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IN THE SUPREME COURT OF THE STATE OF ALASKA

ESAU SINNOK, et al.,	)	
	)	
Appellants,	)	
	)	
v.	)	
	)	
STATE OF ALASKA, et al.,	)	
	)	
Appellees.	)	Supreme Ct. No. S-17297
	)	

Trial Court Case No. 3AN-17-09910 CI

APPEAL FROM THE SUPERIOR COURT,
THIRD JUDICIAL DISTRICT AT ANCHORAGE,
THE HONORABLE GREGORY MILLER, PRESIDING

APPELLANTS' SUPPLEMENTAL BRIEF

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Alaska Constitution

Article I, Section 1 Inherent Rights

This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

Article I, Section 7 Due Process

No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

Article VIII, Section 1 Statement of Policy

It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

Article VIII, Section 2 General Authority

The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

Article VIII, Section 3 Common Use

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Article VIII, Section 4 Sustained Yield

Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

Article VIII, Section 13 Water Rights

All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

Article VIII, Section 14 Access to Navigable Waters

Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

Article VIII, Section 15 No Exclusive Right of Fishery

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State. *[Amended 1972]*

Article VIII, Section 16 Protection of Rights

No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.

Article VIII, Section 17 Uniform Application

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Alaska Statutes

AS 44.99.115 Declaration of State Energy Policy

The State of Alaska recognizes that the state's economic prosperity is dependent on available, reliable, and affordable residential, commercial, and industrial energy to supply the state's electric, heating, and transportation needs. The state also recognizes that worldwide supply and demand for fossil fuels and concerns about global climate change

will affect the price of fossil fuels consumed by Alaskans and exported from the state to other markets. In establishing a state energy policy, the state further recognizes the immense diversity of the state's geography, cultures, and resource availability. Therefore, it is the policy of the state to

(1) institute a comprehensive and coordinated approach to supporting energy efficiency and conservation by

(A) encouraging statewide energy efficiency codes for new and renovated residential, commercial, and public buildings;

(B) decreasing public building energy consumption through conservation measures and energy-efficient technologies; and

(C) initiating and supporting a program to educate state residents on the benefits of energy efficiency and conservation, including dissemination of information on state and federal programs that reward energy efficiency;

(2) encourage economic development by

(A) promoting the development of renewable and alternative energy resources, including geothermal, wind, solar, hydroelectric, hydrokinetic, tidal, and biomass energy, for use by Alaskans;

(B) promoting the development, transport, and efficient use of nonrenewable and alternative energy resources, including natural gas, coal, oil, gas hydrates, heavy oil, and nuclear energy, for use by Alaskans and for export;

(C) working to identify and assist with development of the most cost-effective, long-term sources of energy for each community statewide;

(D) creating and maintaining a state fiscal regime and permitting and regulatory processes that encourage private sector development of the state's energy resources; and

(E) promoting the efficiency of energy used for transportation;

(3) support energy research, education, and workforce development by investing in

(A) training and education programs that will help create jobs for Alaskans and that address energy conservation, efficiency, and availability, including programs that address workforce development and workforce transition; and

(B) applied energy research and development of alternative and emerging technologies, including university programs, to achieve reductions in state energy costs and stimulate industry investment in the state;

(4) coordinate governmental functions

(A) by reviewing and streamlining regulatory processes and balancing the economic costs of review with the level of regulation necessary to protect the public interest;

(B) by using one office or agency, as may be specified by law, to serve as a clearinghouse in managing the state's energy-related functions to avoid fragmentation and duplication and to increase effectiveness; and

(C) by actively collaborating with federal agencies to achieve the state's energy goals and to meet emissions, renewable and alternative energy, and energy production targets.

AS 44.99.125 Implementation of Policy

(a) The governor shall conduct the affairs of the state and carry out state programs in conformity with this policy.

(b) The lieutenant governor shall deliver copies of this Act to Congress and the President of the United States.

