

**No. 19-35708**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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ANIMAL LEGAL DEFENSE FUND, et al.  
*Plaintiffs-Appellants,*

v.

UNITED STATES OF AMERICA, et al.  
*Defendants-Appellees.*

Appeal from the United States District Court for the  
District of Oregon  
Hon. Michael J. McShane (No. 6:18-cv-01860-MC)

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**BRIEF OF AMICI CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS**  
*(FILED WITH CONSENT OF ALL PARTIES PURSUANT TO FRAP 29(a))*

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## FRAP RULE 29 STATEMENT

*Amici Curiae* have received the consent of all parties to file this brief. Accordingly, pursuant to Federal Rule of Appellate Procedure 29(a)(2) and Circuit Rules 29-2(a) and 29-3, a motion for leave to file this amicus brief is not required.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amici* certify that no person or entity, other than *amici* or its counsel made a monetary contribution to the preparation or submission of this brief or authored this brief in whole or in part.

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## **STATEMENT OF INTEREST OF *AMICI CURIAE***

The organizational *amici* represent a diverse group of indigenous rights protectors, environmental organizations, animal rights advocates, community environmental organizations, business associations, and indigenous rights protectors that all share expertise on the impacts of the climate crisis and an interest in preventing the worsening of the crisis for future generations. Each organization, along with their constituents, are specifically impacted by the crisis, are working to reverse it and deal with its impacts, and are urging the federal government to take the most drastic response possible to mitigate the crisis and restore our environment and preserve our wilderness.

The organizational *amici* are joined by individuals with unique experience in environmental and climate activism, and a keen interest in the preservation of our shared constitutional right to nature that is a necessary condition of the freedom that the Framers envisioned. Each of these individual voices, along with the organizational amici, can aid the court in understanding the claims and underlying facts, given their special positioning relative to the issues.

### **INTRODUCTION**

This case presents the basic and fundamental question whether the Bill of Rights, which aims squarely at protecting an individual's right to autonomy and liberty, should be read narrowly to exclude rights, like the right to wilderness at issue

here, which are and have always been essential to an autonomous and rewarding life. *Amici* submits this brief to highlight that the Bill of Rights has long been understood to protect an individual's right to be left alone and free from government intrusion. One of the most essential examples of this right is the ability of individuals to access and enjoy nature—something that is well recognized as essential to enabling individuals to live a meaningful life.

Moreover, while a “right to wilderness” is a right that has not been discretely or formally recognized yet by this court, such a right was well understood to be an essential right as the Constitution and Bill of Rights were drafted. Indeed, the Framers wrote urgently and extensively about the importance of being in and preserving nature.

This right is more important now than ever, as wilderness is slowly being developed out of existence, and as future generations face the prospect of never being able to enjoy the range of individual and developmental benefits that being alone in nature can provide. Facing this bleak future, Amicus urges this Court to reverse the judgment below and recognize that by raising a claim alleging a violation of their right to the wild, Plaintiffs-Appellants have adequately stated a legally cognizable claim.

## ARGUMENT

### I. THE CONSTITUTION PROTECTS AN INDIVIDUAL'S RIGHT TO FREEDOM AND AUTONOMY, OF WHICH A RIGHT TO WILDERNESS IS AN ESSENTIAL COMPONENT

The Constitution and Bill of Rights have long been understood to play a critical role in protecting individuals from government intrusions that unduly impinge on their freedoms and ability to live a meaningful and autonomous life.

#### A. Access to Wilderness is an Essential Component of an Individual's Ability to Live a Free and Meaningful Life

To understand why the Constitution's protections extend to the right to wilderness, it is important to recognize the important role that access to undisturbed nature can play in enabling humans to live free and meaningful lives.<sup>1</sup>

Studies abound that demonstrate how being in nature helps humans “develop a sense of self-identity, self-reliance, and to shun social pressures.” Rudolph M. Schuster, et al., *The Social Values of Wilderness*, PROCEEDINGS OF 2003 NORTHEASTERN RECREATION RESEARCH SYMPOSIUM 356, 357 (2003). Being in nature helps almost every aspect of human development, from encouraging healthy

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<sup>1</sup> By “access” we do not imply motorized access. Indeed, motorized vehicles are antithetical to wilderness and diminish opportunities to enjoy privacy, solitude, quiet, and other desirable attributes of wild places, as well as disturb wildlife.

pregnancies,<sup>2</sup> to helping children regulate stress and develop social skills,<sup>3</sup> to helping children improve their academic performance.<sup>4</sup> Recent studies have even established substantial economic benefits imparted by wilderness and biodiversity. *Cf.* Partha Dasgupta, *THE ECONOMICS OF BIODIVERSITY: THE DASGUPTA REVIEW* (Feb. 2021).

