

## Client Alert

### Ninth Circuit Dismisses Kids' Climate Change Lawsuit Against Federal Government

January 24, 2020

On January 17, 2020, a three-judge panel of the Ninth Circuit Court of Appeals reversed and remanded the climate change case *Juliana v. United States* to the Oregon district court with instructions to dismiss. Plaintiffs, a group of children from across the country joined by climate change advocates, filed the lawsuit in 2015, accusing the federal government of causing alleged climate change-related injuries by permitting, authorizing, and subsidizing fossil fuel use. Plaintiffs did not seek damages, claim a violation of statute or regulation, or assert a procedural right. Instead, they asserted a number of constitutional claims, including the right to a “climate system capable of sustaining human life,” as well as claims under the public trust doctrine. While conceding that their requested relief would not alone solve global climate change, plaintiffs asked the court to declare that the federal government violated their constitutional and public trust rights and issue an order enjoining the federal government from supporting fossil fuel use and directing it to prepare a national remedial plan to phase out fossil fuel emissions.

As the case proceeded through motion to dismiss briefing, discovery, and summary judgment, the government aggressively sought to end the case, filing two writs of mandamus before the Ninth Circuit and seeking a stay of proceedings from the U.S. Supreme Court, before successfully petitioning the Ninth Circuit for interlocutory review of the district court’s orders declining to dismiss the case. The government’s arguments for dismissal included the argument that, to the extent the claims could proceed at all, they must do so under the Administrative Procedure Act. The Ninth Circuit rejected that argument, holding that plaintiffs could bring their claims under the Constitution.

The Ninth Circuit, however, diverged from the district court on the question of plaintiffs’ standing to pursue their claims under Article III of the Constitution—*i.e.*, whether plaintiffs pleaded a legally sufficient injury, caused by the government’s conduct, that could be redressed by a favorable ruling of the court. While the Ninth Circuit agreed with the district court that plaintiffs met the first two prongs of standing by adequately pleading specific injuries—for example, evacuation of their homes caused by flooding—and alleging that those injuries are caused at least in part to the government’s promotion of fossil fuels, it found that plaintiffs could not meet the redressability prong.

Stating that “it is beyond the power of an Article III court to order, design, supervise, or implement the plaintiffs’ requested remedial plan,” the Ninth Circuit found that “any effective plan would necessarily require a host of complex policy decisions entrusted, for better or worse, to the wisdom and discretion of the executive and legislative branches.” While expressing sympathy for plaintiffs’ claims, the Ninth Circuit recognized the significant separation of powers issues they presented, concluding that federal courts are not the proper forum to direct federal policy on such a global scale or fashion the comprehensive remedy plaintiffs sought. The

dissent—penned by a district court judge sitting by designation—disagreed and would have ruled that the district court could fashion the remedy plaintiffs sought.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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