

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 LEAGUES OF WOMEN VOTERS IN
SUPPORT OF PLAINTIFFS-APPELLEES.**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici curiae* League of Women Voters of the United States and League of Women Voters of Oregon each states that it does not have a parent corporation and that no publicly-held companies hold 10% or more of its stock.

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AMICI CURIAE BRIEF IN SUPPORT OF PLAINTIFFS-APPELLEES

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). All parties have consented to the filing of this brief. FRAP 29(a)(2).

I. IDENTITY AND INTEREST OF *AMICI CURIAE*

The League of Women Voters of the United States (“LWVUS”) is a grassroots, nonpartisan, nonprofit organization that encourages informed, active, and inclusive participation in government in order to promote political responsibility and to forward democratic principles of *all* peoples of the United States, including underrepresented groups. LWVUS’s primary focus and activities consist of:

- (1) protecting voters by ensuring that *all* voters—particularly those from traditionally underserved or underrepresented demographics, including young adults, new citizens, and minorities—have the opportunity and information to exercise their vote;
- (2) educating and engaging voters by assisting and encouraging voter registration, education with respect to candidates and their positions, and voter turnout;
- (3) limiting the influence of money in politics by revamping our nation’s campaign finance system to increase governmental transparency, combat corruption, and maximize citizen participation in the political process; and

(4) protecting the environment by supporting legislation and using the best climate change data available that seeks to protect our country from the physical, economic, and public health effects of climate change while providing pathways to economic prosperity.

LWVUS believes that climate change is the greatest environmental challenge of our generation and that averting the damaging effects of climate change requires actions from both individuals and governments at local, state, regional, national and international levels. LWVUS supports legislative solutions and strong executive branch action, and works to build support for action on climate change nationally as well as at the state and local levels to avoid irrevocable damage to our planet.

The League of Women Voters of Oregon (“LWVOR”) is also a grassroots, nonpartisan, nonprofit organization. LWVOR shares LWVUS’s primary mission and focus of ensuring effective representative government through voter registration, education, and mobilization, and works to ensure that the voices and interests of all individuals, particularly those underrepresented in government, are spoken and accounted for in political decision-making. LWVOR also works to advocate for sound environmental policy. Since the 1950s, LWVOR has been at the forefront of efforts to protect air, land, and water resources. LWVOR’s Social Policy directs members to secure equal rights and equal opportunity for all, as well as promote social and economic justice and the health and safety of all Americans.

LWVOR's members work to preserve the physical, chemical, and biological integrity of the ecosystem, with maximum protection of public health and environment. LWVOR believes that climate change is one of the most serious threats to the environment, health, and economy of our nation.

The direct impact that climate change has on the physical well-being of some of our most underserved communities is often times unspoken. This means that the effects of climate change disproportionately effect communities of color, low income communities, seniors, and children. Too often the placement of carbon producing power plants, the transportation of harmful chemicals, and the failure to protect our air, water, and natural resources, are concentrated in the neighborhoods and communities where these populations reside. *Amici* are working to address the practices that are harming our communities by creating policies that protect public health for all people no matter their race, age, or socioeconomic background.

Focused as they are on engaging citizens to participate in the democratic process to ensure that the interests of *all* Americans are represented in a transparent, participatory, and politically accountable government, and respecting the proper role of each branch of government, *amici* direct their limited efforts at effectuating change primarily through the legislative and executive branches. However, where appropriate in certain limited circumstances, *amici* recognize that judicial involvement is necessary to safeguard the fundamental rights of underrepresented individuals when the other branches of government have failed

them. In limited circumstances such as those presented in this action, *amici* participate in litigation to ensure that the interests of representative democracy are served.

To that end, *amici* have occasionally, but sparingly, joined in suits or filed amicus briefs in cases primarily with respect to disputes in which the voting rights of individuals have been infringed,¹ but also in similar cases, such as this one, in which other fundamental rights of underrepresented groups have been adversely impacted.²

Amici file this brief in support of Plaintiffs-Appellees to emphasize the proper role of the courts, in keeping with the separation of powers, to serve as a check and balance to the legislative and executive branches, particularly when their actions, as here, have infringed upon the fundamental rights of individuals.

