For immediate release: June 25, 2021

Contacts:
Julia Olson, 415-786-4825, julia@ourchildrenstrust.org
Andrea Rodgers, 206-696-2851, andrea@ourchildrenstrust.org
Philip Gregory, 650-278-2957, pgregory@gregorylawgroup.com
For interviews with youth plaintiffs, email beth@ourchildrenstrust.org

District Court Judge Takes Motion to Amend Historic *Juliana* Youth Climate Suit Under Advisement

EUGENE, Ore. -- U.S. District Judge Ann Aiken said Friday that as a judge in Oregon -- where temperatures are now hitting record highs just months after devastating wildfires destroyed communities -- she is "keenly aware of the issues brought here today" as attorneys for the 21 youth plaintiffs in constitutional climate lawsuit *Juliana v. United States* sought to amend their complaint.

Attorneys for the plaintiffs presented oral arguments telephonically in front of Judge Aiken to amend their complaint against the federal government and adjust the remedy sought in light of a 9th Circuit Court of Appeals ruling that plaintiffs had demonstrated they were concretely injured and the government was a cause of those injuries, but the Court lacked the authority to order the federal government to prepare a remedial plan.

Judge Aiken said that before issuing her ruling she plans to study a United Nations IPCC draft report that says the worst is yet to come in the climate crisis that will affect "our children's and grandchildren's lives much more than our own." Julia Olson, chief legal counsel for Our Children's Trust, mentioned the report in her argument Friday.

Olson's opening remarks in today's oral arguments can be read in full at the conclusion of this press release
------

The plaintiffs' amended complaint is focused on winning a declaratory judgment that the nation's fossil fuel-based energy system is unconstitutional -- much like the plaintiffs in *Brown v. Board of Education* argued the public school system of segregation was unconstitutional -- as a first essential step to protecting them from more climate danger.

Arguing against the plaintiffs' motion were attorneys for the Department of Justice.

Judge Aiken noted during the argument that the court acts as a backstop to protect fundamental rights. She also acknowledged that recent Supreme Court opinions on standing have changed the complexion of the *Juliana* case in significant ways. She commented on the central question posed by Justice Kavanaugh in today's Supreme Court opinion on standing in *TransUnion v. Ramirez*, where the Court explained that central to the standing analysis is being able "to sufficiently answer the question: 'What's it to you?'"

The *Juliana* constitutional rights lawsuit, filed in 2015, argues that affirmative actions by the federal government knowingly and directly contributed to the climate crisis -- in part by creating a national fossil fuel-based energy system that is a substantial factor in causing the plaintiffs' injuries, including harm to their physical health. By doing so, the plaintiffs argue, the government has knowingly violated their constitutional rights to life, liberty and property, the public trust, and equal protection of the law.

In her argument, Olson said she knows of no other instance where people suffering personal injury at the hands of their government are told to go to the polls when a constitutional right is being violated. She specifically noted that in efforts to protect Second Amendment gun rights, people go to the courthouse to resolve the unconstitutional policy issue, not to the polls.

If U.S. District Court Judge Ann Aiken grants the motion to amend, the case would be able to move forward in the trial court on the question of whether the federal government's fossil fuel-based energy system, and resulting climate destabilization, is unconstitutional.

The youth plaintiffs, now between the ages of 13 and 25, have argued that the 9th Circuit Court of Appeals erroneously ruled in January 2020 that they lacked standing to be heard in an Article III court. If necessary the plaintiffs will petition the U.S. Supreme Court to review the Court of Appeals decision, which they argue was wrongly decided. After this six-year wait, the plaintiffs are seeking the fastest track to trial and a decision on their fundamental constitutional rights, just as youth around the world are vindicating their climate rights in court.

Meanwhile, the parties will also continue settlement talks with the assistance of Magistrate Thomas M. Coffin.

---30---

Opening Remarks from Plaintiffs' Attorney Julia Olson

Good morning, Your Honor, and may it please the Court. This is Julia Olson on behalf of the Plaintiffs, many of whom are on the public call-in line today. We want to thank Your Honor and the Court staff for providing the Plaintiffs and the public the ability to listen at a time when we cannot all gather in person at the courthouse. Also with me today on the conference line are co-counsel Philip Gregory and Andrea Rodgers. With the court's permission, I would like to reserve 5 to 10 minutes for rebuttal.