Indeed, the importance of access to wilderness is only getting more important, “[a]s direct nature experience[s] become progressively unavailable to new generations . . . [due to] each generation’s reduced experienced of ‘wildness.’” Gregory N. Bratman, et al., *Nature and Mental Health: An Ecosystem Service Perspective*, 24 *SCIENCE ADVANCES* 5, at 3 (2019). Access is ever becoming more scarce to “area[s] where the earth and its community of life are untrammelled by man,” keeping Americans from the “outstanding opportunities for solitude and a primitive and unconfined type of recreation” that wilderness offers. 16 U.S.C.A. § 1131(c) (defining “wilderness” as used in the 1964 Wilderness Act).

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<sup>2</sup> Payam Dadvand, et al., *Inequality, Green Spaces, and Pregnant Women: Roles of Ethnicity and Individual and Neighbourhood Socioeconomic Status*, 71 *ENVIRON. INT.* 101, 108 (Oct. 2014).

<sup>3</sup> José A. Corraliza, et al., *Nature as a Moderator of Stress in Urban Children*, 38 *PROCEDIA–SOC. AND BEHAVIORAL SCIENCES* 253 (2012); P. H. Kahn Jr., *Children’s affiliations with nature: Structure, development, and the problem of environmental generational amnesia*, *CHILDREN AND NATURE: PSYCHOLOGICAL, SOCIOCULTURAL AND EVOLUTIONARY INVESTIGATIONS* (MIT Press, 2002).

<sup>4</sup> Louise Chawla, *Benefits of Nature Contact for Children*, 30 *J. PLANNING LIT.* 433, 443 (Nov. 2015).

As access to nature – *i.e.*, wilderness – continues to decrease, the impact of government action that deprives us of yet more undisturbed nature becomes all the more acute. And the importance of protecting individuals’ constitutional right to wilderness becomes that much more important.

**B. The Fifth and First Amendments and the Constitutional Right of Privacy All Protect an Individual’s Right to Wilderness**

The Bill of Rights plays an important role in protecting an individual’s right to autonomy and liberty, and should be understood to extend to protect an individual’s right to wilderness – as “a right . . . older than the Bill of Rights – older than our political parties, older than our school system.” *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965) (describing the historical roots of the then-newly-recognized right to privacy).

**1. The Fifth Amendment Protects Against Deprivation of Fundamental and Deeply Rooted Liberties Such as Enjoyment of Wildlife without Due Process**

The Due Process Clause of the Fifth Amendment protects the rights of individual Americans against the deprivation of “life, liberty, or property, without due process of law.” U.S. Const., amend. V. The fundamental goal of the Fifth Amendment is to ensure that “future generations [can] protect . . . the right of all persons to enjoy liberty as we learn its meaning.” *Obergefell v. Hodges*, 576 U.S. 644, 664 (2015). This case presents the novel question whether depriving an individual of the right to access wilderness is a deprivation of liberty within the

meaning of the Due Process Clause. As described below, caselaw and history demonstrate such a deprivation is indeed a deprivation of liberty within the meaning of the Fifth Amendment. This Court should accordingly reverse the judgment below and hold that Plaintiffs have stated a legally cognizable constitutional claim.

Admittedly, there is nothing in the text of the Fifth Amendment that enumerates a right to wilderness, nor has any court yet recognized such a right as one protected by substantive due process. The “liberty” protected by the Fifth Amendment comprises fundamental personal rights unenumerated elsewhere in the Constitution and Bill of Rights. *Griswold*, 381 U.S. at 493. The Supreme Court has repeatedly held that unenumerated rights can be and are protected under the Fifth Amendment, in areas as diverse as “the rights to marriage, sexual intimacy, procreation, abortion, travel, loiter, choose a profession, possession of a handgun, child-rearing, bodily integrity, avoidance of excessive punitive damages, [and] freedom from unnecessary confinement.” Ariel Strauss, *An Enduring American Heritage: A Substantive Due Process Right to Public Wild Lands*, 51 *Envtl. L. Rep.* 10026, 10030 (Jan. 2021) (references omitted).