¹ See, e.g., Brief of *Amici Curiae* Common Cause, League of Women Voters of the United States and Project Vote, Inc., In Support of Appellants, *Ohio A. Philip Randolph Institute, et al. v. Husted*, No. 16-3746 (6th Cir.) (appealing Ohio's removal of voters from voter roles under National Voter Registration Act); *League of Women Voters v. Newby*, No. 16-236 (RJL) (D.D.C. June 29, 2016) (challenging HB 589 as voter suppression bill); and *League of Women Voters of the United States v. Fields*, 352 F.Supp. 1053 (E.D. Ill. 1972) (challenging discrimination in voter registration practices).

² See *Amici Curiae* Brief of Leagues of Women Voters in Opposition to Petition for Writ of Mandamus, *In Re: U.S. v. Dist. Ore.* (9th Cir. Case No. 17-71692) Doc. 20-2 (Sept. 5, 2017); Brief of League of Women Voters of Oregon, *et al.*, as *Amici Curiae* in Support of Plaintiffs-Appellants, *Chernaik v. Brown*, No. A159826 (Or. App.) (Mar. 3, 2016).

II. SUMMARY OF ARGUMENT

Amici Curiae respectfully request this Court affirm the district court's rulings on the motions to dismiss and motions for summary judgment and judgment on the pleadings. These Youth Plaintiffs' fundamental rights arising under the Constitution and Public Trust Doctrine have been and are being infringed by Defendants' historical and continuing creation and exacerbation of a dangerous climate system. Given the age of many of the Plaintiffs and the political branches' historic and ongoing conduct with respect to climate change, Plaintiffs cannot rely on the representational political process to safeguard their fundamental rights. Their only redress is through the judiciary. "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803). The district court's decision is consistent with the separation of powers in our government.

The urgency of this case further supports allowing the district court trial proceedings to advance so that standing and the important legal issues presented in this case to be determined in light of a full factual record. As explained by Dr. James Hansen,³ "[i]mmminent action is required to preserve and restore the climate

³ Dr. Hansen is the former Director of the NASA Goddard Institute for Space Studies and current Adjunct Professor at Columbia University's Earth Institute, where he directs the University's Climate Science Program.

system such as we have known it in order for the planet as we have known it to be able to continue adequately to support the lives and prospects of young people and future generations.” *Juliana v. United States*, No. 6:15-cv-01517-AA, Dkt. 274-1, 50 (D. Or June 28, 2018) (Expert Report of James Hansen). The parties agree that climate change is happening and poses a “monumental” danger to Americans’ health and welfare. *See* Defendants’ Excerpts of Record (“ER”) at 5.

The district court properly denied Defendants’ motions for summary judgment and for judgment on the pleadings because genuine issues of material fact remain at issue in this case. This Court should not revisit the district court’s fact-intensive inquiry on interlocutory appeal as to whether genuine issues of material fact preclude summary judgment. *See Mendocino Env’tl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1291 (9th Cir. 1999) (“A district court’s determination that the evidence presented by the parties raises genuine factual disputes is not reviewable on interlocutory appeal.”). Standing and the other important legal issues presented in this case should be determined in light of a full factual record at trial. By affirming the district court’s rulings on the motions for summary judgment and judgment on the pleadings, this Court confirms the district court’s role as arbiter of facts and the role of courts as a check and balance to the other branches of government.

III. ARGUMENT

It is the duty of the courts to address claims asserted by the politically powerless. Given the urgency of climate change and the disproportionate harms that children will suffer from it, the courts should act to fulfill this vital function to safeguard individual liberties, and allow the merits of these important issues to be developed and decided through the trial process.

A. Climate Change and the Plaintiffs' Injuries

Climate change is no longer a theoretical, future possibility—it is upon us now. 2018 was the fourth warmest year since 1880, according to independent analyses by NASA and the National Oceanic and Atmospheric Administration. NASA, “2018 fourth warmest year in continued warming trend, according to NASA, NOAA,” (Feb. 6, 2019).⁴ 16 of the last 17 years are the warmest years on record for the globe. U.S. GLOBAL CHANGE RESEARCH PROGRAM, 2017: *CLIMATE SCIENCE SPECIAL REPORT: FOURTH NATIONAL CLIMATE ASSESSMENT, VOLUME I* at 31 (D.J. WUEBBLES ET AL. EDS. 2017) [hereinafter *FOURTH NATIONAL CLIMATE ASSESSMENT*].⁵ Average annual temperature over the contiguous United States increased by 1.8°F (1.0°C) between 1901 and 2016. *Id.* at 17. Of that change, 1.2°F increase occurred since 1986. *Id.* These temperatures are projected to rise even

⁴ Available at <https://climate.nasa.gov/news/2841/2018-fourth-warmest-year-in-continued-warming-trend-according-to-nasa-noaa/>.

