No. 18-36082

IN THE 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 Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b)

BRIEF OF FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY, AOKI CENTER FOR CRITICAL RACE AND NATION STUDIES, CHARLES HAMILTON HOUSTON INSTITUTE FOR RACE & JUSTICE, CENTER ON RACE, INEQUALITY, AND THE LAW, AND HOWARD UNIVERSITY ENVIRONMENTAL JUSTICE CENTER AS AMICI CURIAE IN SUPPORT OF APPELLEES' PETITION FOR REHEARING EN BANC

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), undersigned counsel for amici curiae make the following disclosures. The Fred T. Korematsu Center for Law and Equality, the Aoki Center for Critical Race and Nation Studies, the Charles Hamilton Houston Institute for Race & Justice, the Center on Race, Inequality, and the Law, and the Howard University Environmental Justice Center are not publicly-held corporations, do not issue stock, and do not have parent corporations and consequently there exist no publicly held corporations which own 10 percent or more of their stock.

STATEMENT REGARDING CONSENT TO FILE

Undersigned counsel certifies that the parties have consented to the filing of the amicus brief pursuant to Circuit Rule 29-2(a). Undersigned counsel notes that counsel for Defendants-Appellants conditioned consent on the amicus brief being timely and in compliance with the relevant rules. Undersigned counsel certifies that the brief is compliant with these conditions.

FRAP 29 AND CIRCUIT RULE 29-2 STATEMENT

Amici certify that, pursuant to Federal Rules of Appellate Procedure 29(a)(4)(E) and 29(b)(3), no party's counsel authored this brief in whole or in part, nor did any party or party's counsel contribute money that was intended to fund preparing or submitting this brief. No person—other than the amici curiae, their members, or their counsel—contributed money that was intended to fund preparing or submitting this brief.

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STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

Amici curiae, the Fred T. Korematsu Center for Law and Equality at Seattle University School of Law, the Aoki Center for Critical Race and Nation Studies at UC Davis School of Law, the Charles Hamilton Houston Institute for Race & Justice at Harvard University School of Law, and the Center on Race, Inequality, and the Law at New York University School of Law, are academic centers at their respective law schools that focus on research, education, and advocacy on issues regarding race and racial justice; amicus curiae Howard University Environmental Justice Center is an academic center that emphasizes the intersection of race and environmental justice.[1] Amici note that climate change is a racial justice issue that has, and will continue to have, particularly devastating effects on communities and people of color, especially the children. Amici submit this brief in support of rehearing en banc because they are deeply concerned that the majority's decision will make it more difficult for individuals and groups to safeguard their civil rights in the courts.

INTRODUCTION

Imagine if the Warren Court told the "minors of the Negro race, through their legal representatives[ ] [who sought] the aid of the courts in obtaining

[1] Complete statements of interest are included below in Appendix A.

admission to the public schools of their community on a nonsegregated basis"[2] that they lacked Article III standing to have their claims adjudicated in federal courts because their injuries, though in violation of their constitutional rights and traceable to actions by state actors, nevertheless exceeded the capacity of federal courts to provide an adequate remedy because such a remedy was too complex or difficult to implement.

The *Juliana* majority held that the youth plaintiffs had no court case but instead "an impressive case to be presented to the political branches," *Juliana v. United States*, 947 F.3d 1159, 1165 (9th Cir. 2020). Had this reasoning prevailed in 1954, Chief Justice Earl Warren would have announced that federal courts were powerless to address constitutional violations that were deemed too intractable—that unless Black and Brown children could prevail in the political realm, they could never hope to have separate but equal in primary education redressed by courts. It would have left Black and Brown children, and their parents, to present their case for redress to their local school boards—many of which were predisposed against them under cover of Jim Crow. As experience teaches us, how could "minors of the Negro race" believe that the courts could fully redress their harm? Yet, as experience also teaches us, because of the intractability of many

[2] *Brown v. Bd. of Ed. of Topeka, Shawnee Cty., Kan.*, 347 U.S. 483, 487 (1954) (*Brown I*), *supplemented sub nom. Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294 (1955) (*Brown II*).

local governments, the "minors of the Negro race" could not rely on the political process to provide a remedy. They needed the courts.