When determining whether a previously unrecognized right implicates due process concerns, the analysis turns on whether the right is “fundamental to our scheme of ordered liberty . . . or . . . deeply rooted in this Nation’s history and tradition.” *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010). As explained

below, the right to wilderness fits within both of these alternative theories. The preservation of wilderness free from Government intervention for the enjoyment of present and future generations of Americans is fundamental to our scheme of ordered liberty, *and* is deeply rooted in this Nation’s history and tradition.

First, the right to exist in nature free from Government intrusion is absolutely “fundamental to our scheme of ordered history.” *McDonald*, 561 U.S. at 767. The Supreme Court’s analysis in *McDonald* is instructive. There, the Supreme Court examined its jurisprudence relating to the right to bear arms in the Second Amendment. The court examined the right to individual self-defense at issue in *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008), concluding that the right was “the central component” of the protected right to bear arms set out in the Second Amendment. And because it found that handguns were “the most preferred” means to exercise that right to individual self-defense, the court concluded that the rights at issue in *Heller* (the right to possess a handgun free from certain Government regulation) was “fundamental to our scheme of ordered history.” *Id.* at 628-29.

The same analysis applies here. Wilderness has always been “the basic ingredient of American culture. From the raw materials of the physical wilderness, Americans built a civilization. With the idea of wilderness they sought to give their civilization identity and meaning.” RODERICK NASH, *WILDERNESS AND THE AMERICAN MIND* xi (4<sup>th</sup> ed. 2001). As described in Section I below, the right to

wilderness – that is, the right to enjoy nature undisturbed by recent human or Government intrusion – is a central component of the Constitutional rights to privacy and freedom to not associate. And as was the case with the handguns being regulated in *Heller*, public lands are the most preferred and the most natural way for the public to exercise this right. Indeed, “public wild lands . . . reflect[ ] a recognition of the unique liberty and property interests that these lands offer the American people, which are unavailable elsewhere.” Ariel Strauss, *An Enduring American Heritage: A Substantive Due Process Right to Public Wild Lands*, 51 *Envtl. L. Rep.* 10026, 10030 (Jan. 2021); Carter Dillard, *The Primary Right*, 29 *Pace Env'tl. L. Rev.* 860, 891 (2012); *cf. United States v. Munoz*, 701 F.2d 1293, 1298 (9th Cir. 1983) (discussing the “primary purpose” of national parks as enabling individuals to be “left alone”). Given how closely the right to enjoy wilderness is tied to the American national character, the right to wilderness is certainly “fundamental to our scheme of ordered history” and the deprivation of this right should be reviewed under the Due Process Clause.

Second, there is no question that the ability to enjoy access to wilderness and undisturbed nature is “deeply rooted in this Nation’s history and tradition.” *McDonald*, 561 U.S. at 767. As described in Section II below, this nation has a long history of celebrating nature and wilderness, and the considerable benefits of being alone in or close to nature. The ability to enjoy nature was celebrated by many of the

Framers of the Constitution, from Thomas Jefferson, to James Madison, to Alexander Hamilton. *See generally* FRANKLIN KALINOWSKI, AMERICA’S ENVIRONMENTAL LEGACIES 177-283 (2016).

And this emphasis on the importance of the wild has continued to be “rooted in the traditions and conscience of our people” over the ensuing centuries. As famous historian Frederick Jackson Turner noted, exposure to the wild during westward expansion in the nineteenth century was a significant factor leading to the development of America’s distinct institutional focus on liberty and individuality. *See* FREDERICK JACKSON TURNER, THE SIGNIFICANCE OF THE FRONTIER IN AMERICAN HISTORY (1893). The same appreciation for nature led to important American literary and artistic schools epitomized by great American artists like Henry David Thoreau and Ralph Waldo Emerson. Indeed, this historical emphasis on the power and beauty of undisturbed nature culminated in the designation of what would become our national parks, starting with the designation of Yellowstone in 1872 as a public park, *An Act to Set Apart a Certain Tract of Land Lying Near the Headwaters of the Yellowstone River as a Public Park*, 17 Stat. 32 (1872), and almost a century later to culminating in birth of the modern environmental movement.

