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Juliana v. United States

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Juliana v. United States, 339 F. Supp. 3d 1062 (D. Or. 2018)

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In 2015, a group of adolescents between the ages of eight and nineteen filed a lawsuit against the federal government for infringing upon their civil rights to a healthy, habitable future living environment. Those Plaintiffs in *Juliana v. United States* alleged that the industrial-scale burning of fossil fuels was causing catastrophic and destabilizing impacts to the global climate, threatening the survival and welfare of present and future generations. Seeking to reduce the United States' contributions to atmospheric carbon dioxide, Plaintiffs demanded injunctive and declaratory relief to halt the federal government's policies of promoting and subsidizing fossil fuels, due to the limited timeframe for addressing the impacts of climate change. While extensive motion practice has impeded a hearing on merits of Plaintiffs' claims, *Juliana v. United States* addressed threshold questions concerning constitutional and procedural claims.

I. INTRODUCTION

In *Juliana v. United States*, the United States District Court for the District of Oregon upheld in part and denied in part the federal Defendants' motion for judgment on the pleadings and motion for summary judgment and denied their request to certify the case for interlocutory appeal.[1] Defendants argued that the court should dismiss President Trump as a defendant[2] and that the case should be dismissed as a result of Plaintiffs' failure to state a claim under the Administrative Procedure Act ("APA")[3] and issues relating to separation of powers,[4] standing,[5] due process,[6] and the public trust doctrine.[7] The District Court rejected most of Defendants' substantive claims and ultimately held that Plaintiffs should be permitted to argue that they have a fundamental right to a climate system capable of sustaining human life.[8]

II. FACTUAL AND PROCEDURAL BACKGROUND

A group of 21 young people, the nonprofit organization Earth Guardians, and climatologist Dr. James Hansen (collectively, "Plaintiffs") filed a lawsuit in August 2015 against the federal government, naming the

1. Juliana v. United States, 339 F. Supp. 3d 1062, 1105 (D. Or. 2018).
2. *Id*. at 1076.
3. *Id*. at 1080.
4. *Id*. at 1084.
5. *Id*. at 1086.
6. *Id*. at 1097.
7. *Id*. at 1101.
8. *Id*. at 1103.

United States, the President,[9] and the heads of multiple executive agencies (collectively, "Defendants").[10] Plaintiffs asserted the government "ha[s] known for more than fifty years" that the industrial-scale release of carbon dioxide ("CO_2") is causing dangerous changes to the global climate and threatening the lives, liberty, and property of present and future generations.[11] Plaintiffs alleged that—instead of responding to this knowledge by adopting policies to rationally phase out carbon pollution—Defendants, through the permitting, authorizing, and subsidizing of fossil fuels, have deliberately allowed atmospheric CO_2 levels to reach dangerous and unprecedented levels.[12] Numerous courts have held multiple procedural hearings and delivered various orders arising from Defendants' extensive motion practice in this case.[13] The latest example of this motion practice was addressed by the District Court, which expressed exasperation with Defendants' rehashing of arguments previously raised and decided in prior stages of litigation.[14]

In January 2017, Defendants answered Plaintiffs' first amended complaint, leaving uncontested many of the complaint's scientific and factual allegations.[15] For example, Defendants did not refute Plaintiffs' assertion that some federal employees had been aware—for at least 50 years—of the growing body of scientific research and consensus around the role of CO_2 in causing "measurable long-lasting changes to the global climate, resulting in an array of severe and deleterious effects to human beings, which will worsen over time."[16] Additionally, Defendants agreed that anthropogenic climate change has been occurring since the mid-1900s and that it is damaging human and natural systems and increasing the risk of extinction for many species.[17] According to the court, these admissions showed that Defendants were aware of the existence of climate change, that such changes were human-induced through the burning of fossil fuels,

9. President Trump replaced President Obama as Defendant when he assumed the presidency in January 2017.

10. *Juliana*, 339 F. Supp. 3d at 1071.

11. *Id*.

12. *Id*.

13. *Id*. at 1071–1075.

14. *Id.* at 1068 ("Federal defendants raise several arguments in their motion for summary judgment, many of which were previously considered in the November 2016 Order."); *Id.* ("Federal defendants further argue, as they did in their previous motion to dismiss, that there is no fundamental right to a climate change system capable of sustaining human life . . ."); *Id.* ("Federal defendants argue, as they did at the pleadings stage, that plaintiffs lack Article III standing to bring their claims."); *Id*. at 1089 ("Federal defendants have presented no new controlling authority or other evidence which changes the Court's previous analysis."); *Id*. at 1090 ("Federal defendants offer nothing to contradict these submissions, and merely recycle arguments from their previous motion."); *Id.* at 1096 ("Federal defendants offer no new evidence or controlling authority on this issue that warrant reconsideration of the Court's previous analysis.").

15. *Id*. at 1072.

16. *Id*.

