTITY AND INTERESTS OF THE *AMICI CURIAE*

Guayaki, Royal Blue Organics, Organically Grown Company, Coconut Bliss, Hummingbird Wholesale, Aspen Skiing Company, Protect Our Winters, National Ski Areas Association, Snowsports Industries America, and American Sustainable Business Council (collectively “Business *Amici*”) submit this *amici curiae* brief pursuant to Fed. R. App. P. 29 in support of Plaintiffs-Appellees *Juliana, et al.* The interests of Business *Amici* are as follows:

Guayaki is a 23-year-old producer of Yerba Mate beverages. Guayaki’s beverages are sold predominantly in North America, where the company self-distributes with a fossil-fuel-free fleet of electric vehicles. Guayaki’s primary ingredients are grown in South America. The company employs a regenerative business model to produce premium, shade-grown Yerba Mate and has partnered with South American producer communities to secure long-term vitality for their communities as they steward the forests that produce Yerba Mate. Guayaki’s operations and business interests are being threatened by impacts from climate change.

Royal Blue Organics has been committed to sourcing only fair trade, organic, and shade-grown coffee from indigenous cooperatives since 1990. The coffee used by Royal Blue Organics’ coffee line, Café Mam, is grown by native Mayan farmers living in the highlands of Chiapas, Mexico. The farmers believe that by taking care

of the soil, they are taking care of the entire biosystem. Café Mam coffee farmers seek to conserve and rebuild the natural environment and work toward a higher quality of life for their families and communities. Café Mam coffee is roasted in Oregon and enjoyed across the world. Two percent of Café Mam sales are donated to nonprofit organizations dedicated to organic agriculture, social justice, and environmental causes. The operations and business interests of Royal Blue Organics are being threatened by impacts from climate change.

Organically Grown Company (“OGC”) is the largest distributor of organic produce in the Northwest. At the core of OGC is a simple idea that has held steady since the beginning: that organic agriculture is necessary for a healthy environment and healthy people. OGC’s goal is to support organic agriculture and help it thrive by doing business in a way that is “good, clean and fair.” That goes for the customers, vendors, employees, community and environment. OGC’s operations and business interests are being threatened by impacts from climate change.

Coconut Bliss has been making certified organic coconut milk ice cream since 2005. Based in Eugene, Oregon, the company sells its products across the United States and Canada, with some distribution in Latin America. Coconut Bliss is a Triple Bottom Line company, working to make sure it takes care of its employees as well as its shareholders, while being good stewards of the planet’s resources. The

operations and business interests of Coconut Bliss are being threatened by impacts from climate change.

Hummingbird Wholesale serves a full variety of food businesses, from co-ops and regional retail chains to restaurants, food service providers, and manufacturers. The company offers wholesome, organic food, sourced from the Pacific Northwest as well as the best producers from around the world. Through farm-direct ingredient sourcing, Hummingbird Wholesale provides customers with competitive volume opportunities to obtain staple and unique grains, beans, and seeds to match their quality expectations. The company's mission is to grow organic acreage—with the goal of reaching 100% organic agriculture in Oregon—and to make its business model one based on sustainable practices, not only limiting its carbon footprint but also helping to sequester carbon through both business and agricultural practices. Hummingbird Wholesale's operations and business interests are being threatened by impacts from climate change.

Aspen Skiing Company was founded in 1946 and is a four-season resort that owns and operates four ski mountains—Aspen, Snowmass, Buttermilk and Highlands—as well as 20 restaurants and five hotels, once of which is in Ketchum, Idaho. Aspen Skiing Company hosts 1.4 million visitors annually on some 5,000 acres and employs 4,000 people in winter. Aspen Skiing Company's operations and business interests are being threatened by impacts from climate change.

Protect Our Winters is a 501(c)(3) nonprofit that turns passionate outdoor people into effective climate advocates. Founded by pro snowboarder Jeremy Jones in 2007, Protect Our Winters leads a community of athletes, creative pioneers, and business leaders to affect systemic solutions to climate change. The operations and business interests of Protect Our Winters are being threatened by impacts from climate change.