⁵ Available at https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf

further, with an increase of 2.5°F possible over the next few decades, and much larger rises by late century. *Id.* Consistent with this warming, most regions of the U.S. have seen the frequency and intensity of extreme heat and heavy precipitation events increasing. *Id.* at 19. Extreme temperature events are virtually certain to increase in frequency and intensity in the future as global temperatures rise. *Id.* at 22.

These rising global temperatures have consequences now, including more frequent dangerous climate events such as wildfire, major flooding and extreme drought. In 2017 there were 16 weather and climate events in the U.S. with losses exceeding \$1 billion each. *State of the Climate in 2017* at 196.⁶ These events included three tropical cyclones, eight severe storms, two inland floods, a crop freeze, drought, and wildfires. *Id.* Cumulatively, these events led to 362 fatalities and caused \$306 billion in total, direct costs—a **new U.S. annual cost record**. *Id.*

Climate change disproportionately threatens children for at least two reasons. First, the progressive nature of the impacts of climate change means that today's youth and future generations will see greater warming and associated impacts, including more frequent and severe extreme weather events like drought and flooding. "Warming and associated climate effects from CO₂ emissions persist

⁶ American Meteorological Society, *State of the Climate in 2017* (Blunden, J., D.S. Arndt, and G. Hartfield eds., Aug. 2018), 99 BULL. OF AM. METEOR. SOC'Y, no. 8. Available at <https://www.ametsoc.org/index.cfm/ams/publications/bulletin-of-the-american-meteorological-society-bams/state-of-the-climate/>

for decades to millennia.” *FOURTH NATIONAL CLIMATE ASSESSMENT*, at 31. *See also Juliana v. United States*, No. 6:15-cv-01517-AA, Dkt. 274-1, 32-37 (D. Or June 28, 2018) (Expert Report of James Hansen) (describing climate feedback loops and loss of equilibrium).

Second, the unique life phase of childhood leaves children especially vulnerable to the impacts of climate change. According to the U.S. Environmental Protection Agency (“EPA”), “[c]hildren are especially vulnerable to the impacts of climate change because of (1) their growing bodies; (2) their unique behaviors and interactions with the world around them; and (3) their dependency on caregivers.” EPA, FACT SHEET: CLIMATE CHANGE AND THE HEALTH OF CHILDREN 1 (May 2016).⁷ Children are particularly vulnerable to environmental changes because of the impact those changes have on their development. As Dr. Van Susteren⁸ states, “Children are not simply small adults and because their bodies and brains are still growing and developing, they are particularly vulnerable to environmental stressors. Early childhood is critical for brain development and stress from even minor disturbances during childhood can impact brain development in critical ways.” Plaintiffs’ Supplemental Excerpt of Record (“SER”) at 106 (Expert Report

⁷ Available at <https://archive.epa.gov/epa/climate-impacts/climate-change-and-health-factsheets.html>

⁸ Dr. Lise Van Susteren is currently a psychiatrist practicing in Washington, D.C. She is a former Associate Clinical Professor of Psychiatry at the Georgetown University School of Medicine. Dr. Van Susteren received her Doctorate in Medicine from the University of Paris in 1982.

of Lise Van Susteren).

Children are especially impacted by air pollution from fossil fuels. The burning of fossil fuels adversely impacts both climate change and the respiratory health of children. In their expert report, Pacheco⁹ and Paulson¹⁰ state that “the effects of air pollution on neurodevelopmental conditions in children with long-term exposures deserve special attention due to the long-term implications for children in general and all future generations.” SER at 76 (Expert Report of Susan E. Pacheco and Jerome A. Paulson).

Climate change is already affecting child health through heat stress, decreased air quality, food insecurity, and physical and mental health effects of extreme weather events. *See American Academy of Pediatrics Council on Environmental Health, Policy Statement on Global Climate Change and Children’s Health*, 136 *Pediatrics*, no. 5, 994 (2015).¹¹ Childhood asthma and allergies result from changes in distribution and seasonality of plants and increased frequency of severe wildfires. Children will also suffer most from displacement

⁹ Susan E. Pacheco, M.D. is an Associate Professor of Pediatrics at the University of Texas-Houston. She received her M.D. from the University of Puerto Rico in 1985.