As the Eastern District of Arkansas has observed, the “right to enjoy the beauty of God’s creation, and to live in an environment that preserves the

unquantified amenities of life, is part of the liberty protected by the Fifth . . . Amendment[ ].” *Environmental Def. Fund, Inc. v. Corps of Eng’rs of U.S. Army*, 325 F. Supp. 728, 739 (E.D. Ark. 1971). And indeed, this right has been recognized in many other parts of the world. *See, e.g.*, European Commission, “Guidelines on Wilderness in Natura 2000. Management of terrestrial wilderness and wild areas within the Natura 2000 Network,” (Brussels: European Union, 2013), <http://ec.europa.eu/environment/nature/natura2000/wilderness/pdf/WildernessGuidelines.pdf>.

The right to wilderness, similarly, is at the core of the American character, and has been for the history of this Nation. As such, the right to wilderness is a protected liberty interest within the meaning of the Due Process Clause.

## **2. The Constitutional Right to Privacy Protects the Right of Individuals to be “Let Alone” in Nature**

In addition to the Due Process Clause in the Fifth Amendment, the right to wilderness also emanates from the Constitutional “right to privacy, no less important than any other right carefully and particularly reserved to the people.” *Griswold*, 381 U.S. at 484-85 (quoting *Mapp v. Ohio*, 367 U.S. 643, 656 (1961)). As the Supreme Court has recognized, this right emanates from a number of provisions of the Bill of Rights, which, taken together, offer “[v]arious guarantees [that] create zones of privacy.” *Id.* at 484. At its core, these zones are and were intended to identify certain conduct, spaces, and activities “where privacy is protected from governmental

intrusion.” *Id.* at 483. And just like the right to marital privacy considered in *Griswold*, the right to enjoy undisturbed wilderness is one that humans have enjoyed and benefitted from for centuries.

Fundamentally, the right to privacy is about the right to be “let alone.” *Roe v. Wade*, 410 U.S. 113, 169 (1973). This thread running through the constitutional jurisprudence is true of the recognized right to be “let alone” from interference with decisions about marriage, procreation, and from government action that impedes the ability of individuals to engage in private conduct in their personal lives, such as their choice of sexual partner. *See Griswold*, 381 U.S. at 484-85; *Roe*, 410 U.S. at 169; *Lawrence v. Texas*, 539 U.S. 558, 574 (2003). The right that appellant seeks to protect is no different – the right to enjoy the wild, free from intrusion, development, and government action.

Nor is it fatal that this right to wilderness is not enumerated specifically in the Constitution. The Ninth Amendment “reveal[s] that the Framers of the Constitution believed that there are additional fundamental rights, protected from governmental infringement, which exist alongside those fundamental rights specifically mentioned in the first eight constitutional amendments.” *Griswold*, 381 U.S. at 488 (Goldberg, J., concurring). There is perhaps no better example of such an unenumerated yet essential right as the right that this Court has called the “fundamental right to be let alone” in public wilderness. *Munoz*, 701 F.2d at 1298.

In *Munoz*, this Court explored in great detail the importance of and privacy interests served by wilderness that “preserve[s] for people a setting for respite and reflection . . . .” *Id.* The court rejected the argument that the defendant there had a diminished expectation of privacy by virtue of being in a public national park, noting that indeed the “primary purpose” of having public spaces like national parks and forests was to promote “the visitors’ fundamental right to be let alone.” *Id.* In recognizing the importance of this “fundamental right to be let alone” in nature, this Court recognized an essential yet unenumerated right protected by the Ninth Amendment—the right to wilderness. *Cf.* Katrina Fischer Kuh, *Environmental Privacy*, 2015 Utah L. Rev. 1, 37 n.192 (2015) (examining *Munoz* and the court’s analysis of “the expectation of privacy . . . of individuals who visit national parks”). By alleging that they are being meaningfully deprived of wilderness in which to be alone, Appellants thus state a plausible claim under the Ninth Amendment, for a violation of their unenumerated right to be let alone in the wild.

