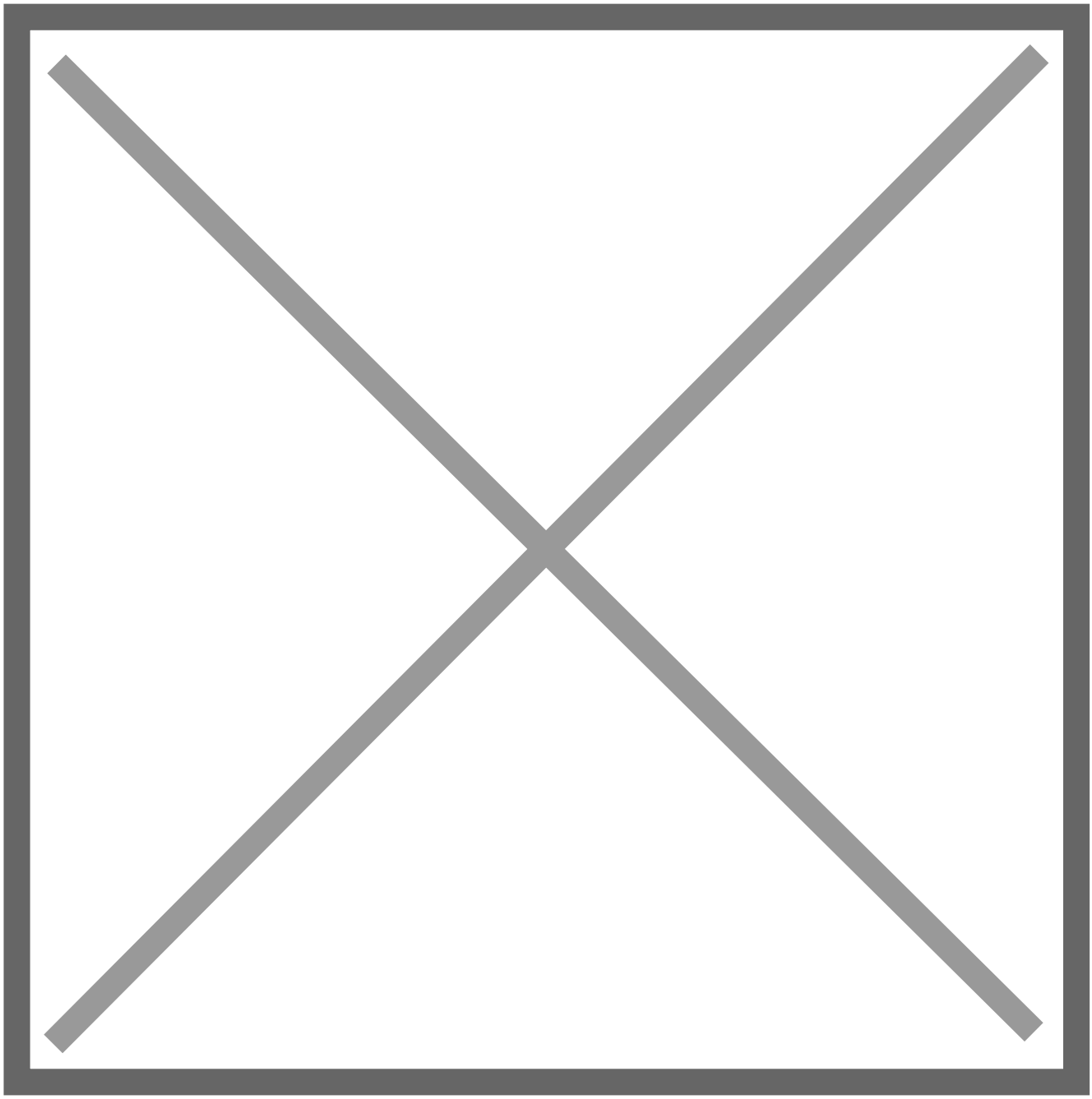


Kelsey Juliana and her co-plaintiffs in the Juliana v. United States constitutional climate change lawsuit hold a press in September 2019 in front of the Supreme Courthouse in Washington, D.C. (Our Children's Trust/Robin Loznak)



by Brian Roewe

NCR environment correspondent

View Author Profile

broewe@ncronline.org
Follow on Twitter at @brianroewe

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Editor's Note: *This report was updated Jan. 19 at 7:30 p.m., cst, with additional reactions.*

A federal appeals court on Friday directed the dismissal of a high-profile lawsuit brought by 21 youth plaintiffs who had sued the U.S. federal government for its inaction on climate change.

In a 2-1 ruling Jan. 17, a three-judge panel in the U.S. Court of Appeals for the Ninth Circuit Court threw out the *Juliana* v. *United States* case, saying the plaintiffs lacked standing and the case was beyond the constitutional power of the courts. The decision overturns a ruling from a federal district court in Oregon and returns the case with instructions for dismissal.

Julia Olson, plaintiff's attorney and executive director of Our Children's Trust, the non-profit law firm that filed the case, told The Washington Post, "This is far from over." In a statement, Our Children's Trust said it would seek a review of the decision by the full 9th circuit bench.

