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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

Decision of Divided Ninth Circuit Court of Appeals Finds Primarily for *Juliana* Plaintiffs, but Holds Federal Judiciary Can Do Nothing to Stop the U.S. Government in Causing Climate Change and Harming Children

The *Juliana* 21 Continue to Fight for Justice in the Biggest Climate Lawsuit in America

Eugene, Oregon - Today, a divided panel of the Ninth Circuit Court of Appeals [“reluctantly” concluded](#) that the youth plaintiffs’ case in *Juliana v. United States* must be made to the Congress, the President, or to the electorate at large. The decision finds federal courts cannot provide the youth with a remedy for their climate change injuries. In her dissent, District Judge Josephine L. Staton wrote that the youth plaintiffs brought suit to enforce the most basic structural principal embedded in our system of liberty: the Constitution does not condone the Nation’s willful destruction. Judge Staton would hold that the youth plaintiffs have standing to challenge the government’s conduct, have articulated claims under the Constitution, and have presented sufficient evidence to press those claims at trial. Counsel for the youth plaintiffs vowed to ask the full Ninth Circuit to review the determination that federal courts can do nothing to address an admitted constitutional violation.

Julia Olson, executive director and chief legal counsel of **Our Children’s Trust** and co-counsel for the youth plaintiffs, commented: “The *Juliana* case is far from over. The Youth Plaintiffs will be asking the full court of the Ninth Circuit to review this decision and its catastrophic implications for our constitutional democracy. The Court recognized that climate change is exponentially increasing and that the federal government has long known that its actions substantially contribute to the climate crisis. Yet two of the judges on the Panel refused to set the standard for redressing the constitutional violation, to protect our Nation’s children. The standard is a question of science that should be determined at trial. The majority opinion ignores the fact that we have yet to go to trial on the issue of redressability.”

There were numerous points in which the majority opinion of Ninth Circuit Judge Andrew Hurwitz found in favor of the youth plaintiffs, including: the evidence showed climate change was occurring at an

increasingly rapid pace; copious expert evidence established that the unprecedented rise in atmospheric carbon dioxide levels stemmed from fossil fuel combustion and will wreak havoc on the Earth's climate if unchecked; the record conclusively established that the federal government has long understood the risks of fossil fuel use and increasing carbon dioxide emissions; and the record established that the government's contribution to climate change was not simply a result of inaction.

The opinion also recognized that the youth plaintiffs had suffered concrete and particularized injuries from climate change. The panel held the district court properly found the youth plaintiffs met the Article III causation requirement because there was at least a genuine factual dispute as to whether a host of federal policies were a "substantial factor" in causing the plaintiffs' injuries.

Yet, two of the three judges held the youth plaintiffs' claimed injuries were not redressable by an Article III court. Specifically, the majority held it was beyond the power of federal courts to order, design, supervise, or implement the youth plaintiffs' requested remedial plan where any effective plan would necessarily require a host of complex policy decisions entrusted to the executive and legislative branches. In short, the majority ruled the remedies the youth plaintiffs have requested must be implemented by Congress or the President, not the courts.

Philip Gregory, with Gregory Law Group of Redwood City, California and co-counsel for the youth plaintiffs, stated: "Despite finding the government was actively contributing to climate change, and despite the fact the court found these youth plaintiffs submitted evidence of concrete and particularized injuries, and despite the fact that the youth plaintiffs presented sufficient evidence to show federal policies were a substantial factor in causing plaintiffs' constitutional injuries, a majority of the panel concluded there was nothing federal courts could do to address these constitutional violations. We strongly disagree with this conclusion and will take this determination to the full Ninth Circuit."

Kelsey Juliana, the 23-year-old named plaintiff in *Juliana* and resident of Eugene, Oregon, said: "THIS ISN'T OVER. Prepare for a petition for review en banc to the 9th circuit as we refuse to do anything but move forward and ultimately win. Courts do have an obligation to address issues of constitutional, existential crisis, like climate change. STAY HOPEFUL STAY WITH US STAY TUNED STAY IN POWER."

Levi Draheim, 12-year-old plaintiff from Satellite Beach, Florida, commented: "We will continue this case because only the courts can help us. We brought this lawsuit to secure our liberties and protect our lives and our homes. Much like the civil rights cases, we firmly believe the courts can vindicate our constitutional rights and we will not stop until we get a decision that says so."

Juliana v. United States is *not* about the government's failure to act on climate. Instead, these young plaintiffs between the ages of 12 and 23, assert 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. The case is one of many related legal actions brought by youth in several states and countries, all supported by Our Children's Trust, and all seeking science-based action by governments to stabilize the climate system.

Counsel for Plaintiffs are Julia Olson, Esq. of Eugene, OR, Philip L. Gregory, Esq. of Gregory Law Group of Redwood City, CA, and Andrea Rodgers, Esq. of Seattle, WA.

Our Children's Trust is a non-profit 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.

www.ourchildrenstrust.org/

Earth Guardians is a Colorado-based nonprofit organization with youth chapters on five continents, and multiple groups in the United States with thousands of members working together to protect the Earth, the water, the air, and the atmosphere, creating healthy sustainable communities globally. We inspire and empower young leaders, families, schools, organizations, cities, and government officials to make positive change locally, nationally, and globally to address the critical state of the Earth.

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