### **3. The First Amendment’s Right “Not to Associate” Requires a Right to Undisturbed Wilderness**

The First Amendment has long been understood to protect the freedom of individuals to associate with others of their choosing. *Roberts v. United States Jaycees*, 468 U.S. 609, 617 (1984). For this right to be meaningful, the Supreme Court has observed that “a corollary of the right to associate [must be] the right not to associate.” *Cal. Democratic Party v. Jones*, 530 U.S. 567, 574 (2000); *Boy Scouts*

*of America v. Dale*, 530 U.S. 640, 644-45 (2000); *Roberts*, 468 U.S. at 623. This important observation—that in order for individuals to have a meaningful opportunity to choose to associate with others, that they need a meaningful ability to refuse to do so—explains a further basis for the right to wilderness: as a necessary right to give meaning to an individual’s right to exist in nature free from associations imposed or permitted by the Government.

Individuals often spend time in the wild specifically to avoid associating with other people or industrialized society—i.e., specifically choosing to not associate with society at large. Where Government action prevents these individuals from enjoying the wilderness, the Government is meaningfully impairing the right these individuals hold to choose to not associate with others. In the process, the Government is denying these individuals the ability to meaningfully not associate with others, in contravention of their First Amendment rights. *Cf.* Carter Dillard, *Right to Be Free Violated by Climate Policies*, LA PROGRESSIVE (Jan. 14, 2021) (arguing that humans cannot “be free from others . . . when there is no alternative to a man-made human-dominated world”), <https://www.laprogressive.com/right-to-be-free/>.

#### **4. The Constitution's Guarantees of the Right to Self Determination and Free Exercise of Religion Require Access to Wilderness**

Access to wilderness is indispensable to the right to the free exercise of religion guaranteed by the First Amendment and also supported by the Constitution's textual commitment to self-determination.

The idea that there is a right to access wilderness that arises from the free exercise clause and from a principle of self-determination in the Constitution is rooted in Supreme Court jurisprudence. The Supreme Court has repeatedly upheld the Constitution's textual commitment to self-determination, holding that “[a]t the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.” *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 851 (1992); *Lawrence*, 539 U.S. at 574. Furthermore, “fundamental rights, even though not expressly guaranteed, have been recognized by the Court as indispensable to the enjoyment of rights explicitly defined.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980).

Wilderness experiences provide time and space to think about meaning and purpose in relation to suffering, the limits of human life, and nonmaterial pleasures. David N. Cole and Troy E. Hall, *Privacy Functions and Wilderness Recreation: Use Density and Length of Stay Effects on Experience*, Vol. 2 No. 2 ECOPSYCHOLOGY, 67-75 (2010). The freedom to be let alone in making “intimate and personal” choices, such as what religion or spiritual practice to follow, are “central to personal dignity and autonomy.” *Planned Parenthood*, 505 U.S. at 851. Experiencing wilderness is essential to the contemplation of those choices and the ability to form the beliefs that underlie them, beliefs about how the individual chooses to interpret life’s meaning.

The proposition that such access is essential is only novel in that ever-increasing development and extractive activities, often permitted or otherwise endorsed by government, have put that right in jeopardy. That the right existed was taken for granted by the Framers of our Constitution, as shown in Section II of this brief. The Framers had an understanding in designing our Republic that the individual’s autonomy depended upon a minimum level of access to wilderness. This understanding later undergirded the passage of the Wilderness Act of 1964. The Act was an attempt to codify and protect the essential human right to be in touch with the “earth and its community of life” in areas “with the imprint of man’s work substantially unnoticeable.” 16 U.S.C.A. § 1131(c).

The government may not endorse and engage in activities that deprive the individual of that ancient solitude in the wilderness, the only place one is truly let alone from the demands of government and other human beings. That choice to be let alone, at least for intermittent periods, is guaranteed by the First Amendment and Ninth Amendments to the Constitution.

## **II. A RIGHT TO WILDERNESS IS CONSISTENT WITH THE ORIGINAL INTENT AND UNDERSTANDING OF THE BILL OF RIGHTS**

Recognizing that the right to wilderness is protected by the Constitution is also consistent with the original intent and understanding of the Bill of Rights, which “grew in soil which also produced a philosophy that the individual was the center of society, that his liberty was attainable through mere absence of governmental restraints, and that government should be entrusted with few controls and only the mildest supervision over men's affairs.” *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 639-40 (1943).