17. *Id.*

and that climate change poses a "monumental" danger to future Americans.[18]

III. ANALYSIS

The District Court's October 15, 2018 opinion and order addressed two interrelated motions filed by Defendants—a motion for judgment on the pleadings and a motion for summary judgment.[19] Under both types of motions, the court must decide whether the facts presented in the complaint would entitle Plaintiffs to a legal remedy.[20] Plaintiffs' claims survived mostly intact.[21]

A. Judgment on the Pleadings

Defendants' motion for judgment on the pleadings raised two issues presented for the first time and two issues upon which the court had previously ruled.[22] First, Defendants moved to dismiss with prejudice President Trump as a named defendant.[23] Next, they moved to have the entire suit dismissed on the basis that Plaintiffs failed to state a claim under the APA.[24] Third, Defendants sought dismissal on separation of powers grounds.[25] Finally, Defendants asked the court to reconsider the November 2016 denial of their Rule 12(b)(6) motion.[26]

i. Motion to Dismiss President Trump as Defendant

The district court first turned to the issue of whether to dismiss President Trump as a defendant in the suit.[27] Plaintiffs were willing to stipulate dismissal of President Trump as a defendant, so long as his dismissal was without prejudice.[28] However, Defendants asserted that anything less than dismissal with prejudice would violate separation of powers principles.[29] The court cited the longstanding canon of constitutional avoidance as the basis for dismissing the President, and provided that "because granting equitable relief against the President of the United States raises serious constitutional questions, dismissal of the President as a defendant is appropriate whenever it appears likely that the plaintiffs' injuries can be redressed through relief against another

18. *Id.*
19. *Id*. at 1075–1076.
20. *Id.* at 1075.
21. *Id*. at 1071.
22. *Id*. at 1076.
23. *Id*.
24. *Id*. at 1080.
25. *Id*. at 1084.
26. *Id*.
27. *Id*. at 1076.
28. *Id.*
29. *Id*.

defendant."[30] However, the court declined to categorize the President's dismissal as one with prejudice, because "[t]he Court [could] not conclude with certainty that President Trump [would] never become essential to affording complete relief" to Plaintiffs.[31] In so deciding, the court disagreed with Defendants' contentions that inferior "federal courts lack jurisdiction to issue equitable relief in connection with a sitting president's performance of his official duties."[32]

ii. Motion to Dismiss for Failure to State a Claim under the APA

Defendants' next argument focused on Plaintiffs' challenges to the actions and inactions of federal agencies by arguing that the only proper avenue for relief was by way of the APA.[33] In rejecting this motion, the court held that Plaintiffs had not—and need not have—brought their claims under the APA because Plaintiffs' claims involved constitutional arguments, which have no "final agency action" requirement.[34] Owing to the complex set of factors influencing climate change, the court held it would be impossible for Plaintiffs to argue that their injuries resulted from a single agency action.[35] The unique nature of Plaintiffs' claims, which require review of "aggregate action by multiple agencies," placed them outside of the APA's scope.[36]

iii. Motion to Dismiss on Separation of Powers Grounds

The court next addressed Defendants' motion to dismiss on separation of powers grounds, and the request to reconsider the court's 2016 denial to dismiss for failure to state a claim upon which relief could be granted.[37] The court began by "recogniz[ing] that there are limits to the power of the judicial branch," and then separately addressed issues related to separation of powers and challenges to subject matter jurisdiction.[38] Relying on the law of the case doctrine as precluding Defendants' arguments on separation of powers issues, the court made clear that it was "under no obligation to give full consideration to a rehash of arguments already presented in a Rule 12(b)(6) motion."[39] Because Defendants had previously raised a 12(b)(6) motion, and "[n]othing ha[d] changed to warrant expending judicial resources in retreading that ground," the district court "decline[d] to revisit its earlier rulings" on the separation of

30. *Id*. at 1078.
31. *Id*. at 1080.
32. *Id*.
33. *Id*.
34. *Id*. at 1081.
35. *Id*. at 1084.
36. *Id.*
37. *Id*.
38. *Id*.
39. *Id*. at 1085.

powers issues.[40]

As to the subject matter jurisdiction issues, while "the law of the case doctrine [did] not apply," the court nevertheless declined to revisit its prior rulings.[41] In addressing these arguments, the court again reiterated to Defendants its awareness of separation of powers principles at play but held fast to the notion "that it is 'emphatically the province and duty of the judicial department to say what the law is.'"[42] The court declined to shirk its responsibility to "fulfill [its] role as a check on any unconstitutional actions of the other branches of government."[43] The court did not consider the merits of Defendants' motions anew, but rather relied on the fact that those motions had been previously raised and rejected.[44] Citing the fact Defendants raised the same arguments in previous hearings, the court held that "courts are under no obligation to give full consideration to a rehash of arguments already presented."[45] With respect to the separation of powers issues, the court reminded Defendants that it had addressed the question extensively; the claims "did not require dismissal" in 2016, and did not require dismissal now.