The **National Ski Areas Association** (“NSAA”) is a 501(c)(6) non-profit trade association based in Lakewood, Colorado. NSAA has served as the trade association for ski area owners and operators nationwide since 1962. NSAA represents 317 alpine resorts in 36 states, accounting for over 90% of the skier/snowboarder visits in the United States. Additionally, NSAA has 420 supplier members who provide equipment, goods, and services to ski resorts. Skiing and snowboarding are popular winter activities that provide outdoor recreation, exercise and family fun for millions of Americans. Ski areas across the country are concerned about climate change and its impacts on winter recreation, mountain ecosystems, our bottom line and our way of life. The operations and business interests of those served by NSAA are being threatened by impacts from climate change.

Snowsports Industries America (“SIA”) is the non-profit, member-owned trade association representing snow sports manufacturers, retailers and sales reps. The snow sports industry generates \$72 billion in economic revenue annually and

supports over 700,000 jobs nationwide. SIA member companies include brands such as The North Face, Burton, Patagonia, Helly-Hanson and Rossingol. The operations and business interests of SIA members are being threatened by impacts from climate change.

The **American Sustainable Business Council** (“ASBC”) is a 501(c)(4) non-profit. ASBC advocates for policy change at the federal and state level that supports a more sustainable economy. ASBC spans a growing network of business associations across the United States, which in turn represents over 250,000 businesses and 325,000 business executives, owners, investors, and others. ASBC businesses understand that a triple bottom line business model can achieve benefits for people, planet and profit will have the best results across all sectors from sustainable agriculture, climate change clean water, safer chemicals, to build a vibrant U.S. economy. The operations and business interests of those served by ASBC are being threatened by impacts from climate change.

SUMMARY OF ARGUMENT

Juliana v. United States forces constitutional consideration of systemic causes of climate change and the catastrophic impacts of climate change, which are having far-reaching ramifications for the economy and society. Business *Amici* are already experiencing a range of impacts to their businesses from climate change and make two arguments herein. First, Business *Amici* explain how climate change is already

impacting their businesses, and the business community in general, and how those impacts are expected to worsen without immediate and bold steps to address climate change. Second, *Business Amici* explain that while businesses are already taking steps to minimize their contributions to climate change, support from the federal government is essential. *Business Amici* note that rather than harming businesses, actions taken by the federal government to address climate change will have a positive benefit on the business community.

I. Climate Change is already harming businesses in a myriad of ways

Current and projected climate change impacts are harming the business community and can be disastrous from a business perspective. *Business Amici* are already being harmed by climate change in various economic ways.

Businesses in the food and agriculture sector, including *Business Amici* Guayaki, Royal Blue Organics, Organically Grown Company, Coconut Bliss, and Hummingbird Wholesale, are being impacted by rising temperatures, declining water availability, extreme weather events (e.g., floods), and altered pest pressures.¹ The Fourth National Climate Assessment (“NCA4”) notes that agriculture producers and the food supply chain contributed nearly one trillion dollars to the economy in

¹ U.S. Global Change Research Program. *Agriculture and Rural Communities* at 393, 398-402. In *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* (2018), available at: https://nca2018.globalchange.gov/downloads/NCA4_Ch10_Agriculture_Full.pdf (hereinafter: “NCA4, Agriculture and Rural Communities”).

2015 and generated over 23 million jobs.² However, as the NCA4 notes, there are some “major challenges to the future of agriculture and food security.”³ Among the challenges are changes in water quantity and quality, which poses a significant threat to crops that rely on irrigation.⁴ While irrigation can help address certain climate impacts, like drought, declining water resources means that irrigated acreage is expected to *decline* in the coming decades, threatening irrigation-dependent crops.⁵

With respect to water, the NCA4 states:

The quality and quantity of water available for use by people and ecosystems across the country are being affected by climate change, increasing risks and costs to agriculture, energy production, industry, recreation, and the environment.⁶

For Guayaki, climate change affects all product sourcing (water, ingredients, packaging, and other supplies), sales markets (local economies and infrastructure), local engagement with customers, consistent energy for operations and vehicles, and

² *Id.* at 393.

³ *Id.* at 397.

⁴ U.S. Global Change Research Program. Water at 152-53. In *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* (2018), available at: https://nca2018.globalchange.gov/downloads/NCA4_Ch03_Water_Full.pdf (hereinafter “NCA4, Water”).

⁵ NCA4, Agriculture and Rural Communities at 400.