¹⁰ Jerome A. Paulson, M.D., FAAP is a Consultant in Environmental Health and former Professor of Environmental & Occupational Health at the George Washington University School of Public Health & Health Policy.

¹¹ Available at

<http://pediatrics.aappublications.org/content/pediatrics/early/2015/10/21/peds.2015-3233.full.pdf>.

due to rising sea levels and extreme weather events as access to education, health care, and nutrition are disrupted. *Id.*

Although the children of America will experience disproportionate harm from climate change impacts, they have no direct representation in our government and also lack economic power in our society. The lack of economic power, combined with the increasing costs of climate change mitigation, will disproportionately burden the Youth Plaintiffs and all other affected children. As explained by Dr. Joseph Stiglitz,¹² “the actions of Defendants in promoting and perpetuating a fossil fuel-based energy system impose a disproportionately higher financial burden and economic disadvantage on Youth Plaintiffs and Affected Children, undermining their economic security and depriving them of the stronger economy that they would have had in the absence of unmitigated climate change.” SER at 19 ¶ 35 (Expert Report of Joseph E. Stiglitz).

The choices our government makes today will determine the magnitude of climate change risks beyond the next few decades. *FOURTH NATIONAL CLIMATE ASSESSMENT*, at 34. By continuing to utilize and enable technologies that it knows are the primary drivers of climate change, our federal government jeopardizes our children’s future existence. In sum, these youth will experience the effects of

¹² Dr. Stiglitz is the former Senior Vice President and Chief Economist for the World Bank and a current University Professor at Columbia University. He received his Ph.D. in Economics from MIT in 1967.

climate change long after the rest of us have left this world. Yet they lack power to engage directly with the legislative and executive branches to assert and protect their rights. In this instance, the courts properly serve as a check and balance on the other branches and to declare and protect the rights of these Plaintiffs.

B. The District Court is Acting in Its Proper Role as a Check and Balance on the Political Branches of Government.

Plaintiffs allege that the legislative and executive branches have actively infringed upon their fundamental liberties. “[P]olicing the enduring structure of constitutional government when the political branches fail to do so is one of the most vital functions of this Court.” *Nat’l Labor Relations Board v. Canning*, 134 S. Ct. 2550, 2593 (2014) (Scalia, A., concurring) (internal quotations omitted). Many of the Plaintiffs have no effective means of relief other than the judiciary for protection of their justiciable constitutional rights. As a check on the legislative and executive branches, “[i]t is emphatically the province and duty of the judicial department to say what the law is.” *Marbury*, 5 U.S. at 177.

Courts have historically exercised jurisdiction to determine the constitutional rights of children. “A child, merely on account of his minority, is not beyond the protection of the Constitution.” *Bellotti v. Baird*, 443 U.S. 622, 633 (1979) (plurality opinion). For example, the Supreme Court has found that children have the right to notice and counsel under the Equal Protection Clause of the Fourteenth Amendment. *See In re Gault*, 387 U.S. 1 (1967). Students, both in and out of school, have First Amendment rights. *Tinker v. Des Moines Indep. Cmty. Sch.*

Dist., 393 U.S. 503, 511 (1969). Children may not be deprived of certain property interests without due process. *See Goss v. Lopez*, 419 U.S. 565, 574 (1975) (finding right to a public education is a property interest, protected by the Due Process Clause). And children are entitled to protections under the Eighth Amendment, which “reaffirms the duty of the government to respect the dignity of all persons.” *Roper v. Simmons*, 543 U.S. 551, 560 (2005) (ruling that execution of persons under the age of eighteen would be cruel and unusual punishment).

In recognizing the rights of children, courts have relied on both the autonomy rights of children and their special vulnerability to deprivations of liberty or property interests by the State. In *Brown v. Board of Education*, the Court recognized the constitutional rights of children, as well as the need to shield children from societal, psychological, and economic harms, particularly when the injury has the sanction of the law. 347 U.S. 483, 494 (1954). In *Bellotti*, the Court noted that the “Court’s concern for the vulnerability of children is demonstrated in its decisions dealing with minors’ claims to constitutional protection against deprivations of liberty or property interests by the State.” 443 U.S. at 634. These Youth Plaintiffs are vulnerable to deprivations of liberty by the government because they must rely on others to advocate for them, and at the same time are directly impacted by the sovereign’s decisions and actions in furthering and responding to climate change. “The nature of injustice is that we may not always see it in our own times.” *Obergefell v. Hodges*, 135 S. Ct. 2584, 2598 (2015).

