



U.S. Department of Justice

Environment and Natural Resources Division

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September 16, 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*
Response to Appellees' Rule 28(j) letter of September 6, 2019

Dear Ms. Dwyer:

The federal courts lack jurisdiction over Plaintiffs' suit, and the Supreme Court's 1939 decision in *Atlas Life Insurance Co. v. W.I. Southern, Inc.*, 306 U.S. 563 (1939), does not change that bottom line. *Atlas Life* merely confirms that the "jurisdiction" that the Judiciary Act of 1789 "conferred on the federal courts to entertain suits in equity is an authority to administer . . . the principles of the system of judicial remedies which had been devised and was being administered by the English Court of Chancery." *Id.* at 568. Plaintiffs seek to have the federal courts solve global climate change, which far exceeds any remedy "devised" and "administered by the English Court of Chancery." *Id.*; *see also* Opening Brief 25-26.

Plaintiffs assert that the government has attempted to "create a new, unfounded jurisdictional barrier," citing the Supreme Court's statement that the Judiciary Act "does not define the jurisdiction of the district courts as federal courts" but instead enables courts to determine whether a particular case is "an appropriate one for the exercise of the extraordinary powers of a court of equity." 306 U.S. at 568. Plaintiffs are lost in semantics. The federal courts lack Article III jurisdiction for two reasons. They lack jurisdiction because Plaintiffs do not have standing. Opening Brief 12-23; Reply Brief 4-15. And they lack jurisdiction because the suit is not otherwise a case or controversy "of the sort traditionally amenable to, and resolved by, the judicial process." *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765, 774 (2000) (internal quotation marks omitted); *see also* Opening Brief 24-27; Reply Brief 15-17. Plaintiffs cannot rely on the federal courts' equitable jurisdiction to establish that their claims are an Article III case or controversy because the relief Plaintiffs seek is not of the sort "traditionally accorded by courts of equity." *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 319 (1999); *see also* Opening Brief 24-27. Neither the Judiciary Act nor *Atlas Life* suggests that Article III jurisdiction encompasses Plaintiffs' claims.

Sincerely,

s/ Jeffrey Bossert Clark
Jeffrey Bossert Clark

Counsel for Appellants

cc: All counsel via CM/ECF