The Framers of the Constitution wrote and spoke urgently and extensively about the importance for individuals to access and enjoy nature. This history is perhaps most visible in the writings of Thomas Jefferson, who wrote about the power of Virginia’s natural beauty, and how “[f]rom his perspective, humanity’s relationship took its environment preconditions and serves as the basis for both the instinctive underpinnings of human behavior and for the cultural institutions that

humans create.” FRANKLIN KALINOWSKI, *AMERICA’S ENVIRONMENTAL LEGACIES* 179 (2016). Indeed, Jefferson “embeds radical environmentalism in American political culture” by focusing on an ethics that centers around “his belief that healthy, ethical communities must primarily be based in rural settings where individuals are rooted in and committed to the protection of the Earth . . . .” *Id.* at 198.<sup>5</sup> As we enter an age where more people live in dense urban centers, Jefferson’s words still ring true but must be implemented by upholding Constitutional limitations on state action that further encroach on wilderness areas with the “imprint of man’s work.” 16 U.S.C.A. § 1131(c).

Indeed, other Framers voiced similar thoughts about the critical role that nature plays enabling human flourishing, and about the need for conservation.<sup>6</sup> This strong belief in the power of the untamed wild was shared by many Framers, and reflects an appreciation for both nature and the ability to exist autonomously, free from Government intrusion. This spirit undergirds many of the provisions in the Bill

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<sup>5</sup> See also THOMAS JEFFERSON, *NOTES ON THE STATE OF VIRGINIA* 80 (1785) (exploring, in a book about nature and the environment of Virginia, how ecology “can increase the progress of human knowledge”); CHARLES A. MILLER, *JEFFERSON AND NATURE: AN INTERPRETATION* 1-3 (1988).

<sup>6</sup> See, e.g., ANDREA WULF, *FOUNDING GARDENERS: REVOLUTIONARY GENERATION, NATURE, AND THE SHAPING OF THE AMERICAN NATION* 205-07 (2011) (describing a speech by President James Madison “rallying Americans to safeguard their environment” and “discussing what he believed to be man’s most calamitous error: ‘the excessive destruction of timber.’”); KALINOWSKI, *supra* at 224-26 (describing Alexander Hamilton’s view of the importance to humans of the “state of nature”—i.e., undisturbed wilderness).

of Rights, including the portions of the Constitution referenced above. As such, by recognizing the right to wilderness, this Court would be acting in a manner consistent with the original understanding of the Constitution and Bill of Rights at the time they were drafted.

### CONCLUSION

The right to wilderness that Appellants seek to vindicate, while not specifically considered by the Courts to date, finds its roots in a wealth of existing Constitutional protections. Not only is the right for humans to peacefully enjoy the wilderness protected by the Constitution, it is a right that the Framers of the Constitution valued highly. Accordingly, this Court should acknowledge the strong weight of caselaw and history and reverse the decision below.

Date: June 28th, 2021

Respectfully Submitted,

EVANS & PAGE

/s/ Corey Page  
*Attorney for Amici Curiae*

## APPENDIX A: LIST OF *AMICI CURIAE*

### ORGANIZATIONS

**California Businesses for a Livable Climate** is a business organization promoting policies that ensure a livable climate, seeks to protect the economic livelihood of its members from threats like the climate crisis and urges the federal government to take the strongest remedial action possible as a matter of constitutional right.

**Call to Action Colorado** is a National Catholic movement working for equality and justice in the church and society, works to protect the most vulnerable from the threat of the climate crisis, and recognizes that the right to nature and the restoration of the nonhuman world undergirds all religious freedom because it ensures a backstop to the commercialization – and hence secularization – of the world.

**CatholicNetwork US** is an environmental protection network working with faith-based communities, all of whom have an interest in protecting the religious freedom inherent in the right to nature that our constitution protects, especially for future generations who should enjoy the natural world that inspired the framers of our constitutional rights.

**Colorado Small Business Coalition** is dedicated to providing resources to small business owners throughout Colorado and Texas, has an interest in the federal government doing the most possible to reverse the climate crisis because it will impact and harm the economy and especially small businesses in a disastrous way.

**Direct Action Everywhere** is a global network of activists working to achieve animal liberation in one generation. The organization is aware that the climate crisis represents the greatest threat to humans and nonhumans alike, and urges the use of a restorative ecological standard of environmentalism consistent with a wild and biodiverse world, one where humans can be truly let alone.

**Extinction Rebellion San Francisco Bay Area** is part of a global nonviolent movement to compel the world to address the climate and ecological emergency. It works to protect future generations from the impacts of the climate crisis, in part, by advocating for our constitutional right to nature.