⁶ U.S. Global Change Research Program. Summary Findings. In *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* (2018), available at: https://nca2018.globalchange.gov/downloads/NCA4_Ch01_Summary-Findings.pdf

the health of the workforce and partners. The principle ingredient, rainforest-grown Yerba Mate, is intrinsically linked to the health and vigor of South American Atlantic rainforest, which is being significantly impacted by climate change. Acknowledging the critical connection between water, carbon and agricultural production, climate change will continue to cause risk and adverse financial impact to the food and beverage industry.

The Fourth National Climate Assessment dedicates an entire chapter to the complexity of public and private actors interacting with different human and natural systems, summing up the key insights as follows:

The sectors and systems exposed to climate (for example, energy, water, and agriculture) interact with and depend on one another and other systems less directly exposed to climate (such as the financial sector). In addition, these interacting systems are not only exposed to climate-related stressors such as floods, droughts, and heat waves, they are also subject to a range of non-climate factors, from population movements to economic fluctuations to urban expansion. These interactions can lead to complex behaviors and outcomes that are difficult to predict. **It is not possible to fully understand the implications of climate change on the United States without considering the interactions among sectors and their consequences.** . . . [S]uch interactions and their consequences can be challenging to identify in advance.⁷

⁷ U.S. Global Change Research Program. Sector Interactions, Multiple Stressors, and Complex Systems at 639. In *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* (2018), available at: https://nca2018.globalchange.gov/downloads/NCA4_Ch17_Complex-Systems_Full.pdf (emphasis added).

This complexity resulting from climate changes to natural resources introduces new business risk into virtually every sector, including the company's community of workers, economic viability, and supply chain.

This aptly describes impacts to Coconut Bliss, as the ingredients for its pints, novelty bars, and cookie sandwiches are grown and processed in many different parts of the world. For example, coconut ingredients are sourced in regions of Thailand and the Philippines, and agave syrup is sourced in the Jalisco region of Mexico. Increased drought cycles, typhoons and other related weather events, can wipe out harvests for one or several seasons. These events are all becoming more common and more destructive as a result of climate change. This disrupts businesses all along the supply chain (growers, manufacturers, trucking, shipping, brokers, and end customers). These disruptions add cost to every ingredient and pose significant challenge for Coconut Bliss.

Café Mam's business relies on coffee, an agricultural product that is completely dependent on climate. The specific coffee beans that Café Mam buys, termed "specialty coffee," are only produced in high mountain ranges. Coffee grown in high mountain ranges, under the shade of native trees (also habitat for birds), is considered some of the best and most sought after in the world. Specialty coffee represents nearly 60% of all coffee sold in the U.S. Tragically, due to climate change, farmers are reporting that their coffee trees are dying due to warmer temperatures,

highly erratic weather, and lack of water. Farmers are having to find land in a more suitable climate, which means going higher and higher up the mountains, something that is not a long-term solution. In fact, current forecasts predict that if climate change is not addressed, 50% of land currently suitable for growing coffee will not be usable by 2050.

Climate change also impacts every part of Organically Grown's business. Erratic weather patterns wreak havoc on crop planning and financial returns for growers and can severely disrupt the marketability of crops that arrive too early or too late, depleting or flooding the market. Growers that Organically Grown works with are experiencing the loss of natural resources such as water and top soil, the increased pressure of pests and disease, and even the inability to grow items that cannot withstand the newer, oftentimes higher, temperatures in many regions. Organic practices are proven to be effective towards sequestering carbon, but changes in weather patterns are making it difficult for farmers to implement the practices such as incorporation of cover crops, predictable crop rotations, and other mitigation strategies.

Hummingbird Wholesale, and the farmers it works with, has already experienced some of the impacts of climate change, including erratic weather patterns, greater pest pressure on farms, and a decade-long drought in the Pacific Northwest ("PNW"). During the summer of 2018, fires in the PNW not only affected

air quality but also nearly stopped tourism and farmers markets all over our region, creating huge income loss across different business sectors, including farmers.