I. SUMMARY OF ARGUMENT

Appellees (the "State" or "Defendants") argue *solely and exclusively* that these Young Appellants' ("Plaintiffs'") constitutional claims implicate the third factor for identifying nonjusticiable political questions under *Baker v. Carr*.[1, 2] Contrary to Defendants' January 21, 2020 letter to this Court, the majority opinion of the divided Ninth Circuit panel in *Juliana v. United States*,[3] neither pertains to nor supports their political question arguments. Indeed, the Ninth Circuit explicitly stated: "we do not find this to be a political question[.]"[4] The panel's decision did not question the *Juliana* district court's thorough analysis and resulting conclusion that claims challenging the constitutionality of government promotion of fossil fuels, like those presented here, implicate none of the six *Baker* factors.[5]

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[1] 369 U.S. 186 (1962).

[2] It was not until oral argument that Defendants briefly raised, in passing and for the first time, an argument that Plaintiffs claims implicate the second *Baker* factor. Defendants have waived the argument. *See Katz v. Murphy*, 165 P.3d 649, 662 (Alaska 2007) ("We have consistently recognized that a party may not raise an issue for the first time on appeal and that cursory treatment of an issue amounts to a waiver."); *Wiersum v. Harder*, 316 P.3d 557, 567 (Alaska 2013) ("As a general matter, a party waives an argument if the party did not raise it in the superior court."); *see also Weiner v. Burr, Please & Kurtz, P.C.*, 221 P.3d 1, 6 n. 14 (Alaska 2009) (argument not raised in opening brief waived); *Adamson v. Univ. of Alaska*, 819 P.2d 886, 889 n. 3 (Alaska 1991) (waiver due to inadequate briefing).

[3] No. 18-36082, 2020 WL 254149 (9th Cir. Jan. 17, 2020).

[4] *Id.* at *10 n. 9; *see also id.* at *19-23 (Judge Staton, dissenting) (also finding no political question).

[5] *Juliana v. United States*, 217 F.Supp.3d 1224, 1235-42 (D. Or. 2016); *see also Conn. v. Amer. Elec. Power Co., Inc.*, 582 F.3d 309 (2d Cir. 2009), *rev'd on other grounds*, *Amer. Elec. Power Co., Inc. v. Conn.*, 64 U.S. 410 (2011); *Comer v. Murphy Oil USA*, 585 F.3d

The panel majority's opinion, which dismissed solely based on redressability under Article III of the United States Constitution, is inapplicable here for several reasons in addition to its not being binding precedent in this Court.[6] First, the decision directly contradicts established precedent of this Court regarding children's standing in climate cases. Second, the majority's redressability analysis is both irrelevant to the political question analysis and erroneous. Redressability and the political question doctrine are discrete inquiries with distinct foci and the majority's analysis and conclusions regarding the availability of relief are both premature and contrary to this Court's precedent. Finally, *Rucho v. Common Cause,*[7] on which the panel majority relied, supports justiciability.

II. ARGUMENT

A. This Court Has Already Ruled that Youth Threatened by Climate Change Have Standing to Sue the State

In a 2-1 split panel decision, the Ninth Circuit "reluctantly" dismissed *Juliana*, not under the political question doctrine, but solely on the basis of the United States Constitution's standing requirements.[8] Despite finding injury and causation, the panel majority concluded that the *Juliana* plaintiffs' claims were not redressable under Article

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855 (5th Cir. 2009) (vacated for rehearing en banc which never occurred); Appellants' Opening Brief at 27-31 (federal precedent supports the justiciability of climate claims); Appellants' Reply Brief at 11-15 (same).

[6] *Monzulla v. Roderick*, No. S-16249, 2018 WL 1778545, *2 (Alaska April 11, 2018) (unpublished) ("Ninth Circuit precedent . . . is not binding upon this court.") .

[7] 139 S.Ct. 2482 (2019).

[8] 2020 WL 254149 at *2, *5-9.

