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Juliana v. United States

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***Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020)**

Anthony P. Reed

Plaintiffs sued the United States government for promoting activities that were known to pollute the atmosphere and cause climate change. They claimed the government’s policies violated their rights under the substantive due process clause of the Fifth Amendment, the equal protection clause of the Ninth Amendment, and the public trust doctrine. The Ninth Circuit held it was not within the court’s Article III power to create and oversee a comprehensive plan capable of redressing the Plaintiffs’ injuries and, therefore, Plaintiffs lacked standing.

I. INTRODUCTION

A group of twenty one young citizens, an environmental non-profit, and a “representative of future generations” (collectively “Plaintiffs”), brought an action alleging the federal government (“Defendant”) violated their constitutional right to a “climate system capable of sustaining human life.”¹ Plaintiffs sought an order compelling the government to develop a plan that would eliminate fossil fuel emissions and restore atmospheric levels of carbon dioxide to preindustrial levels.²

Defendants argued the claim should have been dismissed because Plaintiffs should have sought a remedy under the Administrative Procedure Act (“APA”).³ The court assumed, without examination, the right asserted by Plaintiffs existed under the due process clause of the Fifth Amendment.⁴ The court held that the APA was not an appropriate avenue for relief because Plaintiffs did not allege that an agency took discrete action in excess of its statutory authority.⁵ Furthermore, Plaintiffs did not allege that any discrete agency action was arbitrary and capricious.⁶ Ultimately, the court held the Plaintiffs’ claim could not survive summary judgment because the court did not have the constitutional power to issue the redress Plaintiffs sought.⁷ The court advised Plaintiffs to instead seek relief through the political process.⁸

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs filed their complaint in the United States District Court for the District of Oregon where they alleged constitutional violations of: “(1) the [P]laintiffs’ substantive rights under the Due Process Clause of

1. *Juliana v. United States*, 947 F.3d 1159, 1165 (9th Cir. 2020).
2. *Id.* at 1164–65.
3. *Id.* at 1167.
4. *Id.* at 1164.
5. *Id.* at 1167 (citing 5 U.S.C. §§ 706(2)(A), (C) (2018)).
6. *Id.* at 1167.
7. *Id.* at 1164.
8. *Id.* at 1165.

the Fifth Amendment; (2) the [P]laintiffs' rights under the Fifth Amendment to equal protection of the law; (3) the [P]laintiffs' rights under the Ninth Amendment; and (4) the public trust doctrine."⁹ The district court denied the Defendant's motion to dismiss, finding the Plaintiffs had standing and the matter was justiciable.¹⁰ However, the district court, acting on a motion for summary judgment and judgment on the pleadings filed by the Defendants, granted summary judgment to the Defendants on the Ninth Amendment claim and dismissed the equal protection claim in part.¹¹ Defendant's interlocutory appeal was granted in part and denied in part by the Ninth Circuit.¹²

III. ANALYSIS

The Ninth Circuit first examined, and dismissed, the Defendant's argument that the Plaintiffs should have brought suit under the APA.¹³ Next, the court discussed the issue of standing, finding that two of the three requirements were met.¹⁴ Finally, the court concluded the Plaintiffs' claim was ultimately a political question.¹⁵

A. *The Administrative Procedure Act*

Defendant did not contend climate change, its effect, or its cause, but instead argued that Plaintiffs were required to bring their claim under the APA.¹⁶ The government argued that because the APA is a "comprehensive remedial scheme" used to contest the constitutionality of agency actions, all of the Plaintiffs' claims should have been brought under it, and the freestanding constitutional claims should therefore be barred.¹⁷ However, the court disagreed on the grounds that, if it were to follow the Defendant's interpretation of the APA and force all constitutional claims to proceed through that statutory mechanism, then it would prevent plaintiffs from ever challenging constitutional violations when the violation was not the result of a discrete agency action.¹⁸

In order for a claim to be appropriately brought under the APA, a plaintiff must allege a discrete agency action either exceeded its statutory authorization or was arbitrary and capricious.¹⁹ Here, the Plaintiffs' claim

9. *Id.* at 1165.

10. *Id.*

11. *Id.*

12. *Id.* at 1166.

13. *Id.*

14. *Id.* at 1175.

15. *Id.* at 1173.