Climate change presents one of those injustices, and the Youth Plaintiffs assert “a claim to liberty [that] must be addressed.” *Id.*

1. The District Court Properly Recognized Plaintiffs’ Standing.

Not only have the Plaintiffs met the requirements for Article III standing under *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), and related cases sufficient to survive motions for summary judgment,¹³ there are also strong prudential reasons supporting the district court’s standing determination in this case consistent with the separation of powers. “[T]he class of those litigants who allege that their own constitutional rights have been violated, and who at the same time have no effective means other than the judiciary to enforce these rights, must be able to invoke the existing jurisdiction of the courts for the protection of their justiciable constitutional rights.” *Davis v. Passman*, 442 U.S. 228, 242 (1979).

First, the Youth Plaintiffs’ claims are rooted in a diminishment of their voice in representational government. The executive and legislative branches of the federal government are making decisions today that discount the future and exploit future generations. Youth have no voice in these decisions—elected representatives are not accountable to youth who did not elect them. Voting is an exercise in free expression, which is highly personal and therefore by necessity must be carried out by the individual and not by proxy. Sonja C. Grover, YOUNG

¹³ *Amici* refer the Court to the arguments of Plaintiffs and other briefing for a full discussion of standing.

PEOPLE’S HUMAN RIGHTS AND THE POLITICS OF VOTING AGE 66-69 (2011). “The conception of political equality from the Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote.” *Gray v. Sanders*, 372 U.S. 368, 381 (1963). The political franchise of voting is “regarded as a fundamental political right, because [it is] preservative of all rights.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). Without the ability to vote, many of these Plaintiffs’ rights are more often and more easily violated when the political branches make decisions about climate change.

The Youth Plaintiffs’ voices in representational government are diminished and as a result, they must be protected by the courts from the impositions of the majority. See John Edward Davidson, *Tomorrow’s Standing Today*, 28 COLUM. J. ENVTL. L. 185, 215 (2003) (arguing that youth without a vote are akin to a political minority, unable to pursue their goals through the political process). See also, Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 27 SUFFOLK U. L. REV. 881, 895 (1983) (framing standing as requiring a plaintiff to establish a “basis for concern that the majority is suppressing or ignoring the rights of a minority that wants protection,” justifying judicial intervention.).

Second, the Youth Plaintiffs’ voices are also diminished by their economic powerlessness. According to Dr. Stiglitz, under scenarios in which greenhouse gas

emissions continue without reductions, “national income will be lower because of the adverse effects of climate change, imposing doubly an increased financial burden and economic disadvantage on Youth Plaintiffs and Affected Children: they will face the costs of remediation and adaptation with fewer resources with which to do so.” SER at 202 ¶ 38 (Expert Report of Joseph E. Stiglitz). As time progresses, the youth of this country will have to deal with the changing climate financially. The youth will be forced to deal with the loss of land and property due to rising waters along the coasts. It will also be incredibly expensive to rebuild and relocate after natural disasters influenced by changing climate. The financial burdens faced by the next generation due to the current decisions of government officials could be substantially reduced if greater action was taken to reduce greenhouse gas emissions today.

The fact that these youth collectively have diminished voice and power in the political process does not diminish their standing under Article III, it bolsters it. *See Brown v. Bd. of Educ.*, 347 U.S. 483; *West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624 (1943). And the systemic nature of the alleged violations of their rights does not prevent the judiciary from reviewing their claims, rather it calls on the judiciary to exercise jurisdiction. *See Brown v. Plata*, 563 U.S. 493 (2011) (challenge to systemic conditions across state prison system); *Brown v. Bd. of Ed.*, 347 U.S. 483 (1954) (systemic racial injustice in schools).

The district court applied the proper standard of review in denying summary judgment and concluding that there are genuine issues of material fact. “[I]t is the function of the District Court rather than the Court of Appeals to determine the facts, . . .” *Murray v. U.S.*, 487 U.S. 533, 543 (1988). As previously explained by the district court, “permitting this case to proceed to trial will produce better results on appeal by distilling the legal and factual questions that can only emerge from a fully developed record.” *In re United States*, No. 17-71692, Dkt. 12 at 2 (Letter from United States District Court for the District of Oregon) (9th Cir. Aug. 25, 2017). Remaining fact-intensive inquiries related to standing and other important issues in the case are properly resolved by the district court at trial.