III.[9] Even should that conclusion ultimately withstand further appeal,[10] it is inapplicable here because it directly contradicts this Court's precedent. In *Kanuk v. State, Department of Natural Resources*, this Court established that children harmed by climate change and seeking reductions of Alaska's greenhouse gas emissions have injury-interest standing.[11] In so ruling, this Court rejected the State's argument that children's climate harms are not redressable by Alaska's courts.[12, 13] Moreover, Alaska's courts are more accessible to plaintiffs generally, having interpreted standing more broadly than Article III courts.[14] Even were the issue not already definitively settled by *Kanuk*, which it is, Defendants do not challenge Plaintiffs standing.

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[9] *Id.* at *6-9.

[10] The *Juliana* plaintiffs have announced their intention to seek a rehearing *en banc* before a larger panel of the Ninth Circuit. *See* Mary Wood & Michael C. Blumm, "The Dramatic Dismissal of a Landmark Youth Climate Lawsuit Might Not Close the Book on That Case," The Conversation, *available at https://theconversation.com/the-dramatic-dismissal-of-a-landmark-youth-climate-lawsuit-might-not-close-the-book-on-that-case-130162.*

[11] 335 P.3d 1088, 1093-95 (2014).

[12] *See* Brief of Appellee, *Kanuk v. State, Dept. of Nat. Resources*, No. S-14776, 49-50 (Alaska Jan. 18, 2013) (arguing lack of redressability).

[13] After finding standing in *Kanuk*, this Court declined, on political question grounds, to determine the State's obligations outside of a challenge to an *existing* policy. 335 P.3d at 1101 (absence of initial policy determination for judicial review prevented "determin[ation of] precisely what [the State's] obligations entail."). Here, Plaintiffs challenge the State's existing Energy Policy as enacted in AS § 44.99.115(2)(B).

[14] *Trustees for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987) "[t]he concept of standing has been interpreted broadly in Alaska . . . . favoring increased accessibility to judicial forums." (internal citations omitted); *Fannon v. Matanuska-Susitna Borough*, 192 P.3d 982, 987 (Alaska 2008) (Article III standing requirements are more restrictive than Alaska's).

Many aspects of the *Juliana* panel's standing analysis favor Plaintiffs here. The panel found that "climate change is affecting [the youth plaintiffs] now in concrete ways," and that government conduct which "affirmatively *promotes* fossil fuel use" despite "knowing that it can cause catastrophic climate change" is causally linked to youth's climate injuries.[15] The statute Plaintiffs challenge here explicitly declares the State's Energy Policy of "*promoting*" the development, transport, and use of fossil fuels[16] despite the State's longstanding knowledge of its dangers. Exc. 214-218 ¶¶ 205-218.

B. The Ninth Circuit's Redressability Analysis and Conclusions Are Inapplicable to the Political Question Inquiry and Erroneous

In addition to *Kanuk* having already decided the standing issue, this Court should decline to import the *Juliana* panel majority's redressability analysis and conclusions for the additional reasons that they are inapplicable to the political question inquiry before this Court and erroneous.

1. Redressability and the Political Question Doctrine Are Discrete Inquiries

The Ninth Circuit's redressability concerns do not apply to the political question inquiry here because, while each is rooted in separation of powers principles, Article III redressability and the political question doctrine call for discrete inquiries with distinct foci. Article III redressability focuses broadly on whether any relief is likely to provide

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[15] 2020 WL 254149 at *2, *4, *6 (emphasis added).

[16] AS § 44.99.115(2)(B) (emphasis added).

meaningful redress for the alleged injuries.[17] In contrast, the political question doctrine is not remedially-focused at all. It looks instead to the judiciary's ability to decide the *merits of the claims presented.*[18] As the Fifth Circuit stated in another climate case, finding no political question present:

> Even if a particular case involves a claim for injunctive or other equitable relief that the court finds to be impracticable, a court sitting in equity has the discretion to limit or mold relief for reasons of practicality. *There is no . . . authority to invoke the political question doctrine for such reasons.*[19]

The remedial focus of the redressability analysis simply does not translate to application of the political question doctrine.[20]

2. The Ninth Circuit Applied an Erroneous Redressability Analysis

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[17] *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000) (requiring that "it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision").