As was true of Black children in 1954, the *Juliana* plaintiffs need the courts to vindicate their rights when other branches of government refuse to do so.

SUMMARY OF THE ARGUMENT

The broad and extensive remedial powers of Article III courts have been invoked to address some of the most vexing challenges faced by our nation. Chief among them is racial segregation in education and the complexities associated with a racial caste system buttressed by federal, state, and local government actors, practices, and policies. The Court should be mindful of this historical precedent and deploy its remedial powers to address the injuries raised by the *Juliana* plaintiffs, even though the remedies will be complex and difficult to implement. Courts are fully capable of redressing injuries for which remedies depend on the resolution of issues of hard physical science.

The desegregation effort catalyzed by *Brown I* and *Brown II* and the desegregative efforts undertaken by district courts across the nation demonstrate the sweeping remedial power that courts have to redress constitutional violations that are divisive, socially entrenched, and politically intractable. *Brown* and the ensuing desegregation cases also demonstrate that redressability is not about perfect efficacy but about pragmatic progress. Courts retain their jurisdiction to set

a trajectory toward a constitutional endpoint, to manage the process and ensure compliance, and ultimately to step back upon a determination that sufficient progress has been achieved. The desegregation cases eventually became less effective in dismantling the legacy of de jure segregated schools by refusing to implement interdistrict remedies and address continuing de facto segregation. Nevertheless, those cases created useful standards for courts to draw on in assessing whether the parties have resolved the harm to the extent practicable—standards the district court could and should implement in this case.

Because this case involves a question of exceptional importance and because the majority's decision is in tension with *Brown I*, *Brown II*, and the legacy desegregation cases as well as institutional reform litigation to vindicate the rights of disempowered communities, rehearing en banc is appropriate under FRAP 35(a)(2). *See also Brown I*, 347 U.S. at 488 (noting "the obvious importance of the question presented" and taking jurisdiction).

ARGUMENT

I. BROAD REMEDIAL POWER MUST BE EXERCISED TO REDRESS CONSTITUTIONAL VIOLATIONS THAT REALISTICALLY CANNOT BE VINDICATED THROUGH THE POLITICAL PROCESS AND TO PRESERVE COURTS' ABILITY TO PROTECT CIVIL RIGHTS.

The broad remedial authority exercised in *Brown* was necessary because the political branches could not be relied upon to recognize and protect the

constitutional rights of Black and Brown children. In declaring that "[s]eparate educational facilities are inherently unequal," the *Brown* Court recognized that desegregation would not occur without judicial action. Erwin Chemerinsky, *The Segregation and Resegregation of American Public Education: The Court's Role*, 81 N.C. L. Rev. 1597, 1600 (2003). Judicial action was necessary precisely because those most affected by segregation "lack[ed] adequate political power to achieve integration through the political process." *Id.*

The broad remedial power exercised in *Brown* was also necessary where aggregate government actions had to be dismantled, and the trajectory of government decision-making reset along a constitutional path. Against a backdrop of government-mandated segregation in every southern state (and many northern ones), *Chemerinsky*, *supra* at 1602, it would have been both unconscionable and ineffective to place the burden on school children and their families to effect change within school boards and local governments—the precise entities that perpetuated Jim Crow segregation. As Justice Thomas recognized, the *Brown* Court's initial approval of broad remedial measures was "necessary to overcome the widespread resistance to the dictates of the Constitution." *Missouri v. Jenkins*, 515 U.S. 70, 125 (1995) (Thomas, J., dissenting).

