



U.S. Department of Justice

Environment and Natural Resources Division

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August 6, 2019

Ms. Molly C. Dwyer
Clerk, U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, California 94103

Re: No. 18-36082, *Juliana v. United States*

Dear Ms. Dwyer:

On July 31, 2019, the District of Oregon granted the government’s motion to dismiss the complaint in *Animal Legal Defense Fund v. United States (ALDF)*, No. 6:18-cv-01860-MC, 2019 WL 3467927. Plaintiffs in that case, two nonprofit organizations and six individuals, asserted that “climate change—and the government’s failure to protect them from the effects of climate change—has violated their constitutional right to a safe and sustainable environment,” including a constitutional “right to wilderness.” *Id.* at *1.

The district court identified several independent grounds for dismissal. First, it held that the plaintiffs lacked standing because their alleged injuries from climate change are “generalized grievances” and “not particularized,” *id.* at *3, as we have argued here, Opening Brief 13-17; Reply Brief 5-8. Next, the court held that the action “is not a case or controversy under Article III” because “[i]t is not the province of the judiciary to make the policy decisions required to grant Plaintiffs the relief they seek,” 2019 WL 3467927, at *3, as we have argued here, Opening Brief 24-27; Reply Brief 15-17.

Finally, the court held that that the “right to wilderness” plaintiffs identified “lacks foundation in this ‘Nation’s history, legal traditions, and practices’ and is unlike other fundamental rights the Supreme Court has enumerated.” 2019 WL 3467927, at *4. Indeed, the court recognized that “courts have consistently held that there is no fundamental right to a particular type of environment or environmental conditions.” *Id.*; *see id.* n.2 (collecting cases). The court also rejected the plaintiffs’ reliance on the district court’s denial of the government’s motion to dismiss in *Juliana*, distinguishing *Juliana* on the ground that Plaintiffs “did not object to the government’s role in just any pollution or climate change, but rather catastrophic levels of pollution or climate change.” *Id.* at *5. Even if it were true that Plaintiffs challenge only “catastrophic” levels of climate change, the *ALDF* court identified a distinction without a difference. Like the *ALDF* plaintiffs’ “right to wilderness,” Plaintiffs’ right to a “stable climate system” is also without basis in this Nation’s history or tradition. Opening Brief 35; Reply Brief 23.

Sincerely,

s/ Jeffrey Bossert Clark
Jeffrey Bossert Clark

Counsel for Appellants

cc: All counsel via CM/ECF