2. The District Court Acted within its Equitable Authority.

Plaintiffs’ cause, “arising . . . in Equity,” is a matter properly before the court under Article III, Section 2 of the U.S. Constitution. Since *Ex Parte Young*, courts have recognized actions seeking injunctive relief for violations of the Constitution, even where there is no express statutory authority for such relief. 209 U.S. 123 (1908). *See also Davis v. Passman*, 442 U.S. 228, 242 (1979) (recognizing “established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution” (quoting *Bell v. Hood*, 327 U.S. 678, 684 (1946))).

The equitable powers of the federal district courts include “a practical flexibility” in shaping remedies. *Brown v. Bd. of Educ.*, 349 U.S. 294, 300 (1955).

Equity’s flexibility also allows the courts to respond to unforeseen circumstances—that is, new threats like severe climatic changes caused by human activity that were neither contemplated nor predicted by the drafters of the Constitution. *See Davidson, supra* at 199-200; WILLIAM BLACKSTONE, 1 COMMENTARIES at 34 (Bernard C. Gavit ed., 1941). “Once a right and a violation have been shown, the scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.” *Swann v. Charlotte-Mecklenburg Bd. Of Educ.*, 402 U.S. 1, 15 (1971).

In fashioning a remedy, the court will of course also be bound to stay within its remedial powers. The district court acknowledged as much in its decision: “should the Court find a constitution violation, it would need to exercise great care in fashioning any form [of] relief,” ER at 44. But determining the scope of an injunctive remedy does not divest the court of its duty to serve as a check on the other branches of government whose actions violate the rights of individuals without power. “[T]he scope of remedy is to be determined by the nature and extent of the constitutional violation,” *Milliken v. Bradley*, 418 U.S. 717, 753 (1974). The district court here properly exercised its jurisdiction to determine whether the as-yet undetermined facts of this case support a finding of violations of constitutional rights, including well-established unenumerated rights and the right to a climate system capable of sustaining human life.

3. The District Court’s Decision is Consistent with Separation of Powers.

The separation of powers is critical to securing liberty and preventing the accumulation of power in the hands of one decision-making body to the detriment of our society. The Constitution articulates the three separate branches of our government in the legislature, the executive, and the judiciary. But “unless these departments be so far connected and blended as to give each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be duly maintained.” THE FEDERALIST NO. 48 (James Madison). The separation of powers requires that each department be independent from the others, but each must also “by their mutual relations, be the means of keeping each other in their proper places.” THE FEDERALIST NO. 51. The separation of powers ensures dependence on, and accountability to, the people:

It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

THE FEDERALIST NO. 51.

“The declared purpose of separating and dividing the powers of government, of course, was to diffuse power, the better to secure liberty.” *Bowsher v. Synar*,

478 U.S. 714, 721 (1986) (internal quotations omitted). Rather than sheltering the executive and legislature, the system was “deliberately structured to assure full, vigorous, and open debate on the great issues affecting the people and to provide avenues for the operation of checks on the exercise of governmental power.” *Id.* at 722.

Under *Marbury*, when faced with claims implicating individual rights, the courts have an important duty and a role to play. “[I]t is established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution” *Bell v. Hood*, 327 U.S. 678, 684 (1946). As noted by Magistrate Coffin, the separation of powers calls upon the court to decide the merits of this case:

[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 at 552.

Where the legislative and executive branches have, as here, failed to protect the fundamental liberties of citizens, and have, as here, actively infringed upon those rights, the separation of powers concerns mandate that the judiciary fulfill its role to serve as a check and balance to protect the rights of these individuals. *Marbury*, 5 U.S. (1 Cranch) at 170 (“The province of the court is, solely, to decide on the rights of individuals, not to enquire how the executive, or executive officers,

perform duties in which they have a discretion.”). The district court properly exercised review in this case consistent with the separation of powers principles of our government.

IV. CONCLUSION

The courts have a duty to safeguard individuals’ rights where the other branches have failed to do so. These Youth Plaintiffs are reliant on the judicial branch to declare their rights, and the district court is the proper venue to develop the case record and decide the merits of these important issues. *Amici Curiae* respectfully request that this Court affirm the district court’s decisions.

Dated: March 1st, 2019.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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