Kelsey Juliana, the 23-year-old plaintiff named in the lawsuit, said she was disappointed by the court's decision, calling it "contrary to American principles of justice that I have been taught since elementary school."

"This decision gives full unfettered authority to the legislative and executive branches of government to destroy our country, because we are dealing wit ha crisis that puts the very existence of our nation in peril," she said in the statement.

In a follow-up statement, Juliana echoed the "this is not over" comments from her attorney, and that with the petition to the 9th circuit "we refuse to do anything but move forward and ultimately win." She argued that courts have "an obligation to address issues of constitutional, existential crisis, like climate change," and urged supporters to "stay hopeful, stay with us, stay tuned, stay in power."

As it made its way through the court system over four years, the lawsuit drew support and numerous amicus briefs from law professors, environmental groups, health organizations and religious congregations. That included the Leadership Conference of Women Religious, GreenFaith, the Sisters of Mercy and several other religious congregations.

Several of the plaintiffs are Catholic, including Nick Venner, who was 14 years old when he joined the *Juliana* case. Now 18, he told NCR in August he was drawn to the lawsuit because he saw it as a way to force systemic change to address climate change, and that it meshed with Catholic teaching on the need to protect life and preserve God's creation for future generations.

Venner told NCR in an email Jan. 18 he experiencecd a mix of emotions upon hearing the decision, but found it "encouraging" that the court recognized three things: "that climate change is occurring, that the federal government is playing a big role in causing it, and that it is causing significant harm to me and my fellow plaintiffs."

"Even though I am disappointed that, in the end, the court did not have the courage to follow its reasoning to its logical end, I still see this as a victory for us," Venner said.

Related: Meet the young Catholic suing the government over climate change

The *Juliana* case has spanned two presidencies, originally filed in 2015 during the Obama administration. It argued that the federal government has known for decades the impact of carbon dioxide emissions on the planet's climate and that it continued to facilitate investment in the fossil fuel industry. The case also alleged that inadequate federal action on climate change violated the young people's constitutional rights.

In an email to NCR Jan. 18, Our Children's Trust spokeswoman Erin Barnhart stressed the Juliana case was not about the government's failure to act, but rather, the plaintiffs' asserted that "the U.S. government, through its affirmative actions in creating a national energy system that causes climate change, is depriving them of their constitutional rights to life, liberty, and property, and has failed to protect essential public trust resources."

Rather than monetary damages, the case sought the courts to force the federal government to enact a plan to lower greenhouse gas emissions equal to what the science says is required.

In the opinion, 9th Circuit Judge Andrew Hurwitz said the plaintiffs "presented compelling evidence" that climate change has brought the planet closer to destruction, and that the evidence in their suit documented that "the federal government has long promoted fossil fuel use despite knowing that it can cause catastrophic climate change, and that failure to change existing policy may hasten an environmental apocalypse."

The ruling did not address whether the plaintiffs have a constitutional right to a life-sustaining climate. The central issue in the case, Hurwitz said, was whether the court had the constitutional authority to compel another branch of government to take action, including action on climate change. He wrote that any plan to address climate change "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."

"Reluctantly, we conclude that such relief is beyond our constitutional power. Rather, the plaintiffs' impressive case for redress must be presented to the political branches of government," he said.

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Near the end of his decision, Hurwitz wrote, "The plaintiffs have made a compelling case that action is needed; it will be increasingly difficult in light of that record for the political branches to deny that climate change is occurring, that the government has had a role in causing it, and that our elected officials have a moral responsibility to seek solutions."

District Judge Josephine Staton dissented from the decision. In her own lengthy opinion, she said that the government was essentially accepting as fact that the country "has reached a tipping point crying out for a concerted response — yet presses ahead toward calamity." She said the youth lawsuit was an effort "to enforce the most basic structural principle embedded in our system of ordered liberty: that the Constitution does not condone the Nation’s willful destruction."

Staton said there was precedent for judicial action in orders from the Supreme Court on desegregation and overhaul of state prison systems. She also referenced the landmark *Brown* v. *Board of Education*, a case some *Juliana*'s supporters have held up as an encouraging precedent. That included Venner, who said many civil rights cases were once seen as longshots before they scored court victories and movements formed around them. "We are rising, and progress is steadily being made," he said. "The question now is whether we can accomplish [our goals] in the time we have left."

Staton said that after *Brown*, "complex policy decisions" emerged that trial courts had to face, "and I have no doubt that disentangling the government from promotion of fossil fuels will take an equally deft judicial hand."

"Where is the hope in today's decision?" she wrote in her conclusion. "Plaintiffs' claims are based on science, specifically, an impending point of no return. If plaintiffs' fears, backed by the government's *own studies*, prove true, history will not judge us kindly. When the seas envelop our coastal cities, fires and droughts haunt our interiors, and storms ravage everything between, those remaining will ask: Why did so many do so little?"

[Brian Roewe is an NCR staff writer. His email address is **broewe@ncronline.org**. Follow him on Twitter: @BrianRoewe.]