The majority's decision concludes that part of the redress the youth plaintiffs seek—an order requiring the government to develop a plan to "phase out fossil fuel

emissions and draw down excess atmospheric CO_2," 947 F.3d at 1164–65—is both beyond the Court's constitutional power and one that could be presented to the political branches for redress. *Brown* demonstrates that both presumptions are flawed and illustrates that courts' remedial power has the force necessary to address widespread constitutional wrongs running through governmental entities. And, like in *Brown*, broad remedial authority is called for where the political process is unavailable to those aggrieved, like the plaintiff children here, who are suffering and will suffer most profoundly from climate change, and who cannot yet vote. This Court recognized as much when it recently reversed a district court's finding of unitary status because "[d]ecades of Supreme Court precedent dictate that, where good faith lacks and the effects of de jure segregation linger, public monitoring and political accountability do not suffice." *See Fisher v. Tucson Unified Sch. Dist.*, 652 F.3d 1131, 1143 (9th Cir. 2011).

The majority's restrictive view of redressability is contravened by decades of precedent across an array of civil rights issues involving structural injunctions[3]

[3] Charles F. Sabel & William H. Simon, *Destabilization Rights: How Public Law Litigation Succeeds*, 117 Harv. L. Rev. 1016, 1021–52 (2004) (tracing history of institutional reform remedies, especially litigation involving education, mental health services, prisons, police, and housing); *see also Brown v. Plata*, 563 U.S. 493, 511 (2011) (ordering reduction of California's prison population to remedy Eighth Amendment violations).

or consent decrees.[4] Cases resolved by consent decrees showcase how redressability concerns are unwarranted here; many cases requesting institutional change to pass constitutional muster surpass the initial standing hurdle and are resolved without judicially fashioned remedies. Cases involving appointed monitors or special masters showcase how federal courts are equipped to carefully manage injunctive remedies. And the Court is ultimately responsible for ensuring that a consent decree produces the required result, with power to modify the consent decree. *United States v. United Shoe Mach. Corp.*, 391 U.S. 244 (1968). Both the structural injunction and the oversight of consent decrees are vital tools in cases involving discrimination and disempowered communities.

II. THE DESEGREGATION CASES DEMONSTRATE THAT REDRESSABILITY NORMS ARE ROOTED IN PRAGMATIC PROGRESS RATHER THAN PERFECT EFFICACY.

A. Courts Can Effectively Oversee and Enforce Broad Remedial Schemes, as Courts Demonstrated in the Early Desegregation Cases.

In the face of overturning half a century of de jure race discrimination under *Plessy v. Ferguson*, 163 U.S. 537 (1896), and Jim Crow, *Brown*'s recognition that separate was unequal brought with it a remarkable exercise of remedial authority to

[4] *See, e.g.*, Consent Decree, *Antoine ex rel. Milk v. Winner Sch. Dist.*, No. 3:06-CV-03007 (D.S.D. Dec. 10, 2007), Dkt. 64 at 3–4, 8–10 (remedying school-to-prison pipeline impacting Native American students); *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999) (racial discrimination in farm loans); *NAACP, Western Region v. Brennan*, 360 F. Supp. 1006 (D.D.C. 1973) (migrant farmworkers' rights).

ensure that the constitutional right of equal protection meant something in substance as well as form. Recognizing that its declaration would be empty without the accompanying power to enforce the principle of integrated schools, the Court required the parties to fully develop proposals for how lower courts would manage desegregation efforts, including the possibility that each district court would frame decrees to define those efforts, and/or appoint a special master to craft the terms for the decrees. *Brown*, 347 U.S. at 495 n.13 (setting forth questions for parties to further develop regarding how the Court would oversee implementation of the remedy).

In *Brown II*, the Court sent the case back to lower courts to achieve desegregation "with all deliberate speed." 349 U.S. at 301. The Court also recognized that in fashioning and effectuating the decrees, courts must be guided by "a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs." 349 U.S. at 300 (citing *Hecht Co. v. Bowles*, 321 U.S. 321, 329–30 (1994)).