[18] *See, e.g.*, *Rucho*, 139 S.Ct. at 2501 (political question inquiry focuses on institutional authority for "deciding whether there has been a violation"); *id.* at 2502-05 (applying political question analysis to merits on a claim-by-claim basis); *id.* at 2493 (acknowledging remedy issued by lower court; no subsequent discussion of remedy in political question analysis); *see also* Appellants' Opening Brief at 20-21; Appellants' Reply Brief at 6-9.

[19] *Comer*, 585 F.3d at 877 n. 17; *see also Ctr. for Biological Diversity v. Mattis*, 868 F.3d 803, 829 (9th Cir. 2017) ("Assessing the equities of injunctive relief does not" implicate the political question doctrine).

[20] *See State, Dept. of Health & Soc. Servs. v. Planned Parenthood of Alaska, Inc.*, 28 P.3d 904, 915 (Alaska 2001) (*PPH I*) ("It is legally indisputable that a trial court order requiring state compliance with constitutional standards does not violate the separation of powers doctrine."); *Flast v. Cohen*, 392 U.S. 83, 100-01 (1968) ("[S]eparation of powers problems related to the improper judicial interference in areas committed to other branches . . . . arise, if at all, only from the substantive issues the individual seeks to have adjudicated.")

Even putting aside the inapplicability of the redressability inquiry to the political question doctrine, the *Juliana* panel majority's redressability analysis and conclusions run contrary to well-settled precedent in a number of ways. For instance, the panel focused predominantly on the courts' ability to alleviate the plaintiffs' injuries completely.[21] However, a plaintiff "need not show that a favorable decision will relieve his *every* injury[,]"[22] but only that it "would at least partially redress" the harm.[23] Specifically addressing climate change, the U.S. Supreme Court has clarified that relief that may at least "*slow* or *reduce*" the harm suffices.[24]

The panel majority also erred by prematurely focusing its analysis on the particulars of one of the plaintiffs' specific requests for injunctive relief.[25] In a constitutional case in equity, it is premature to engage in hypothetical speculation as to whether the particulars of any specific remedy may be appropriate prior to evaluation of the evidence and a finding of a violation.[26] Justiciability does not depend on whether the

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[21] *Juliana*, 2020 WL 254149 at *7.

[22] *Larson v. Valente*, 456 U.S. 228 (1982) (emphasis in original).

[23] *Meese v. Keene*, 481 U.S. 465, 476 (1987).

[24] *Massachusetts v. EPA*, 549 U.S. 497, 525 (2007) (emphasis in original).

[25] *Juliana*, 2020 WL 254149 at *6-9 (discussing request for defendants to prepare remedial plan).

[26] *Baker*, 369 U.S. at 198 ("[I]t is inappropriate now to consider what remedy would be most appropriate if plaintiffs prevail at trial."); *Milliken v. Bradley*, 433 U.S. 267, 280 (1977) ("[T]he nature of the remedy . . . is to be determined by the nature and scope of the constitutional violation."); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) ("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.").

specifics of any request for relief would be appropriate because "even if the relief demanded is unavailable, the claim should not be dismissed as long as some relief might be available on the basis of the alleged facts."[27]

3. Courts Can Provide Remedies in Constitutional Climate Cases

In addition to its premature consideration of remedies, the *Juliana* majority further erred in concluding that it would be without power to provide *any* remedy, including well-established forms of declaratory and injunctive relief for correcting constitutional violations.[28] The majority ruled that declaratory relief would not remediate the alleged injuries and that the court could not order agencies to develop and implement a plan of their own devising to reduce greenhouse gas emissions because to do so would require "complex policy choices."[29] This logic erroneously conflates judicial *review* of policy with policymaking itself, runs counter to established precedent of this Court regarding the availability and efficacy of declaratory relief, and contradicts clearly established practice for remedying systemic constitutional violations.