Other business, including Business *Amici* Aspen Skiing Company, are being impacted by warming temperatures and declining snow levels, which pose an existential threat to individual businesses and entire sectors of the economy, such as the winter tourism industry from recreational skiing. The winter sports economy is vital for many communities around the country. The snow sports industry generates \$72.7 billion in economic revenue annually and supports over 700,000 jobs nationwide.⁸ The impact of declining snow impacts many other businesses, like hotels, restaurants and ski shops.⁹ The National Climate Assessment confirms that climate change is reducing snowpack, and rising temperatures, resulting in less winter precipitation falling as snow.¹⁰ Decreased snowpack, warmer night temperatures during times when resorts are making snow, wetter shoulder seasons, and reduced weather predictability all have an impact on ski area winter operations. Drought and increased wildfire activity during summer is affecting resorts' summer recreational operations as well.

⁸ Outdoor Industry Association, *The Outdoor Recreation Economy* 18 (2017), available at: https://outdoorindustry.org/wp-content/uploads/2017/04/OIA_RecEconomy_FINAL_Single.pdf.

⁹ *Id.*

¹⁰ NCA4, Water at 152.

Aspen Skiing Company is one of the ski resorts that has been impacted by climate change and declining snowpack. Since 1940, Aspen has lost a month of winter (defined as days with frost) and has warmed 2 degrees F. This trend has led to warmer winters and more difficult operating conditions, including warmer nights, when it is harder and more expensive to make snow, increasing rain events in winter, and rapid warm-up in spring. Ski resorts operate in deficit until March, when they start to make profit for the year. If climate change continues to shave off late-season skiing, it will threaten the industry's viability.

In short, climate change poses serious threats to the viability, and profitability, of numerous businesses and sectors of the economy and urgent action is needed to protect Business *Amici*, and other businesses, from the catastrophic impacts of climate change.

II. Bold federal action to address climate change is needed and will have a positive economic impact on businesses

While Business *Amici*, and many other businesses, are already taking steps to reduce their fossil fuels use and contributions to climate change, in order to fully transition to a fossil-fuel-free economy, businesses need support from the federal government. Quite simply, no matter how hard they try, businesses cannot solve climate change on their own. Importantly, addressing climate change and transitioning to a fossil fuel-free economy will not harm the economy but will

generate new jobs, allow businesses that may be losing jobs as a result of climate change to continue to operate, and will generate economic growth.

Businesses that are already taking steps to reduce their reliance on fossil fuels and support sustainable, carbon-sequestering agriculture practices (that will generate immense economy-wide benefit) still have to compete a predominately fossil fuel based economy, propped up by the federal government through subsidies, the leasing of federal lands for fossil fuel extraction, the permitting of fossil fuel infrastructure, and other means. These proactive climate companies represent massive potential benefit for society as a whole to transform our economy to a green business model in a timely way. Unfortunately, in many cases, these burgeoning businesses require removal of policies that preclude full realization of both economic and climate benefits.

The reality is that American businesses expend a significant amount of capital on the cost of energy to manufacture, produce, process, and ship their products to market. Government can play a substantial role in creating incentives for, and leveling the playing field for, renewable energy sources that must still compete with the heavily subsidized fossil fuel energy sector. Business *Amici* utilize renewable energy sources wherever possible, but in order to fully transition to renewable energy source of energy the federal government must stop actively supporting and taking numerous actions that allow fossil fuels to be the primary energy source.

Business *Amici* Guayaki, Royal Blue Organics, and Hummingbird Wholesale source ingredients globally and ship them to Oregon for processing, packaging and shipment to market. Ideally, they would be able to power the shipment and processing of their products through entirely renewable energy sources. However, as long as the federal government continues to affirmative support and promote fossil fuels, and control the national energy system (in part through federal preemption), Business *Amici* must continue to rely on fossil fuels for some energy.

To help mitigate climate change, Coconut Bliss purchases only certified organic ingredients and backs that up by certifying all of its products. Studies have shown organic growing methods sequester more carbon than conventional farming. Supporting regenerative agriculture is a key component of the business model. Additionally, Coconut Bliss has joined like-minded companies as part of the Climate Collaborative.¹¹ This business-based organization encourages and empowers the natural products industry to be a driver for reversing climate change.