16. *Id.* at 1167.

17. *Id.*

18. *Id.* (citing *Sierra Club v. Trump*, 929 F.3d 670, 694, 696 (9th Cir. 2019); *Navajo Nation v. Dep't of the Interior*, 876 F. 3d 1144,1172 (9th Cir. 2017)).

19. *Id.* (citing 5 U.S.C. § 706 (2)(A), (C)).

did not allege a discrete agency action.²⁰ The court further reasoned that if an act of Congress intends to judicially control a colorable constitutional claim, they must explicitly state that intention in the act and the APA contains no such language.²¹ Thus, the court held that the Plaintiffs were not required to bring their constitutional claims under the APA.²²

B. Article III Standing

Plaintiffs were unable to show they had adequate Article III standing to bring their claims.²³ To establish standing, a plaintiff must show (1) a concrete and particularized injury that (2) is caused by the challenged conduct and (3) is likely redressable by a favorable judicial decision.²⁴ To survive summary judgment, a plaintiff must merely show the existence of a genuine dispute as to the requirements.²⁵

1. Injury In-Fact

The court held that several Plaintiffs were able to show concrete and particularized injuries that were neither conjectural nor hypothetical.²⁶ The court noted that one Plaintiff was forced off her homeland and separated from her family on the Navajo Reservation because of water scarcity.²⁷ Having to leave one's home qualified, in the court's eyes, as a concrete and particularized injury.²⁸ Another Plaintiff had been evacuated multiple times from his coastal home due to flooding.²⁹ The court stated this too was a concrete and particularized injury resulting from climate change, and that Plaintiffs will likely to continue to experience effects if it is left unchecked.³⁰

Nevertheless, the Defendant argued that because climate change affects everyone, the Plaintiffs' claims could not be particularized.³¹ The court noted, however, that "it does not matter how many persons have been injured if the plaintiffs' injuries are concrete and personal."³² Additionally,

20. *Id.*

21. *Id.* (citing *Webster v. Doe*, 486 U.S. 592, 603, (1988) (internal quotations omitted); *Allen v. Milas*, 896 F.3d 1094, 1108 (9th Cir. 2018)).

22. *Id.* at 1166.

23. *Id.* at 1168.

24. *Id.* (citing *Friends of the Earth, Inc. v. Laidlaw Env'tl. Serv. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000); *Jewel v. NSA*, 673 F.3d 902, 908 (9th Cir. 2011)).

25. *Id.* (citing *Cent. Delta Water Agency v. United States*, 306 F.3d 938, 947 (9th Cir. 2002)).

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.* (quoting *Massachusetts v. EPA*, 549 U.S. 497, 517 (2007)).

“the fact that a harm is widely shared does not necessarily render it a generalized grievance.”³³ The injury requirement is met provided at least one person has suffered a concrete harm.³⁴

2. Causation

The court acknowledged that Plaintiffs had compiled a convincing record that left little doubt climate change is occurring, accelerating, caused in part by fossil fuel combustion, and will have dire effects on the planet if left unconstrained.³⁵

However, Defendant argued that because carbon dioxide entered the atmosphere by the actions of third-parties, the causal chain was too attenuated.³⁶ The court disagreed, and reasoned that even if multiple links in the chain of causation exist, causation can still be established if the chain is not so long that it rises to a level regarded as merely hypothetical or tenuous.³⁷ The court held that Plaintiffs sufficiently established the causal chain with evidence that showed emissions from fossil fuel production, extraction, and transportation caused their injuries.³⁸ The court stated the Plaintiffs adequately showed their claims could survive summary judgment as to governmental causation through federal policy, including subsidies, leases, and authorizations which increased carbon dioxide emissions over the past fifty years.³⁹

3. Redressability

The court began its redressability analysis by stressing that Plaintiffs did not claim a statutory, regulatory, or procedural violation, nor was their claim brought under the Federal Tort Claims Act.⁴⁰ Fundamentally, Plaintiffs claim was that the government deprived them of a substantive constitutional right to a “climate system capable of sustaining human life.”⁴¹ The court noted that whether or not this right existed was for a jury

33. *Id.* (quoting *Novak v. United States*, 795 F.3d 1012, 1018 (9th Cir. 2015)).