Adjudicating and remedying constitutional climate claims does not require courts to engage in policymaking, but only the traditional exercise of *reviewing* policy. Indeed, in every constitutional challenge to State policy, this Court is confronted with a situation in which the State has weighed and struck a balance between an often complex array of competing interests. That does not absolve the Court of its "duty" to assess the specific

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[27] *Adkins v. Stansel*, 204 P.3d 1031, 1033 (Alaska 2009).

[28] *Juliana*, 2020 WL 254149 at *6-9.

[29] *Id.*

policy adopted for compliance with Alaska's Constitution.[30] As this Court has repeatedly made clear, Alaska's Constitution calls on its courts, when adjudicating such claims, to determine whether the State has struck a permissible balance between the competing interests at issue:

> In reaching this decision, we go no further than the Alaska Constitution demands, and merely affirm that the State does not strike the proper constitutional balance between its own compelling interests and the fundamental rights of its citizens . . . .[31]

That the State's Energy Policy involves competing interests does not render Plaintiffs' constitutional claims any different from any constitutional challenge this Court has previously decided.

Where the balance struck in a challenged policy runs afoul of Alaska's Constitution, Alaska's courts must provide, at minimum, declaratory relief invalidating the policy. Alaska's courts have "not only the power but the duty to strike . . . challenged restriction[s] and any underlying legislation if it f[inds] them to violate constitutional

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[30] *PPH I,* 28 P.3d at 915 ("We have a duty. . . to adjudicate a claim that a law and the actions undertaken pursuant to that law conflict with the requirements of the Constitution.").

[31] *State v. Planned Parenthood*, 171 P.3d 577, 585 (Alaska 2007) (*PPH III*); *see also, id.* at 585 (Carpenetti, J., dissenting) (addressing merits involving "competing interests of the highest constitutional level"); *State v. Planned Parenthood of Alaska*, 35 P.3d 30, 46 (Alaska 2001) (*PPH II*) (directing superior court to apply "difficult balance of interests that frames the disputed constitutional questions"); *State v. Planned Parenthood of the Great Northwest v. Alaska*, 375 P.3d 1122, 1128 (Alaska 2016) (*PPH IV*) (addressing "whether, given its underlying justifications" challenged statute complied with equal protection); *id.* at 1156 n. 8 (Stowers, J., dissenting) (addressing merits of constitutional challenge to "the legislature's thoughtful balance").

rights. . . ."[32] Declaratory relief and invalidation provides plaintiffs relief from the challenged policy itself while affording guidance to the State, "case by case," as to the constitutional parameters within which any subsequently developed policies must fall.[33] This remedial model is well illustrated by this Court's *Planned Parenthood* line of precedent addressing the State's sequential legislative and regulatory efforts to restrict funding for, and minors' access to, abortions.[34] In each of these cases, the Court announced and applied relevant constitutional standards to strike down State policies. Declaratory relief and invalidation of the respective unconstitutional policies provided relief to women burdened by the State's unlawful restrictions on abortion. The Court's analysis, conclusions, and declarations of law likewise provided guidance to the State for reformulation of policy in line with announced constitutional standards. That would also be the case here.

Importantly, the determination of appropriate relief and declarations of law is to be made in light of the evidence presented at trial.[35] Here, the evidence will show that, given the already dangerous climate emergency facing Alaska, any amount of continuing fossil

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[32] *PPH I*, 28 P.3d. at 913.

[33] *PPH II*, 35 P.3d at 38-39 ("constitutional provision[s] . . . are subject to definition, interpretation, and refinement through the traditional course of adjudication, case by case.").

[34] *PPH I*, 28 P.3d 904; *PPH II*, 35 P.3d 30; *PPH III*, 171 P.3d 577; *PPH IV*, 375 P.3d 1122; *State v. Planned Parenthood of the Great Northwest*, 436 P.3d 984 (Alaska 2019) (*PPH V*).