Ten years later, realizing that school boards were failing to implement *Brown*'s mandate, the Court began to issue a handful of important desegregation decisions, signaling to district courts that they had broad authority both to carefully scrutinize school boards' attempts to skirt *Brown*'s mandate, *see, e.g.*, *Green v. Cty. Sch. Bd. of New Kent Cty.*, 391 U.S. 430 (1968) (freedom of choice plan did

not constitute adequate compliance with *Brown*'s mandate to desegregate), and to implement effective tools for integrating schools, including redrawing attendance zones and busing students, *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971). These decisions, issued between 1964–1974, activated the sweeping and appropriate remedial power announced in *Brown II*.

First, in *Griffin v. Cty. Sch. Bd. of Prince Edward Cty.*, 377 U.S. 218 (1964), the Court signaled to the States that it would more closely scrutinize state-sanctioned devices created to uphold separate but equal. The Court affirmed an injunction against paying tuition grants and giving tax credits to support private segregated schools while Prince Edward County schools remained closed. *Id.* at 232. The Court also indicated that the district court might find it necessary to direct the Board of Supervisors, the entity responsible for implementing levies to finance public schools, "to exercise the power that is theirs to levy taxes to raise funds adequate to reopen, operate, and maintain without racial discrimination a public school system in Prince Edward County." *Id.* at 233. *Griffin* represents recognition that judicial management of complex problems requires active participation by courts to accompany broad declarations of constitutional rights.

The Court in *Green*, 391 U.S. 430, explained to school boards that it was looking for a plan "that promises realistically to work, and promises realistically to work now," *id.* at 439. The decision reminded the nation of the Court's role to

actively encourage school boards to produce a "unitary system in which racial discrimination would be eliminated root and branch." *Id.* at 437–38. *Green* also demonstrated that the judiciary was capable of stringently assessing whether a proposed desegregation plan was sufficient, articulating a specific process through which 1) a school board would generate a plan, with the burden to establish that "proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation," 2) the district court would "weigh[] that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness," and 3) the district would determine that the plan provides effective relief where the board is acting in good faith and the proposed plan has "real prospects for dismantling the state-imposed dual system at the earliest practicable date." *Id.* at 439.

Finally, in *Swann*, 402 U.S. 1, the Court reaffirmed the broad nature of judicial remedial power[5] extended to use of specific tools that would achieve nondiscriminatory school assignments. The Court upheld the district court's mandated busing of students and other student assignment tools to eliminate racial segregation within a particular school district, recognizing that "[t]he essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould

[5] "Once a right and a violation have been shown, the scope of a district court's equitable power to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Id.* at 15.

each decree to the necessities of the particular case." *Id.* at 15 (quoting *Bowles*, 321 U.S. at 329–30, cited in *Brown II*). Equally important was *Swann*'s recognition that equity jurisdiction did not displace the plenary power of the school boards whose decisions it was scrutinizing, while at the same time reaffirming that remedial judicial power was necessary and proper when local authorities failed to proffer acceptable remedies. *Id.* at 16.

These decisions demonstrate that the judiciary can deftly assess efforts to redress constitutional violations by other government entities, and that ongoing exercise of equitable power allows courts to monitor progress towards complex but constitutionally mandated ends.

B. Subsequent Desegregation Cases Demonstrate that Courts Can Effectively Monitor Progress.

Much of the majority's objection to the redressability of Plaintiffs' claims is that oversight of the requested plan to phase out fossil fuel emissions and draw down excess atmospheric CO_2 would require the Courts to become embroiled in a standardless policymaking exercise. 947 F.3d at 1172 ("[P]laintiffs' request for a remedial plan would subsequently require the judiciary to pass judgment on the sufficiency of the government's response to the order, which necessarily would entail a broad range of policymaking."). As demonstrated by the Supreme Court's desegregation jurisprudence, passing judgment on the sufficiency of a government response to a court order is a core competency of an Article III court. And the

framework for assessing progress provided by the school desegregation cases demonstrates that judicial oversight of a remedial plan designed and implemented by the political branches to address climate change could be guided by standards already familiar to the judiciary.

