

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, No. 6:15-cv-01517-AA

**BRIEF OF AMICI CURIAE FORMER SURGEONS GENERAL IN
SUPPORT OF PLAINTIFFS-APPELLEES' PETITION FOR EN BANC
REVIEW**

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INTERESTS OF THE AMICI CURIAE

Amici are former Surgeons General of the United States.¹ In that role, they were charged with leading the U.S. Public Health Service in its mission to protect, promote, and advance the health of our nation, by providing Americans with the best scientific health information available. In their subsequent careers, they have worked to educate and engage their fellow Americans to better address preventable illness and reduce health disparities.

Dr. Richard Carmona, MD, MPH, FACS, was the 17th Surgeon General of the United States, from 2002 to 2006, under President George W. Bush. He is Distinguished Professor, University of Arizona.

Dr. David Satcher, MD, PhD, was the 16th Surgeon General of the United States from 1998 to 2002 under Presidents Bill Clinton and George W. Bush. He is Founding Director and Senior Advisor at the Satcher Health Leadership Institute, Morehouse School of Medicine.

Amici write here as physicians bound to a code of medical ethics that prioritizes beneficence and the just allocation of resources. As Surgeons General having served administrations from both the Republican and Democratic Parties, *Amici* stand together, driven by the best available science and the commitment to the health, safety, and security of our nation without regard for partisan politics. Their belief that Plaintiffs, and others of their generation, are being denied a

¹ *Amici* file this brief solely as individuals and not on behalf of the institutions with which they are affiliated. Pursuant to Federal Rule of Appellate Procedure 29 and Ninth Circuit Rule 29-2, all parties have consented to the filing of this amicus brief. *Amici* certify that, pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), no party's counsel authored this brief in whole or in part, nor did any party or party's counsel contribute money that was intended to fund preparing or submitting this brief. No person funded the preparation or submission of this brief.

healthy future by the actions of the government that promote a fossil fuel energy system transcends political affiliation.

Amici write on behalf of the *Juliana* plaintiffs, 21 young people from across the country and various walks of life. They have sued the federal government to hold it accountable for its “affirmative actions that cause climate change.” They argue that our government’s actions violate their right to an environment “capable of sustaining human life.” *Amici* do not generally involve themselves in judicial matters, but feel compelled to make an exception in this case: first, because of the unprecedented threats to public health and safety posed by the growing climate crisis; and second, because they are concerned that the fundamental rights of our nation’s youth may indeed be at risk. From their perspective as public health experts, *Amici* find the *Juliana 21*’s science-based claims credible and convincing, and urge this Court to allow this case to go to trial.

Specifically, *Amici* urge this Court to review the issue of redressability. In cases like this, where children’s health and very lives are at stake, their injuries can and should be redressed by the courts. Considering that children have no right to vote, suggesting, as the Majority did, that their only remedy is available at “the ballot box,” leaves the Constitution with a gaping hole and renders the fundamental rights of our most vulnerable unprotected.

ARGUMENT

As Surgeons General, *Amici* recognized the importance of investing in public health. Our nation’s public health system has eliminated polio, reduced cancer risk, and increased overall life expectancy. Now, as we face the potentially catastrophic consequences of climate change, the importance of a science-based, maximally effective public health infrastructure seems beyond dispute. Yet

progress has been fitful in educating and mobilizing the political branches to address climate change's threats to health and safety.

This is not for lack of science-based information. As our nation's Fourth National Climate Assessment notes, "it is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century...there is no convincing alternative explanation supported by the extent of the observational evidence."² The Fourth National Climate Assessment makes clear that "without major reductions in emissions, the increase in annual average global temperature relative to preindustrial times could reach 9°F or more by the end of this century," while "with significant reductions in emissions, the increase in annual average global temperature could be limited to 3.6°F or less."³

Now, a rising generation, frustrated with our policymakers' inadequate responses, is demanding a commensurate response. The *Juliana* Plaintiffs aim to compel the federal government to act in our youth's best interest, to secure "the right to a safe climate and healthy atmosphere for all present and future generations."

The *Juliana* Plaintiffs lay out their case convincingly. First, as they remind us, these youth Plaintiffs were born into this problem; they did not create it. Second, these youth Plaintiffs are uniquely vulnerable: their developing bodies suffer disproportionately from climate change's most serious and deadly harms. For example, children's lungs are more susceptible to damage from heat-generated ozone, and because they generally spend more time outdoors, their increased exposure to ozone can lead to more asthma attacks and emergency room visits.

² U.S. Global Change Research Program, *Climate Science Special Report: Fourth National Climate Assessment* 10 (2017).

³ *Id.* at 15.

Third, childhood development is crucial for subsequent physical and mental health, so the harm these youth Plaintiffs suffer today can result in lifelong pain and suffering. Examples include lasting cognitive impairments from malnutrition and polluted water, the negative consequences of lost school days, and the persistence of severe anxiety and PTSD symptoms following exposure to extreme storms, floods, and wildfires.

The *Juliana* Plaintiffs’ case has the support of educators, business associations, and dozens of public health experts. A number of compelling amicus briefs have already been submitted to the court, including one on behalf of the American Academy of Pediatrics and the American Heart Association. This Brief for Public Health Experts asserts that our nation’s youth were “born into a world made hazardous to their health and well-being by greenhouse gases (‘GHG’) emitted by human activities.”⁴ The Brief for Public Health Experts draws our attention to the broad “scientific consensus that GHG emissions are causing major...changes to the planet, manifesting as extreme weather events, including heat waves and heavy precipitation, as well as droughts.”⁵ It lends additional gravity to the *Juliana* youth’s demand that our government respond rapidly and decisively.

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⁴ Brief for Public Health Experts et al. as Amici Curiae in Support of Plaintiffs-Appellees at 8, *Juliana v. U.S.*, 947 F.3d 1159 (9th Cir. 2020) (No. 18-36082).

⁵ *Id.*

CONCLUSION

Experience teaches us that by providing a public forum for an airing of the relevant arguments, the court would facilitate greater public awareness, bringing our country one step closer to consensus on the urgency of this unprecedented public health threat, and the many benefits of a concerted and proportionate response. We believe this case should be allowed to go to trial and that these young citizens have a right to be heard.

Respectfully submitted,

Dated: March 12, 2020

ARTIGA-PURCELL LAW OFFICE

By: /s/ Camilo Artiga-Purcell
Camilo Artiga-Purcell

Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE

I hereby certify the attached brief is proportionally spaced, has a typeface of 14 points or more, and contains 1,174 words (excluding the parts of the brief exempted) based on the word processing system used to prepare the brief. I also certify that this amicus brief complies with the word limit of Federal Rule of Appellate Procedure 29(a)(5).

I further certify that, pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), no party's counsel authored this brief in whole or in part, nor did any party or party's counsel contribute money that was intended to fund preparing or submitting this brief. No person – other than the *Amici Curiae* or their counsel – contributed money that was intended to fund preparing or submitting this brief.

Dated: March 12, 2020

By: /s/ Camilo Artiga-Purcell
Camilo Artiga-Purcell

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2020, I electronically filed the foregoing Brief of Amicus Curiae Former Surgeons General In Support Of Plaintiffs-Appellees' Petition for En Banc Review with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Dated: March 12, 2020

By: /s/ Camilo Artiga-Purcell
Camilo Artiga-Purcell