**Future Coalition** is an organization built by youth activists, for youth activists. Future Coalition is a national network that fosters community and collaboration among youth leaders and youth-led organizations. Young people have the ideas and passion to make incredible change in their local communities, in the country, and in the world. Future Coalition provides these young people with the tools, resources, and support to power their ideas and amplify their impact, for instance, by using a wilderness standard of environmental protection.

**IAMECON** is an interdisciplinary team of researchers, driven by continuous innovation, to develop models, solution concepts and products that benefit society. IAMECON is developing game-theory models that include the role of wilderness in liberating humans from one another.

**New Mexico Climate Justice** is a community organization fighting for climate justice and the protection of those most at risk from the climate crisis, is comprised of a large membership keenly impacted by the climate crisis, and demands the strongest remedial action possible to protect their members and the future generations they represent.

**North Range Concerned Citizens** is a coalition of Commerce City neighborhoods that firmly believes industrial activity is incompatible with residential areas anywhere, strongly supports the right to nature, and has specific interests in the prevention of natural spaces being appropriated and commercialized.

**Oceanic Global** inspires us to care deeply for the ocean and provides solutions to protect it. The international NGO sheds light on humanity's essential relationship to the ocean and empowers individuals, communities, and industries to create positive change. Oceanic Global creates educational experiences, consults on sustainable operations, and engages local communities to generate measurable impact for our collective wellbeing. The organization has expertise in the impact of the climate crisis on our oceans and the need for the highest standard of protection to be used in response to the crisis.

**RapidShift Network** is an environmental protection network focusing on the rapid shift away from the use of fossil fuels and other unsustainable practices, has specialized expertise in the remedies sought by the Appellants, and represents a diverse membership keen on protecting their right to nature.

**The Rewilding Institute** is dedicated to developing and promoting ideas and strategies to advance continental-scale conservation in North America, particularly

for large carnivores and a permeable landscape for their movement. It is also dedicated to offering a bold, scientifically credible, practically achievable, and hopeful vision for the future of wild Nature and human civilization in North America. The Institute has particular expertise in the value of wilderness as the fundamentally liberating component of our constitutional structure.

**Rising Hearts** is an indigenous-led grassroots group devoted to elevating indigenous voices and promoting intersectional collaborative efforts across all movements with the goals of racial, social, climate, and economic justice. Its primary focuses are to inform, elevate, mobilize, and organize through strategic and targeted advocacy, establishing collaborative partnerships to help create a better and safer future and environment for all of our relatives who inhabit this planet, past, present and future. Rising Hearts recognizes the liberating role of nature, and wilderness, in the human experience and works to protect it.

**Spirit of the Sun** is an indigenous woman-led nonprofit located on sacred land of the Očhéthi Šakówiŋ, Núu-agma-tuvu-pu (Ute), Tsésthó'e (Cheyenne), hinono'eino' biito'owu' (Arapaho) land, Comanche, and 48+ other tribes. It works to empower Native communities, one youth at a time, to protect their right to the natural world from threats posed by the failure of the government to act on the climate crisis.

**Strategies for Ethical and Environmental Development** is a non-profit organization operating in the US and Brazil. SEED's mission is to dismantle capital-intensive, industrial animal agriculture while advocating for a just transition that is equitable and sustainable for animals, people, and the planet. SEED has a special interest in the restoration of the climate to ensure equity for all, using the nonhuman world or wilderness as a baseline for restoration.

**Unite North Metro Denver** is a neighborhood organization working to help unify and improve North Metro Denver and has a keen interest in the federal government taking the greatest action possible to prevent the climate crisis impacting its work to protect its constituent communities and the future generations that deserve the nature past generations enjoyed.

**Urban Indigenous Collective** drives the inclusion of Urban Natives by indigenizing existing infrastructures and ensuring cultural humility in health and wellness services to build more equitable, inclusive, and prosperous communities. The Collective seeks to protect vulnerable communities from the ravages of the

climate crisis, and is specifically interested in nature and rights-based solutions that will work in perpetuity.

**Wall of Women** is a community organization opposing fracking and other attacks on local communities and seeks to protect local communities from the failure of the federal government to prevent the climate crisis and maintain the natural or wilderness-based ecological baseline that our constitution implies in its promise of freedom.