First, any remedy must be related to "the condition alleged to offend the Constitution." *Milliken v. Bradley*, 418 U.S. 717, 738 (1974) (*Milliken I)*; *see also Milliken v. Bradley*, 433 U.S. 267, 281–82 (1977) (*Milliken II*). Second, a decree must be remedial in nature, i.e., designed to "to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct." *Milliken I*, 418 U.S. at 746. Third, in devising a remedy, federal courts must "take into account the interests of state and local authorities in managing their own affairs, consistent with the Constitution." *Milliken II*, 433 U.S. at 280–81 (noting that in *Brown II*, the Court "squarely held that '[s]chool authorities have the primary responsibility for elucidating, assessing, and solving these problems" (quoting *Brown II*, 349 U.S. at 299)). And because the parties had to explain to the court how a proposed action might constitute a sufficient remedy, courts in the desegregation context demonstrated that the judiciary is institutionally capable of engaging with complex scientific standards. Involvement of complex science in the determination of a proper remedy should not prevent the courts from ordering remedies in the climate change context. *See Plata*, 563 U.S. at 535 (some

"judgments [normally reserved to government] officials…necessarily must be made by courts when those courts fashion injunctive relief to remedy serious constitutional violations in the prisons. These questions are difficult and sensitive, but they are factual questions and should be treated as such. Courts can, and should, rely on relevant and informed expert testimony when making factual findings.").

The ultimate inquiry in determining whether a school district has achieved unitary status is a pragmatic one that recognizes the complexity of the undertaking: "whether the Board had complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination had been eliminated to the extent practicable." *Freeman v. Pitts*, 503 U.S. 467, 492 (1992) (quoting *Bd. of Educ. of Oklahoma City Pub. Sch., Indep. Sch. Dist. No. 89, Oklahoma Cty., Okl. v. Dowell*, 498 U.S. 237 (1991)). The good faith standard also enables the judiciary to acknowledge and account for actions by third parties that foil ideal outcomes. White parents were able to partially foil desegregation plans by placing their children into private school. But the decisions of white families did not prevent courts from ordering school districts to take all steps practicable to remedy segregation. Likewise, third parties' approach to climate change should not prevent the courts from ordering the federal government to take all steps practicable to

remedy its knowing, ongoing contributions to the climate crisis that infringe constitutional rights and threaten these children.

Finally, the desegregation cases demonstrate that courts can catalyze creative solutions in managing complex problems. As recently as 2012, a district court in Arizona found that the standards announced in *Freeman* and *Dowell* gave the judiciary authority to delve deeply into important details of desegregation decrees, in that case requiring the school district to provide culturally relevant curriculum, including courses centered on the experiences and perspectives of African American and Latino communities. Unitary Status Plan, *Fisher*, No. Civ. 74-90 and 74-204, Dkt. 1450 at 32 (Feb. 20, 2013). The desegregation decree was entered in 1978, and to this day, the district court continues to meaningfully guide TUSD toward post-unitary status. *Fisher*, 652 F.3d at 1134 (noting decree was originally entered in 1978, four years after initiation of the lawsuit).

C. Overseeing Implementation of a Plan to Reduce Emissions Does Not Present the Same Federalism Concerns that Have Complicated Desegregation Efforts.

Some of the concerns that catalyzed the narrowing of the remedial authority in the school desegregation context are simply not present here. In the eventual tailoring of the desegregation cases[6] that began with the Court's decisions in

[6] The Court's post-*Milliken* decisions, and *Milliken* itself, eviscerated the promise of earlier desegregation decisions, that schools might actually educate all children alongside one another. *See, e.g.*, *Milliken I*, 418 U.S. at 744–45 (courts lacked

Milliken I, 418 U.S. 717, the Court refused to order interdistrict remedies that would have addressed continuing de facto desegregation in Detroit-area schools. An interdistrict remedy would apply equally to school districts who had not enforced segregated schools as to those districts who had operated under de jure segregation, but "without an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy." *Id.* at 745.