34. *Id.* (citing *Trump v. Hawaii*, 138 S. Ct. 2392, 2416 (2018); *Town of Chester, N.Y. v. Laroe Estates, Inc.* 137 S. Ct. 1645, 1651 (2017)).

35. *Id.* at 1166.

36. *Id.* at 1169.

37. *Id.* (citing *Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th Cir. 2014); *Maya v. Centex Corp.* 658 F.3d 1060, 1070 (9th Cir. 2011)).

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

to decide; however, for purposes of examining standing, the court assumed a jury would find the right existed.⁴²

Plaintiffs sought redress in the form of declaratory and injunctive relief.⁴³ The court stated the question of redressability is twofold and a plaintiff must show relief is both “(1) substantially likely to redress their injuries; and (2) within the district court’s power to award.”⁴⁴ A plaintiff need not show redress is guaranteed, only that it is more than merely speculative.⁴⁵

Plaintiffs sought a declaration from the government stating that it had violated the Constitution.⁴⁶ The court observed this remedy would be unlikely to redress the Plaintiffs’ injuries, although it may benefit them psychologically.⁴⁷ Psychological remedies may be attached to redressability but are not acceptable as the sole remedy to establish Article III standing.⁴⁸

Plaintiffs also sought injunctive relief in the form an order preventing the government from permitting, authorizing, and subsidizing fossil fuel use and to create a plan, approved by the judiciary, that reduces the country’s carbon footprint.⁴⁹ The court reasoned such a plan would be problematic because it would prevent the Executive from exercising its discretion expressly granted by Congress, and prevent Congress from exercising power expressly granted by the Constitution.⁵⁰ The court expounded further that the Plaintiffs’ experts had not shown that action taken by the United States to eliminate pro-fossil fuel programs would sufficiently reduce global carbon dioxide levels and prevent further injury.⁵¹ The court made clear that the Plaintiffs’ experts acknowledged much more would be required to curb the effects of climate change including “a fundamental transformation of this country’s energy system.”⁵²

The court held that even if the proposed relief would reduce the likelihood of further injury to the Plaintiffs, the redressability requirement was still not satisfied.⁵³ A remedy that merely ameliorates a plaintiff’s in-

42. *Id.* (comparing *Clean Air Council v. United States*, 362 F. Supp. 3d 237, 250–53 (E.D. Pa. 2019) with *Juliana v. United States*, 217 F. Supp. 3d, 1248–50 (D. Or. 2016)).

43. *Id.* at 1169.

44. *Id.* at 1170 (citing *M.S. v. Brown*, 902 F.3d 1076, 1083 (9th Cir. 2018) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992))).

45. *Id.* (citing *Clean Air Council v. United States*, 362 F. Supp. 3d 237 (E.D. Pa. 2019); *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 107 (1998)).

46. *Id.*

47. *Id.*

48. *Id.* (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Serv. (TOC), Inc.*, 528 U.S. 167, 185 (2000)).

49. *Id.*

50. *Id.* (citing U.S. CONST. art IV, § 3, cl. 2).

51. *Id.*

52. *Id.* at 1171.

53. *Id.*

juries is only available to those who have suffered a deprivation of a procedural right.⁵⁴ Notably, in *Massachusetts v. EPA* the Supreme Court found redressability because “there [was] some possibility that the requested relief [would] prompt the injury-causing party to reconsider the decision that allegedly harmed the litigant.”⁵⁵

Finally, the court found the injunctive relief Plaintiffs sought was beyond the power of an Article III court because it required a comprehensive, complex plan which could not be ordered, designed, supervised, or implemented by the judiciary.⁵⁶

IV. CONCLUSION

Plaintiffs were unsuccessful in their attempt to obtain a ruling on the merits of their challenge to the United States’ reliance on fossil fuels. Had the Plaintiffs brought additional claims as the court noted, or if they had a simpler solution to the problem, the court may have been more receptive to their suit. This claim was novel, but likely to serve as an example for those concerned with the state of the environment who seek to bring similar suits in the future.

54. *Id.*

55. *Id.* (quoting *Massachusetts v. EPA*, 549 U.S. 497, 517 (2007)).

56. *Id.* (citing *M.S. v. Brown*, 902 F.3d 1076, 1086 (9th Cir. 2019)).