[35] *PPH II*, 35 P.3d at 44 ("[I]t was error to declare S.B. 24 unconstitutional without allowing an evidentiary hearing"); *Baker*, 369 U.S. at 198; *Milliken*, 433 U.S. at 280.

fuel development and resulting greenhouse gas emissions further endangers these young Plaintiffs. Exc. 191-201 ¶¶ 136-168 (science of causation of climate change and climate change impacts); Exc. 201-214 ¶¶ 169-204 (climate change impacts in Alaska are already severe and will only increase with further fossil fuel development and use).[36] The evidence will also establish that there are clear alternative means of furthering Alaska's economic and energy interests that are far less restrictive of Plaintiffs' rights than promoting fossil fuels. Exc. 92, 99; Exc. 200-201 ¶¶ 166-167; Exc. 221 ¶ 34. Moreover, the evidence will show that continuing fossil fuel development is in fact "*detrimental*"[37] to any compelling interest[38] the State might assert to justify its ongoing promotion of fossil fuels and resulting endangerment of Plaintiffs. Exc. 90-92; Exc. 213-214 ¶ 203; Exc. 217 ¶ 217.

In light of findings of fact and conclusions of law to be entered consistent with the evidence at trial, a declaration that the State's Energy Policy violates Alaska's Constitution would provide meaningful relief to Plaintiffs and clear guidance to the State for formulating a constitutionally compliant energy policy going forward. At minimum, as in each of the *Planned Parenthood* cases, declaratory relief would terminate the instant

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[36] Significant developments in the science and urgency underlying Alaska's climate emergency have occurred since Plaintiffs submitted the First Amended Complaint in August of 2018. The evidence at trial will reflect the most up-to-date and best available science.

[37] *PPH IV*, 375 P.3d at 1142 n. 4 ("under its own theory the Notification Law is *detrimental* to the State's compelling interest") (emphasis in original).

[38] The only stated justification for the challenged Energy Policy is the "encourage[ment of] economic development." AS 44.99.115(2)(B). *PPH IV*, 375 P.3d at 1135 (A challenged statute "stands or falls on its own specific terms and stated justifications.").

controversy over the specific policy at issue, providing "clear guidance on the consequences of future conduct" by informing the State that it cannot continue to actively *promote* fossil fuels in the midst of the climate crisis.[39] Also as in the *Planned Parenthood* cases, determination of the constitutionality of any policies or actions developed subsequent to invalidation of AS 44.99.115(2)(B), if necessary, could be left for a later day, whether as part of the remedial phase of this litigation[40] or in a subsequent case.

Issuance of declaratory relief, whether as a first step or as the sole relief provided, would comport with established judicial practice for remedying systemic constitutional violations:

> The court's first step should be to issue a form of declaratory judgment, placing the defendants on notice of the constitutional violation and retaining jurisdiction to determine whether the defendants have remedied the violations on their own initiative. In cases where a declaration of rights would not serve adequately to protect the plaintiffs, the court should issue a simple, prohibitory decree to prevent continuing injury while still relying on the defendants to initiate corrective measures.
>
> In the face of recalcitrance by government officials to such first-level declaratory or injunctive action, the proper next step is for the court to frame a decree requiring the government defendant to submit to the court, for approval and review, a plan for remedial action which will either demonstrate that continuing jurisdiction is not required or permit it to embody the proposal in an affirmative mandatory injunction. While the local officials are now under judicial compulsion to exercise their policy

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[39] *Kanuk*, 335 P.3d at 1091.

[40] *See, e.g.*, *Brown v. Plata*, 563 U.S. 493, 506 (2011) (affirming remedy where "court appointed a Special Master to oversee development and implementation of a remedial plan of action."); *McCleary v. State*, 269 P.3d 227, 261 (Wash. 2012) ("A better way forward is for the judiciary to retain jurisdiction over this case to monitor . . . the State's compliance with its paramount duty.").