While global agriculture is still dominated by large-scale monocultures with conventional petrochemical inputs and mechanization, there is a clear shift toward low-carbon and climate-resilient agriculture that is distinctly different from the prevailing norm. Agriculture, and the downstream purchasers of agricultural inputs,

¹¹ The Climate Collaborative, <https://www.climatecollaborative.com/> (last accessed February 28, 2019).

have identified the benefits that come with good soil stewardship, high-biodiversity farms, and other methods mimicking natural ecosystems. These benefits are both good for the environment, help mitigate climate change, and are good from a business perspective. Supporting regenerative, resilient agricultural practices is already a key component of several of *Business Amici's* business model, and many other companies. These businesses are pursuing these changes in their supply chains largely out of self-interest because a more resilient supply chain is smart from a business perspective (many of these companies are also mission-driven and pro-climate).¹²

Ski areas across the country are engaged in initiatives to voluntarily reduce their carbon footprint. They are taking action through significant investments in energy efficiency, including applying green building techniques, retrofitting existing structures to be more efficient, investing in efficient lighting and snowmaking systems; significant investments in on-site renewable energy including wind, solar, geothermal, micro-hydro and renewable energy storage projects; entering into agreements for offsite renewable power development and buying renewable energy credits (“REC”) as offsets; using alternative fuels; providing or promoting

¹² Starbucks has developed its own ethical sourcing program, its C.A.F.E. Practices, in which climate resilience and ecosystem stewardship figure prominently (“Farming Communities,” www.starbucks.com/responsibility/community/farmer-support).

carpooling or mass transit by guests and employees; and working with their utilities to increase the amount of energy sourced from renewable power on the grid.¹³

Amici NSAA developed its “Climate Challenge” program in 2011 as a voluntary program for reducing carbon emissions and reporting on those reductions in the absence of adequate federal regulations to address climate change. The Climate Challenge program provides technical support and recognition to ski areas that are developing carbon inventories, setting goals for carbon reduction, and measuring success in reducing their overall carbon footprint. Together, the cumulative impact of all Climate Challengers’ on-site projects plus REC purchases since 2011 is 252,169 MTCO_{2e}.¹⁴ This reduction is the equivalent of over 37,700 homes’ electricity for a year, or the carbon sequestered by 6.5 million tree seedlings grown for 10 years.¹⁵

Importantly, Business *Amici* believe that a win for the Plaintiffs in the *Juliana* case, that required the federal government to prepare and implement a national plan to address climate change would actually *help* businesses and the economy.¹⁶ Taking

¹³ National Ski Areas Association, Sustainable Slopes Annual Report (2018), available at: <http://www.nsaa.org/media/340465/AR2018FINAL.pdf>.

¹⁴ National Ski Areas Association, *Climate Challenge Annual Report* 17 (2018), available at: <http://www.nsaa.org/media/340465/AR2018FINAL.pdf>.

¹⁵ *Id.*

¹⁶ Stiglitz, Joseph (2018). *Declaration Of Joseph E. Stiglitz, Ph.D In Support Of Plaintiffs’ Urgent Motion Under Circuit Rule 27-3(B) For Preliminary Injunction*, Case No. 18-36082, In the United States Court of Appeals for the Ninth Circuit.

action to address climate change will not only help *Business Amici* but will have an impact far beyond the agriculture and winter sports industry. For example, there is broad cooperation among some of the nation's largest corporations to transform production, consumption, and policy to protect both the climate and business interests. For example, the World Business Council for Sustainable Development ("WBCSD") is a coalition of "almost 200 forward-thinking global companies committed to advance the sustainability agenda."¹⁷ The group, founded and run by many of the world's largest corporations, has created or partnered in a wide range of foundational sustainable business efforts. Some of WBCSD's work is surprisingly transformational, fostering and promoting change in agriculture, forestry, high-emissions sectors such as cement and tires. In short, WBCSD has become a vibrant venue in which major companies work together with the express purpose of advocating for and fostering change.

CDP (formerly the Carbon Disclosure Project) has become a principal global venue for large and medium-sized businesses to document and disclose their climate impacts and strategies. CDP acts as a disclosure and information-sharing platform for some of the world's largest companies with complex supply chains. Walmart, Johnson & Johnson, Procter & Gamble, and others now use CDP to gain

¹⁷ World Business Council for Sustainable Development, www.wbcsd.org/Overview/About-us.

insight into the so-called “climate risk” they bear as a result of their complex global supply chains. Notably, the entire disclosure effort is on behalf of CDP’s “network of investors and purchasers, representing over \$100 trillion, along with policy makers around the globe.”¹⁸ It is significant that investors—banks, hedge funds, insurance companies, pension funds and other institutional investors and more—are at the heart of CDP because risk ultimately lands with lenders and investors whose money is at stake. This ostensibly “voluntary” request of firms by financial markets is taken seriously by large companies, with over 70% of S&P 500 firms in the U.S. now responding to the CDP questionnaire.

