

June 3, 2020

Via CM/ECF

Molly C. Dwyer  
Clerk of the Court  
U.S. Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103-1526

Re: *Kelsey Cascadia Rose Juliana, et al. v. United States, et al.*,  
No. 18-36082

Dear Ms. Dwyer,

Pursuant to Federal Rule of Appellate Procedure 28(j) and Circuit Rule 28-6, Plaintiffs-Appellees submit *In re: Flint Water Cases*, No. 19-1425/1472/1477/1533, 2020 WL 2611546 (6th Cir. May 22, 2020), as supplemental authority. This decision demonstrates the conflict with sister Circuits in the panel majority's holding that it is beyond Article III power to order preparation of a remedial plan for constitutional violations where such plan would require "complex policy decisions" entrusted to the executive and legislative branches. Doc. 156.

In *Guertin v. Michigan*, the Sixth Circuit found the role of government officials in creating, sustaining, and concealing the Flint Water Crisis violated residents' right to bodily integrity. 912 F.3d 907, 921 (6th Cir. 2019), *cert. denied*, 140 S.Ct. 933 (2020). The plaintiffs were deprived of bodily integrity when government mislead them into consuming life-threatening lead and legionella "through the water supply." *Id.* at 920–22.

Relying on *Guertin*, plaintiffs in *In re: Flint Water Cases* sought broad, prospective injunctive relief against Governor Whitmer to redress ongoing violations of their constitutional rights stemming from the crisis, such as "[a]ppointment of a monitor who will assist in the development of remedial plans including, but not limited to: early education, education intervention programs, criminal and juvenile justice evaluations." 2020 WL 2611546 at \*21.

The Sixth Circuit found this type of relief proper:

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In *Milliken* [*v. Bradley*, 433 U.S. 267, 290 (1977)], the Supreme Court held that, under *Ex Parte Young*[, 209 U.S. 123 (1908)], courts could order newly integrated schools to implement remedial education programs in order to combat the lasting effects of de jure school segregation. *Id.* ‘[T]he victims of Detroit’s *de jure* segregated system will continue to experience the effects of segregation,’ the Court reasoned, ‘until such future time as the remedial programs can help dissipate *the continuing effects of past misconduct.*’ *Id.* (emphasis added). Like the remedial education programs at issue in *Milliken*, **the remedial measures that Plaintiffs-Appellees request ‘are plainly designed to wipe out continuing [harms] produced by’ the unconstitutional acts of Defendants-Appellants.** *See id.*

*In re: Flint Water Cases*, 2020 WL 2611546 at \*22 (emphasis added).

Respectfully submitted,

*s/ Julia A. Olson*

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