The *Milliken* concern—that the court's remedial power would dictate the actions of entities not technically at fault—is not present here. Because the Plaintiffs allege (and the panel agreed) that the combined affirmative actions of multiple government agencies in contributing to climate change caused their injury, *see* Br. of Appellees at 17 n.10, any remedy would apply only to those who contribute to the climate harms, and any decrees originating from the court would apply broadly to all agencies implicated. Any conceivable remedy in this case

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power to order interdistrict remedies because it would include districts that had not themselves violated the constitution); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 54–58 (1973) (courts lacked power to order redistribution of inequitable school funding because those inequalities in funding did not offend equal protection). But these decisions do not reflect something inherently limited about the scope or power behind the broad remedial power exercised in *Brown*. *See* Chemerinsky, *supra* at 1620 (later failure of desegregation cases "are less an indication of the inherent limits of the judiciary and more a reflection of the Supreme Court's choices"). And while *Milliken I* and its progeny devastated desegregation efforts and any meaningful chance to address de facto school segregation, these cases nevertheless provide workable standards that might assist the district court's exercise of remedial authority here.

would require those federal agencies identified, who have all contributed to climate change and are a "'substantial factor' in causing the plaintiffs' injuries," *Juliana*, 947 F.3d at 1169, to come up with a plan to reduce emissions and draw down atmospheric CO_2.

Additionally, the concern for the autonomy of state and local jurisdictions expressed throughout the desegregation cases is simply not present here. *Milliken*, 433 U.S. at 280–81. The target of any remedial scheme is not the variety of subnational governmental units like school boards and local governments as in the desegregation context, but the federal political branches themselves.

D. Separation of Powers Concerns Do Not Eclipse the Judiciary's Duty to Ensure the Actions by the Political Branches Are Constitutional.

Rather than the federalism rationale that ultimately animated a contraction of the courts' remedial power in the desegregation effort, the tension here lies in separation of power concerns. *See Juliana*, 947 F.3d at 1172 ("Absent court intervention, the political branches might conclude…that economic or defense considerations called for continuation of the very programs challenged in this suit, or a less robust approach to addressing climate change than the plaintiffs believe is necessary.").[7] That exercise of remedial authority might be politically sensitive

[7] A school district subject to a desegregation order might also have other considerations that weigh on its approach to desegregation; for example, a school district might conclude that financial consideration calls for changes to enrollment practices that are part of a court-ordered desegregation plan. But in addressing that

should not justify a refusal to order preparation and implementation of a remedial plan. Whether the political branches might choose to address climate change less robustly than plaintiffs request misses the boat entirely. Plaintiffs' constitutionally cognizable injuries—which the panel agrees are sufficient to test at trial—call for the Courts to set the trajectory of the political branches to a constitutionally permissible path of climate redress.

The exercise of remedial authority here would not usurp the power of the political branches, and in fact leaves much power and discretion to the expertise of the political branches. The requested remedial relief would require development and implementation of a plan of Defendants' own devising to draw down atmospheric CO_2. *See generally Sabel & Simon, supra* at 1019 (analyzing the evolution of structural injunctions away from a "command and control" approach toward experimentalist interventions, which "combines more flexible and provisional norms with procedures for ongoing stakeholder participation and measured accountability…. the governing norms are general standards that express the goals the parties are expected to achieve—that is, outputs rather than inputs."). Engaging the standards already applied in the desegregation context and in many other domains of institutional reform litigation, this case requires the court to carry

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or other considerations, a court still has oversight to guarantee that any policy changes do not conflict with the school district's constitutional responsibilities.

out its constitutionally mandated role to act as a check and balance on the actions of the political branches that rise to the level of constitutional concern. The courts' longstanding exercise of remedial authority in the desegregation cases lays bare the majority's unwarranted refusal to engage its judicial oversight of the admittedly complex remedial scheme here—but no more complex than the dismantling of race segregation in education. In fact, addressing CO_2 emissions is arguably simpler and more straightforward[8] than the challenges existing in the desegregation context.