Additionally, RE100 is “a collaborative, global initiative uniting more than 100 influential businesses committed to 100% renewable electricity, working to massively increase demand for—and delivery of—renewable energy.”¹⁹ These firms have come together to develop expertise and tools for pursuing renewable energy.

And finally, *amici* American Sustainable Business Council (“ASBC”) is a growing coalition of business organizations and companies advancing market solutions and policies that support a vibrant, just and sustainable economy. ASBC informs and engages business leaders, while educating decision makers and the media about opportunities and policies that can lead to a more sustainable economy.

¹⁸ CDP, Our Vision and Mission, <https://www.cdp.net/en/info/about-us>.

¹⁹ The RE100, About Us, there100.org/re100.

Founded in 2009, today, the organizations that have joined in this partnership represent over 200,000 businesses. These diverse business organizations cover the gamut of trade associations, local and state chambers of commerce, microenterprise, social enterprise, minority, cooperatives, green and sustainable business groups, local and community-rooted business, women business leaders, economic development organizations and investor and business incubators. ASBC is raising up the voice and power of business to create jobs, grow business and build a sustainable U.S. economy. ASBC members believe that sustainable business is good business, and a sustainable economy is a prosperous and resilient one.²⁰

ASBC businesses, which represent many small and medium enterprises across the country, have been instrumental in pioneering new innovations to address climate change, including water technologies, new battery and renewable energy systems, practices to reduce energy consumption, regenerative agricultural practices, green and more resilient building materials and design, and more. ASBC businesses understand the need to work hand and hand with government to advance policies that enable businesses to address the economic and environmental problems associated with climate change and to advance the needed innovations that U.S. businesses can provide.

²⁰ American Sustainable Business Council, Who we Are and What we Do, <http://asbcouncil.org/about-us#.XHmQFC2ZPOQ> (last accessed March 1, 2019).

In sum, many businesses, including *Business Amici*, support and will flourish in an economy powered by renewable energy. Indeed, because businesses increasingly face financial risks and losses due to climate change, the converse, not taking action on climate change, poses grave threats to the nation's economy. Taking action to address climate change is essential for supporting a prosperous business community and national economy.

CONCLUSION

In addition to the overwhelming social, environmental, and economic rationale provided by other *amici* and in expert testimony, *Business Amici*, and the business community in general, stand to benefit from bold action by the federal government to address climate change. Therefore, *Business Amici* respectfully request that this Court return the case to the district court for trial.

RESPECTFULLY SUBMITTED AND DATED this 1st day of March,
2019.

TERRELL MARSHALL LAW
GROUP PLLC

By: /s/ Toby J. Marshall

Toby J. Marshall

Email: tmarshall@terrellmarshall.com

936 North 34th Street, Suite 300

Seattle, Washington 98103

Telephone: (206) 816-6603

Counsel for Business Amici

CERTIFICATE OF COMPLIANCE WITH RULE 32(g)(1)

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,
TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS**

1. This brief contains 4,306 words, excluding the items exempted by Fed. R. App. P. 32(f).
2. This BRIEF OF AMICUS CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains no more than one-half the maximum length authorized by these rules for a party's principal brief.
2. This BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLEES is in compliance with the typeface requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in a font style Times New Roman and font size 14-point type.

DATED this 1st day of March, 2019.

TERRELL MARSHALL LAW
GROUP PLLC

By: /s/ Toby J. Marshall

Toby J. Marshall

Email: tmarshall@terrellmarshall.com

936 North 34th Street, Suite 300

Seattle, Washington 98103

Telephone: (206) 816-6603

Counsel for Business Amici

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED this 1st day of March, 2019.

TERRELL MARSHALL LAW
GROUP PLLC

By: /s/ Toby J. Marshall

Toby J. Marshall

Email: tmarshall@terrellmarshall.com

936 North 34th Street, Suite 300

Seattle, Washington 98103

Telephone: (206) 816-6603

Counsel for Business Amici