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Youth Plaintiffs in *Juliana v. United States* File Petition with Ninth Circuit Court of Appeals Seeking Full Court Review of Their Case

The 21 Youth Plaintiffs Continue to Fight for Their Right to a Trial in the Most Important Climate Lawsuit in America

Eugene, Oregon - On Monday, March 2, attorneys for the 21 young Americans behind the landmark constitutional climate lawsuit, *Juliana v. United States*, [filed a petition for rehearing en banc](#) with the Ninth Circuit Court of Appeals. This petition asks the full Ninth Circuit Court of Appeals to convene a new panel of 11 circuit court judges to review [January's sharply divided](#) opinion. In a 2-1 decision, the panel of judges decided federal courts do not have the power to remedy the youth plaintiffs' injuries even though there was ample evidence that they were caused by the federal government.

In the petition for rehearing *en banc*, the youth plaintiffs argue the full Court of Appeals should review the January decision because of the unparalleled gravity of the case and because the divided panel decision undermines the role of the judiciary under the Constitution to act as a check on abuses of power of the other branches, including the Executive branch. The youth plaintiffs contend the majority's decision would have undone other landmark Supreme Court decisions protecting children's constitutional rights like *Brown v. Board of Education*. The petition asks the full Court to allow the facts and expert testimony to be presented at trial and the constitutional rights of the children declared and judged on the basis of that evidence.

Under the U.S. Constitution, a case can typically proceed in federal court when the plaintiff is injured, the defendant is a cause of the injury, and there is a remedy within the court's power to award, a test known as "standing." January's 2-1 decision acknowledged the youth plaintiffs presented "copious" expert evidence that the children are suffering injuries because of catastrophic climate change caused by the government's conduct. The youth plaintiffs argue that, at a minimum, the court can declare the Executive branch is actively violating the constitutional rights of not only these plaintiffs, but their fellow American children, and the government would then be expected to halt or alter those actions in accordance with the court's declaration of the law.

Philip Gregory, co-counsel for the youth plaintiffs, emphasized: “This Petition addresses an issue of exceptional importance to our country. According to the district court, these young Americans should have a trial. In overturning the district court, the majority fundamentally changed the way our branches of our government operate, placing the president and Congress beyond the reach of judicial oversight. If this opinion stands, there will be no more constitutional checks and balances on government conduct. We hope the entire Ninth Circuit recognizes that this case raises important questions of authority to address constitutional controversies when our government knowingly harms the fundamental rights of America’s children. Our federal judges have both the authority and the duty to confront and resolve this case based on the evidence at trial.”

Avery M., 14 year old *Juliana v. United States* plaintiff, stated: “The judges told us we should take our issues to the political branches, but I am too young to vote so that's not a reasonable request.”

In the majority opinion [filed on January 17, 2020](#), Ninth Circuit Judge Andrew Hurwitz found in favor of the youth plaintiffs on numerous points, including:

- The evidence showed climate change was occurring at an increasingly rapid pace;
- Copious expert evidence established that the unprecedented rise in atmospheric carbon dioxide levels stemmed from fossil fuel combustion and will wreak havoc on the Earth’s climate if unchecked;
- The record conclusively established the federal government has long understood the risks of fossil fuel use and increasing carbon dioxide emissions; and
- The record established the federal government’s contribution to climate change was a result of knowing, affirmative conduct.

In her dissent, Judge Josephine L. Staton wrote, “My colleagues throw up their hands, concluding that this case presents nothing fit for the Judiciary. On a fundamental point, we agree: No case can singlehandedly prevent the catastrophic effects of climate change predicted by the government and scientists. But a federal court need not manage all of the delicate foreign relations and regulatory minutiae implicated by climate change to offer real relief, and the mere fact that this suit cannot alone halt climate change does not mean that it presents no claim suitable for judicial resolution.”

Julia Olson, executive director and chief legal counsel of **Our Children’s Trust** and co-counsel for the youth plaintiffs, commented: “For the last decade, the Ninth Circuit Court of Appeals has always granted *en banc* review in cases where children’s rights were denied by a three-judge panel. Given the gravity of the ongoing harm to these children, and the significant flaws in the majority’s decision made clear by the vigorous dissent, this case deserves the same careful review of the full Court.”

Juliana v. United States is *not* about the government’s failure to act on climate. Instead, these young plaintiffs between the ages of 12 and 23, assert that the U.S. government, through its *affirmative actions* in creating a national energy system that causes climate change, is depriving them of their constitutional rights to life, liberty, and property, and has failed to protect essential public trust resources. The case is one of many related legal actions brought by youth in several states and countries, all supported by Our Children’s Trust, and all seeking science-based action by governments to stabilize the climate system.

Counsel for Plaintiffs are Julia Olson, Esq. of Eugene, OR, Philip L. Gregory, Esq. of Gregory Law Group of Redwood City, CA, and Andrea Rodgers, Esq. of Seattle, WA.

Our Children's Trust is a non-profit public interest law firm that provides strategic, campaign-based legal services to youth from diverse backgrounds to secure their legal rights to a safe climate. We work to protect the Earth's climate system for present and future generations by representing young people in global legal efforts to secure their binding and enforceable legal rights to a healthy atmosphere and stable climate, based on the best available science. We support our youth clients and amplify their voices before the third branch of government in a highly strategic legal campaign that includes targeted media, education, and public engagement work to support the youths' legal actions. Our legal work – guided by constitutional, public trust, human rights laws and the laws of nature – aims to ensure systemic and science-based climate recovery planning and remedies at federal, state, and global levels.

www.ourchildrenstrust.org/

Earth Guardians is a Colorado-based nonprofit organization with youth chapters on five continents, and multiple groups in the United States with thousands of members working together to protect the Earth, the water, the air, and the atmosphere, creating healthy sustainable communities globally. We inspire and empower young leaders, families, schools, organizations, cities, and government officials to make positive change locally, nationally, and globally to address the critical state of the Earth.

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