

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 courts can resolve cases through declaratory relief interpreting our Nation’s laws, even laws whose breadth of application and consequence may have been unanticipated by their authors. Doc. 156 at 8-10.

As Justice Gorsuch emphasized, “[s]ometimes small gestures can have unexpected consequences. Major initiatives practically guarantee them.” *Bostock*, 2020 WL 3146686 at *3. Like the 1964 Civil Rights Act, the Fifth Amendment’s breadth of protection that “[n]o person . . . shall be deprived of life, liberty, or property, without due process of law” constitutes a “major initiative” requiring judicial interpretation, precisely suited for declaratory relief. “[T]he limits of the drafters’ imagination supply no reason to ignore the law’s demands.” *Id.*

Bostock rejects the argument that, “[w]hen a new application emerges that is both unexpected and important,” the Court should “refer the subject back to Congress, and decline to enforce the plain terms of the law in the meantime.” *Id.* at *15. To abandon the judiciary’s role as interpreter of laws, especially the Constitution, “would tilt the scales of justice in favor of the strong or popular and neglect the promise that all persons are entitled to the benefit of the law’s terms.” *Id.* By abandoning Constitutional interpretation and the possibility of declaratory relief here, telling non-voting children to turn to Congress, the majority favored the strong, popular interests that maintain the *status quo*, denying children the protections afforded by the Fifth Amendment. As Alexander Hamilton explained, “the job of the

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judge is to enforce the supreme and enduring law of the Constitution over the current will of the majority.” Justice Neil Gorsuch, *A Republic, If You Can Keep It*, 186 (2019); *see* Doc. 156 at 8. If a court can decline jurisdiction in one case for extraconstitutional reasons, then it can use this unwritten exception to decline jurisdiction in any case, avoiding its interpretive obligations imposed by Article III. *Zivotofsky v. Clinton*, 566 U.S. 189, 194–95 (2012).

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)