> formulation and implementation powers, they retain, within constitutional limits, their discretion in doing so. The compulsion involved, it would seem, is the minimum required by the [Constitution]. . . .
>
> [I]t is not necessary that a remedial effort secure the ideal operation of the governmental institution or program in question; all that is required is compliance with minimum constitutional standards.[41]

Regardless of whether any further or later relief might be appropriate in this or a subsequent case, at minimum, a declaration invalidating AS 44.99.115(2)(B) would provide meaningful redress.[42] Plaintiffs and the courts are entitled to "assume" that "executive . . . officials would abide by" such "an authoritative interpretation of the . . . constitution[]" by Alaska's courts.[43]

C. *Rucho v. Common Cause* Supports Justiciability

The *Juliana* panel majority's redressability analysis relied heavily on *Rucho v. Common Cause*, in which the United States Supreme Court ruled that claims challenging partisan gerrymandering under the U.S. Constitution implicate the second *Baker* factor for identifying political questions.[44, 45] *Rucho* provides clear support for justiciability here.

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[41] Substantive Limits on Liability and Relief, 90 Harv. L. Rev. 1190, 1248-49 (1977).

[42] *See* AS § 22.10.020(g) ("[T]he superior court . . . may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought.")

[43] *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992).

[44] 139 S.Ct. 2484. Defendants have waived any argument under the second *Baker* factor. *See* note 2, *infra.*

[45] As explained in Section II.B.1, *supra*, the redressability and political question doctrines are discrete inquiries with distinct foci. *Rucho* is clear that the political question analysis

In *Rucho*, the Supreme Court instructed that its decision would not "condone" partisan gerrymandering because state courts can resolve partisan gerrymandering claims under state constitutional provisions.[46] Indeed, many state courts have done just that.[47] Here, Alaska's Constitution provides strong, unique provisions and protections under which Alaska's courts must adjudicate constitutional climate claims.[48]

III. CONCLUSION

For the foregoing reasons, the majority opinion of the divided Ninth Circuit panel in *Juliana* neither pertains to nor supports Defendants' political question arguments. Plaintiffs respectfully request this Court reverse the judgment of the superior court and remand for trial.

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looks not to a court's ability to provide relief, but it's authority to decide the merits of "whether there has been a violation." 139 S.Ct. at 2501. As the *Juliana* dissent acknowledged, by relying on *Rucho* to determine redressability, the majority panel's opinion "blur[s] any meaningful distinction between the doctrines of standing and political question." *Juliana*, 2020 WL 254149 at *19 n. 10 (Judge Staton, dissenting).

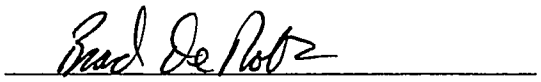
[46] 139 S.Ct. at 2507.

[47] *See League of Women Voters of Florida v. Detzner*, 172 So.3d 363 (Florida 2015) (striking down partisan gerrymander under Florida Constitution); *League of Women Voters of PA. v. Commonwealth of PA.*, 178 A.3d 737, 822 (Penn. 2018) (adjudicating partisan gerrymandering suit); *Common Cause v. Lewis*, No. 18-CVS-014001, 331-342 (Super. Ct. of Wake County, N. C. Sept. 3, 2019) (ruling partisan gerrymandering claims justiciable under NC Constitution) *available at https://www.brennancenter.org/sites/default/files/legal-work/2019-09-03-Judgment.pdf.*

[48] Alaska Constitution, Art. VIII; *Myers v. Alaska Psychiatric Inst.*, 138 P.3d 238, 245 (Alaska 2006) (Alaska Constitution more protective of liberty than U.S. Constitution); *PPH I*, 28 P.3d at 909 (Alaska Constitution provides greater equal protection guarantee than U.S. Constitution); *Sands ex. rel Sands v. Green*, 156 P.3d 1130, 1134 (Alaska 2007) (ruling in children's case that right of access to courts under Alaska's due process clause is "more expansive than that provided by the federal constitution").

DATED this12th day of February 2020 at Eagle River, Alaska.

Attorneys for Appellants



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