CONCLUSION

For the foregoing reasons, rehearing en banc should be granted.

Respectfully submitted,

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[8] It is simpler and more straightforward because while the plan itself is complex, it would apply to fewer parties and involve hard scientific issues, requiring relatively straightforward judicial supervision of emission reductions reported by the government. And the government already measures CO_2 emissions and atmospheric CO_2 levels, and the sources of emissions are well measured.

APPENDIX A: AMICI CURIAE STATEMENTS OF INTEREST

The Fred T. Korematsu Center for Law and Equality is a non-profit organization based at Seattle University School of Law that works to advance justice through research, advocacy, and education. Inspired by the legacy of Fred Korematsu, who defied the military orders during World War II that ultimately led to the incarceration of over 120,000 Japanese Americans, the Korematsu Center works to advance social justice for all. It has a special interest in ensuring that the judiciary exercise its broad remedial power to ensure that other branches of government exercise their authority within constitutional bounds, particularly when the constitutional rights are held by those who are politically disenfranchised. The Korematsu Center does not, in this brief or otherwise, represent the official views of Seattle University.

The Aoki Center for Critical Race and Nation Studies at King Hall, UC Davis School of Law, fosters multi-disciplinary scholarship and practice that critically examine the law through the lens of race, ethnicity, indigeneity, citizenship, and class. Named to honor the memory of Keith Aoki, the Aoki Center seeks to deepen our understanding of issues that have a significant impact on our culture and society. The Aoki Center has a significant interest in insuring that our courts hold our political branches of government accountable for violations of constitutional rights not just when it is simple and popular but when it

is complicated and treacherous. When the rights of the least powerful in our country are no longer protected by our courts our democracy is gravely wounded.

The Charles Hamilton Houston Institute for Race and Justice (CHHIRJ) at Harvard Law School was launched in 2005 by Charles J. Ogletree, Jr., Jesse Climenko Professor of Law. The Institute honors and continues the unfinished work of Charles Hamilton Houston, engineer of the legal strategy that enabled the unanimous 1954 Supreme Court decision, *Brown v. Board of Education*, resulting in a broad exercise of courts' remedial powers to de-segregate public schools. CHHIRJ recognizes that communities of color particularly depend on courts embracing their equitable remedial powers to ensure protection of constitutional rights for disempowered communities. To ensure that every member of our society enjoys equal access to the opportunities, responsibilities, and privileges of membership in the United States, CHHIRJ seeks to dismantle practices or policies of criminalization, discrimination, and disinvestment in communities of color, including environmental racism.

The Center on Race, Inequality, and the Law at New York University School of Law works to highlight and dismantle structures and institutions that have been infected by racial bias, plagued by inequality, and visit harm upon marginalized groups. The Center fulfills its mission through public education, research, advocacy, and litigation. It has a special interest in ensuring that courts

exercise their broad remedial powers to vindicate the constitutional rights of those subjected to harm at the hands of government. The Center on Race, Inequality, and the Law does not, in this brief or otherwise, represent the official views of New York University or New York University School of Law.

The Howard University Environmental Justice Center supports interdisciplinary scholarly research on legal and public policy issues related to environmental justice, hosts and coordinates educational programs, events, and training, and provides legal support and advocacy for communities experiencing environmental injustices.

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that this brief complies with the type-volume limitations of Circuit Rule 29-2(c) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains fewer than 4,200 words. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared with a proportional typeface using Microsoft Word in Times New Roman 14-point font.

Dated: March 12, 2020

/s/ Jessica Levin
Jessica Levin
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

U.S. Court of Appeals Docket Number: **18-36082**

I hereby certify that on March 12, 2020, 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 this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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