

Case 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 Appeal from the United States District Court
For the District of Oregon (6:15-cv-01517-TC-AA)

***AMICI CURIAE* BRIEF OF MEMBERS OF THE UNITED STATES
CONGRESS IN SUPPORT OF PLAINTIFFS-APPELLEES.**

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AMICI CURIAE BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF MANDAMUS

No party's counsel authored this brief, and no party, party's counsel, or other person contributed money for the preparation or filing of this brief. FRAP 29(a)(4)(E).

Pursuant to FRAP 29(a)(2), all parties consent to the filing of this *amici curiae* brief.

I. IDENTITY AND INTEREST OF AMICI CURIAE

Amici curiae are members of the United States Senate and House of Representatives: Senator Ron Wyden of Oregon; Senator Jeff Merkley of Oregon; Senator Sheldon Whitehouse of Rhode Island; Representative Debra Haaland of New Mexico; Representative Peter DeFazio of Oregon; Representative Earl Blumenauer of Oregon; and Representative Rashida Tlaib of Michigan.

As members of Congress, we serve the citizens of the United States. The Youth Plaintiffs are among the youngest generation and the most vulnerable citizens. Each branch of our Nation's government has a role to play in protecting our most vulnerable citizens and the generation that will be born to them. *Amici* have a strong interest in ensuring that all three branches of the government comply with the unique and vital roles each plays in upholding the United States Constitution under our divided system of government. We affirm the Court's duty to assess the

constitutionality of the conduct of its co-equal branches and the vital role that our system of checks and balances, designed to limit the power of the various parts of the government, plays in the healthy functioning of our democracy, ensuring each branch follows the will of the people. *Amici* support the Youth Plaintiffs' fundamental rights and respectfully ask this Court to grant Plaintiffs a trial to present their case and secure their constitutional rights to life, liberty, property, and public trust resources.

II. SUMMARY OF ARGUMENT

We, members of Congress, believe that youth's fundamental rights to life, liberty, and property and the access to the essential natural resources they need to survive are being threatened by a man-made climate crisis caused, in large part, by our national fossil fuel energy system. This Court must exercise its duty in assessing the conduct of its co-equal branches and evaluating the constitutionality of the conduct which violates the fundamental rights of these Youth Plaintiffs and future generations. Not only does the Court have the power to interpret the law and provide remedies for systemic violations, the federal judiciary as a whole must fulfill its duty despite the inappropriate politicization of climate change.

III. ARGUMENT

A. The Court must exercise its duty to assess the constitutionality of the conduct which violates the Youth Plaintiffs' fundamental rights to life, liberty, and property

Given the urgency of climate change and the allegations that the federal government's historic and ongoing actions have substantially caused the climate crisis, the Court must exercise its core and traditional duty to assess the constitutionality of the conduct challenged based on the scientific evidence, not on politics. The Constitution guarantees citizens protection against government action that takes away life, liberty, or property without due process. U.S. Const. Amend. V. The Youth Plaintiffs' fundamental rights to life, liberty, property, and the access to essential natural resources, as guaranteed in the Constitution and public trust doctrine, are currently being threatened by a human-induced climate crisis.

A growing body of scientific data – including the recent 2018 Intergovernmental Panel on Climate Change special report and the Fourth National Climate Assessment, Volume II – continues to add to the vast body of scientific evidence verifying that climate change is accelerating at an alarming pace. The catastrophic impacts of global warming are inflicting the greatest harms (and will continue to inflict those harms) on the youngest generation. Among the many allegations which must be taken as true for purposes of reviewing a motion to dismiss, *see* FRCP 12(b)(6), Plaintiffs allege the federal government has had a substantial historic and ongoing role in creating the climate crisis in violation of

Plaintiffs' constitutional rights.¹ These allegations were thereafter supported by expert testimony and citations to numerous documents generated by the federal government. *See* SER10-SER505.

Given the substantial evidence presented in opposing summary judgment by the Youth Plaintiffs of the present climate crisis, the harmful effects on these Plaintiffs as a result of the climate crisis, and allegations and evidence of the federal government's role in creating and perpetuating this crisis, the Court has a duty to assess the constitutionality of the conduct challenged. The judiciary cannot defer to the branches whose conduct is challenged as violating the Constitution. "The Government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right." *Marbury v. Madison*, 5 U.S. 137, 163 (1803). With the increasing exacerbation of the climate crisis induced by the federal government's own actions, the Court must act now or deny these Youth Plaintiffs the possibility of any nation-wide recourse, leading to futures plagued by instability and unnecessary destruction.

