

June 22, 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 *Bostock v. Clayton County, Georgia*, No. 17-1618, 2020 WL 3146686 (June 15, 2020), as supplemental authority. *Bostock* affirms that statutory terms are to be interpreted by ordinary meaning, further demonstrating the irreconcilability of the panel majority's decision regarding the sufficiency of relief under the Declaratory Judgment Act, 28 U.S.C. § 2201 ("DJA"), with Supreme Court precedent. Doc. 156 at 8-14.

"[W]hen the meaning of the statute's terms is plain, [the Court's] job is at an end," as "[t]he people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration." *Bostock*, 2020 WL 3146686 at *14. The DJA states courts "may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). To hold, as the majority has, that where plaintiffs demonstrated injury-in-fact and causation, the court cannot "declare the rights and other legal relations" of the parties renders meaningless the plain terms of the DJA.

The majority relies on an "extratextual consideration" that declaratory relief is not meaningful "absent further court action." Doc. 153-1 at 22. But Congress did not carve out such an "extratextual consideration" in the DJA. Declaratory relief may be awarded "whether or not further relief is or could be sought." 22 U.S.C. § 2201(a). If the availability of declaratory relief in a constitutional case involving climate change is an exception to courts' authority to issue declaratory judgments, it

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must be expressly stated in the written law. *Bostock*, 2020 WL 3146686 at *11 (when law does not “include any exceptions to a broad rule, courts apply the broad rule.”).

The possibility of a declaratory judgment shows this dispute is amenable to judicial resolution. The declaratory relief awarded in *Bostock* will govern the way employers and government comply with the law in the future, just as declaratory relief, if awarded here, could resolve the constitutional controversy brought by these children.

Respectfully submitted,

s/ Philip L. Gregory

PHILIP L. GREGORY

(CSB No. 95217)

Gregory Law Group

1250 Godetia Drive

Redwood City, CA 94062

JULIA A. OLSON

(OSB No. 062230, CSB No. 192642)

Wild Earth Advocates

1216 Lincoln Street

Eugene, OR 97401

ANDREA K. RODGERS

(OSB No. 041029)

Law Offices of Andrea K. Rodgers

3026 NW Esplanade

Seattle, WA 98117

Attorneys for Plaintiffs-Appellees

cc: All Counsel of Record (via CM/ECF)