**Wet'suwet'en Solidarity Front Bay Area** is an indigenous collective supporting front-line indigenous communities, urges the government to protect front-line communities using a restorative standard of environmentalism that rewilds the earth and frees its inhabitants from the harms caused by the climate crisis.

## **INDIVIDUALS**

*The following individuals view the right to be let alone as encompassing a right to wilderness and biodiverse nature, which requires the remedies appellants seek:*

**Izzy Chasinghorse** (legal name is "Isaiah M. Potts") is an environmental youth organizer, who supports a constitutional right to nature that would protect the environment – at the highest standard possible – for future generations.

**Daryl Hannah** is an actress and environmental activist and an outspoken proponent of protecting nature envisioned as part of human autonomy and key to the basic idea of consensual governance.

**Chris Hedges** is a Pulitzer Prize-winning journalist, activist and author and has vast expertise in environmentalism and the role of the wild in ensuring human autonomy and freedom.

**Derrick Jensen** is an author and environmental activist and has extensive experience in environmental philosophy and practice and an interest in the recognition of the role of wilderness in the constitutional structure of the country.

**Riley Keough** is an actress and environmental activist and seeks to restore the environment to its natural state and reverse the climate crisis to fulfill future generations' right to nature.

**Sharon Lavigne** is an environmental activist and winner of the 2021 Goldman Environmental Prize, has particular interest in the protection of nature at its most pristine level, especially as means of preventing the worst impacts of the climate crisis.

**Giada Lubomirsk** founded Ecoshaker in 2014, a social media platform that supports environmental education and action through various art forms, mediums, and partnerships, and seeks the establishment of our right to nature.

**Mark Ruffalo** is an actor and environmental activist, works to ensure the protection of nature for future generations for mitigation of the climate crisis in the most effective way possible.

**Zane Kekoa Schweitzer** is an athlete and environmental activist who, as a surfer and lover of nature, has a keen interest in the protection of wilderness as a matter of right.

**Madeleine MacGillivray Wallace** is an environmental activist and youth leader and works to urge the federal government to mitigate the climate crisis – using a wilderness or restorative standard – so that she and other youths can enjoy the wilderness prior generations have.

*The following amici are experts in environmental ethics and policy and have a specific interest in the recognition of our fundamental human right to nature and its application to mitigate – at the highest standard possible – the climate crisis.*

**Randall Abate**

Endowed Chair in Marine and Environmental Law and Policy  
Monmouth University

**Afshin Akhtar-Khavari**

Professor of International Law and Director of Research, School of Law  
Queensland University of Technology

**Myanna Dellinger**

Professor of Law, University of South Dakota School of Law

**Noah Hall**

Professor of Law  
Wayne State University Law School

**Heidi M. Hurd**

Ross and Helen Workman Chair in Law  
Professor of Philosophy  
Director, Illinois Program in Law and Philosophy  
University of Illinois College of Law

**Kirk W. Junker**

Professor of Law  
Director, International Master of Environmental Science Programme  
University of Cologne, Germany

**James R. May**

Distinguished Professor of Law  
Widener University Delaware Law School

**Joel A. Mintz**

Professor of Law Emeritus and C. William Trout Senior Fellow  
Nova Southeastern University College of Law

**Michael Freitas Mohallem**

Professor of Human Rights Law  
Beyond Institute, Brazil

**Rick Reibstein**

Lecturer, Environmental Law and Policy, Department of Earth and Environment  
Boston University  
Faculty, Division of Continuing Education  
Harvard University

**Kalyani Robbins**

Morris I. Leibman Professor of Law  
Loyola University Chicago School of Law

**Natalie Rosen**

Beyond Institute, Brazil

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 17. Statement of Related Cases Pursuant to Circuit Rule 28-2.6**

The undersigned attorney or self-represented party states the following:

- I am unaware of any related cases currently pending in this court.
- I am unaware of any related cases currently pending in this court other than the case(s) identified in the initial brief(s) filed by the other party or parties.
- I am aware of one or more related cases currently pending in this court. The case number and name of each related case and its relationship to this case are:

**Signature:** /s/Corey Page

**Date:** June 28th, 2021

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 8. Certificate of Compliance for Briefs**

**9th Cir. Case Number 19-35708**

I am the attorney or self-represented party.

**This brief contains 4,196 words**, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief is an amicus brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

**Signature:** /s/Corey Page      Date: June 28th, 2021