Your Honor, how our nation's children (and adults) speak, move, love, vote, worship, assemble, learn, and behave in our world is a function of the rights we hold, and those we are denied. For our rights to endure, in the face of government policy threats, they need to be declared.

Do children have a right to free speech on snapchat when they aren't in school, even if that speech is profane? On Wednesday, eight Supreme Court Justices said yes, they do. The Supreme Court issued a declaration of constitutional law in *Mahoney Area School District v. B.L*. That declaration of a student's constitutional rights isn't just about one 14-year-old cheerleader who is now in college, it's about the First Amendment rights of children across the country. It's also about the line where government interests (in that case, the public school's) unjustly invade constitutionally protected rights.

Only our courts can declare those constitutional rights and define those constitutional lines in a final judgment for all.

Nearly 80 years ago in *West Virginia State Board of Education v. Barnette*, the Supreme Court also protected children who were in school exercising their free speech and freedom of religious expression, and the Court declared their rights.

In 2005, in *Roper v. Simmons*, the Supreme Court invoked the 8th Amendment rights of young people convicted of crimes and finally declared that children cannot be sentenced to death.

In 2012, in *Miller v. Alabama*, the Court said rarely should children be sentenced to life without the possibility of parole. Since that declaration of constitutional law, thirty-one states and the District of Columbia either banned life without parole for children or have no children serving that sentence. That declaration had real life consequences not just for Evan Miller, but many other children. But this term, the Supreme Court clarified the government line for when life without parole for Evan Miller and other children may be

permitted and when it deprives children of fundamental rights under the 8th Amendment, and that new constitutional declaration and clarification of *Miller* will also have profound consequences for convicted children around the country and affect their entire life trajectory.

Only our courts can judge and declare those constitutional rights and define those constitutional lines. And those declaratory judgments of our courts matter, immensely.

Twenty-one children and young people are here today to argue over whether they are entitled to file an amended complaint that seeks primarily an adjudication of whether they too have constitutionally protected rights that have been invaded by their government, and where the line is for that invasion, or deprivation. While this Second Amended Complaint is not about First Amendment speech or Eighth Amendment cruel and unusual punishment, the rights of Kelsey the eldest, and Levi the youngest, and the 19 youth in between, are located in and protected by the Fifth Amendment, and they are *no less vital to their freedom and pursuit of happiness*. The rights to life and to personal security and to be free of government-imposed danger, the right to family autonomy, the right to a climate system that sustains human life, the right to equal protection of the law, and the right to public trust resources, are all at least as deeply rooted in the history of our nation and fundamental to ordered liberty as the right some people seek to own an AR-15 assault weapon.

Just this month in *Miller v. Bonta,* a federal judge in the S.D. of California declared unconstitutional policies banning children and adults from owning assault weapons. Our federal courts allow people standing to assert their alleged fundamental rights in challenging government policies, and have those rights adjudicated.

A declaration of rights and constitutional limits on government policies very often has broad ramifications because it changes the legal relationship between all of us and our government. It affects how we live our lives, our dignity, and our physical security. Some people want to protect their right of self-defense via alleged constitutional rights to assault weapons, and they have standing to walk through the courthouse doors and receive a declaration of their rights. These young people before you today want to protect their lives and personal security too, and they also have standing to receive a declaration of their rights and the constitutional limits to government policies when their government is actively threatening their self-preservation.

While we are here on a routine motion to amend a prior complaint to correct a perceived defect that was found by the Ninth Circuit, the outcome of this routine motion has monumental implications for whether justice is served.

Here, where the law of the case is that the subject matter of plaintiffs' complaint—the nation's energy system, policies, and practices, and plaintiffs' Fifth Amendment claims against that system—are not barred by the political question doctrine, it would be manifestly unjust, and contrary to Article III and a nearly century-old Act of Congress, not to allow these children and youth to access our judiciary to seek a declaration of their constitutional rights and the line at which those rights are invaded and infringed by their government. That declaration alone will change the current legal status of these youth. And the plain text of the Declaratory Judgment Act dictates just that. Even where no further relief may be available to a plaintiff, this Court may issue declaratory judgment for or against them, where they have demonstrated injury, causation, and a live case or controversy with their government. Nothing the Ninth Circuit said on interlocutory appeal changes this Court's obligation to say what the law is."

Our Children's Trust, which represents the federal youth plaintiffs in Juliana and a number of similar state cases, is a nonprofit 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.