B. Summary Judgment

In its motion for summary judgment, Defendants raised a host of legal arguments: (1) Plaintiffs lacked Article III standing to sue because they could not prove injury-in-fact, causation, or redressability;[46] (2) Plaintiffs failed to state a claim under the APA;[47] (3) Separation of powers principles barred Plaintiffs' claims;[48] (4) Plaintiffs' due process claims to a "fundamental right to an environment capable of sustaining human life"[49] and the "state-created danger theory" were insufficient;[50] and (5) the public trust doctrine applies only to states and not the federal government.[51]

i. Standing

The court addressed the three elements of Article III standing—injury in fact, causation, and redressability—in turn.[52] On the question of injury in fact, the court referred to Plaintiffs' sworn declarations, attesting

40. *Id*. at 1085.
41. *Id*.
42. *Id*. (quoting Marbury v. Madison, 5 U.S. 137, 177 (1803)).
43. *Id*. at 1085-1086.
44. *Id*. at 1084–1085
45. *Id*. at 1085.
46. *Id*. at 1086.
47. *Id*. at 1096.
48. *Id*. at 1097.
49. *Id*. at 1097–1098.
50. *Id*. at 1098–1099.
51. *Id*. at 1101–1102.
52. *Id*. at 1087–1094.

to a range of personal injuries resulting from climate change.[53] Plaintiffs' expert witnesses drew connections between these injuries and fossil fuel-caused warming.[54] Noting that Defendants did not attempt to refute these assertions, the court held that "Plaintiffs and their experts ha[d] provided 'specific facts,' of immediate and concrete injuries."[55]

As to causation, the court commented on the fact that Defendants admitted the U.S. was responsible for more than 25 percent of cumulative global CO_2 emissions between 1850 and 2012,[56] that such emissions could be tied to climate change, and that climate change could be shown to be causally related to the injuries alleged by Plaintiffs.[57] Because surviving summary judgment requires only a showing that genuine issues of material fact remain, the court found "Plaintiffs ha[d] provided sufficient evidence showing that causation for their claims [was] more than attenuated."[58]

Citing the lower standard of review required to survive a motion for summary judgment, the court rejected Defendants' contention that redress was impossible because Plaintiffs' requested remedies were beyond the court's authority.[59] Plaintiffs' burden was not to "show that a favorable decision is certain to redress [their] injury;" rather, Plaintiffs need only show a "substantial likelihood" that the court could provide meaningful relief.[60]

ii. Failure to State a Claim Under the APA and Separation of Powers

Similar to its analysis under Defendants' motion on the pleadings, the court declined to entertain Defendants' rehashing of old arguments already rejected by the court.[61] On the separation of powers question, the court held that while the allocation of powers between the branches of the federal government is an important consideration, the issue was not sufficient to result in dismissal.[62]

iii. Due Process Claims

Defendants argued that the case should be dismissed because Americans do not have a fundamental constitutional right to a life-

53. *Id.* at 1087 (indicating that one Plaintiff's home was flooded multiple times as a result of extreme weather events, another suffered injuries caused by sea level rise and extreme weather, and yet another suffered trauma and health effects as a result of increased frequency and intensity of wildfires).

54. *Id.* (including statistics showing that, in the 123 years such records have been kept, the five hottest years on record all occurred within the past decade).

55. *Id*. at 1090 (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992)).

56. *Id*. at 1091.

57. *Id*. at 1093.

58. *Id.*

59. *Id*. at 1093.

60. *Id*. at 1093, 1096.

61. *Id.*

62. *Id*. at 1097.

sustaining climate system.[63] In rejecting this argument, the court held that the Constitution does, in fact, afford sufficient "protection against the government's knowing decision to poison the air its citizens breathe or the water its citizens drink."[64] Defendants challenged Plaintiffs' state-created danger theory, asserting Plaintiffs failed to show that government conduct was the proximate cause of "a dangerous situation in deliberate indifference to Plaintiffs' safety."[65] Deliberate indifference, the court noted, "is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action."[66] Noting that Defendants did not refute Plaintiffs' evidence that Defendants were aware of—and failed to act upon—information showing that continued use of fossil fuels would harm the U.S. and its citizens, the court found the existence of a genuine issue of disputed fact sufficient for Plaintiffs to survive summary judgment.[67]

Finally, the court turned to Defendants' assertions that the public trust doctrine does not apply to the federal government.[68] Noting once again that Defendants raised the same issues in an earlier proceeding, the court reiterated its previous order stating that "the public trust doctrine is deeply rooted in our nation's history and that [P]laintiffs' claims are viable."[69]

IV. CONCLUSION

The claims argued here invoke complex and novel questions about the role of the judicial system in addressing climate change, injury in relation to standing, and constitutional rights. Regardless of how courts ultimately decide the merits of *Juliana*, the present case illustrates the ways litigation is developing to address what is arguably the most pressing issue of our time. Questions raised and answered through the process of this litigation will likely inform the scope and substance of future efforts to address climate change, both within and outside the legal system.

63. *Id.*

64. *Id*. at 1098 (quoting Juliana v. United States, 217 F. Supp. 3d 1224, 1250 (D. Or. 2016)).

65. *Id*.

66. *Id*. at 1099 (quoting Patel v. Kent Sch. Dist., 648 F.3d 965, 974 (9th Cir. 2011)).

67. *Id*. at 1101.

68. *Id*. at 1101.

69. *Id*. at 1101–1102.