¹ *See, e.g.*, Plaintiffs' Amended Complaint, ER517, ("By their exercise of sovereign authority over our country's atmosphere and fossil fuel resources, they permitted, encouraged, and otherwise enabled continued exploitation, production, and combustion of fossil fuels, and so, by and through their aggregate actions and omissions, Defendants deliberately allowed atmospheric CO₂ concentrations to escalate to levels unprecedented in human history, resulting in a dangerous destabilizing climate system for our country and these Plaintiffs.")

B. The Constitution vests the power to provide remedies for systemic violations in the judiciary

It is “the province and duty” of the Courts to “say what the law is” in cases alleging constitutional violations by the executive and legislative branches, as with this case. *Id.* “Those who apply the rule to particular cases, must of necessity expound and interpret that rule.” *Id.* It is the duty of the judiciary to interpret laws and the Constitution and, with the benefit of a full record of evidence, make findings in accordance thereof in remedying a harm. This role that the judiciary must fulfill has been especially significant in cases, like this one, alleging systemic constitutional deprivations. *See, e.g., Brown v. Bd. of Educ.*, 349 U.S. 294 (1955); *Brown v. Plata*, 563 U.S. 493 (2011); *Hills v. Gautreaux*, 425 U.S. 284 (1976).

The role of the judiciary in remedying systemic constitutional violations, such as those at issue in the instant case, is not to take on the policy devising roles of the other branches, but only to interpret the Constitution and assess the federal government’s compliance with it. If a violation is found, courts can then order the other branches to prepare and implement plans of their own creation to remedy the violations identified. Historically, this is what has occurred in many systemic constitutional cases. *See, e.g., Bolling v. Sharp*, 347 U.S. 497 (1954); *Brown v. Bd. of Educ.*, *supra*; *Hills v. Gautreaux*, *supra*.

C. The Court must fulfill its duty despite inappropriate politicization of climate change

Climate change has inappropriately been turned into a political issue. Notwithstanding the inappropriate politicization of the issues, the protection of fundamental rights at issue in this case is squarely within the Courts' competence and duties. As *Amici*, we fundamentally agree with the position taken by these Youth Plaintiffs and the reasoning of the district court: "[T]he intractability of the debates before Congress and state legislatures and the alleged valuing of short-term economic interest despite the cost to human life, necessitates a need for the Courts to evaluate the constitutional parameters of the action or inaction taken by the government." SER 552. The far-reaching effects of climate change, with the lives, liberties, and properties of many generations of Americans at stake, calls upon the judiciary to look past the current political divide and exercise its duty to adjudicate the case in an impartial and unbiased manner based on the evidence. The Youth Plaintiffs must be allowed to have their day in an apolitical court to give their testimony about how they have been harmed by climate change caused by the federal government, to present their scientific evidence, and, most importantly, to defend their fundamental rights under the Constitution.

The issues of whether resources foundational to human survival and security can be destroyed or irreversibly harmed cannot be deliberated solely by our government's political branches: Elected officials accept money from the very

interest groups that profit off of this destruction. Our government's courts must also address these issues under exacting analyses of fundamental rights and discrimination against a class of people, our nation's youngest citizens.

IV. CONCLUSION

From the present flooding and arctic temperatures in the East to the wildfires and droughts in the West, climate change is not just an impending threat that risks the future of this Nation, but a present crisis. The lives of our children, our grandchildren, and generations that will be born to them are at a Constitutional crossroads. The federal judiciary has the power to alter the path for these Youth Plaintiffs by assessing the constitutionality of the conduct of its coequal branches. *Amici* support protecting these Youth Plaintiffs' fundamental rights under the Constitution. We respectfully ask the Court to uphold its duty under the United States Constitution and grant Plaintiffs a trial to present their evidence and secure their constitutional rights to life, liberty, property, and public trust resources.

Respectfully submitted this 1st day of March, 2019.

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UNITED STATES COURT OF APPEALS
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