The Ninth Circuit threw out the *Juliana* litigation this morning. The two judges in the majority basically said, legalistic language, that you can't get the Green New Deal by court order. It was wrong for the Supreme Court to step in at the last minute to put the trial on hold, rather than giving the plaintiffs their day in court. But the ultimate result wasn't surprising, given the unprecedented, sweeping ruling that the plaintiffs were requesting.

I don't blame the plaintiffs for giving this a try — it was a long-shot that could have been a game changer. But at the end of the day, it asked judges to take on a sweeping new role as overseer of federal energy policy. It's not surprising the court declined.

Now to the technicalities: The Ninth Circuit majority approached the case in terms of standing doctrine, ultimately concluding that the plaintiffs lacked standing. To have standing, a plaintiff must show that a court could provide some kind of real redress. The court went astray in thinking that only a dramatic cut in global carbon emissions would count as redress. I agree with the dissenter that this is a misreading of *Massachusetts v. EPA*. Correspondingly, I think that for standing purposes the court should have looked to some of the smaller, more limited remedies that might have been available for purposes of standing. However, I can see why the majority felt that nickel-and-dime remedies would make no sense given that the plaintiffs' complaint covered the full sweep of government policies.

The court understandably had qualms about the core remedy sought by the plaintiff: an order that the government devise a plan for drastic reduction or elimination of carbon emissions. It's very hard to see how that would accomplish anything unless the court exercised oversight to ensure that the plan was aggressive enough, feasible, and implemented on schedule. That could require constant supervision of government actions to ensure they were properly conducted and on schedule.

The dissent analogized this case to *Brown v. Board of Education*. Under *Brown*, judges had to determine whether individual school districts were illegally segregated and devise a remedy accordingly. That may be too modest a comparison, however. If Thurgood Marshall, who steered desegregation litigation, had sought similarly broad relief, he would have asked the court to require a national plan to eliminate discrimination in all forms. That would not have been a winning strategy.

The plaintiffs' legal theory had much the same problem. They claimed that federal energy policy taken as a whole violated their constitutional rights. But courts are in no better position to make decisions about federal energy policy taken as a whole than about racial inequality taken as a whole. So the outcome was not surprising — if anything, the surprise was that the district judge and one judge on the panel were willing to take that step. That's a credit to the persuasive powers of the *Juliana* lawyers.

Even with this loss, there were some real benefits to the case. The majority and dissenting opinions contain remarkably strong language about the dangers of climate change and the urgent need for action. That wouldn't have happened without this lawsuit, and it may help change the way other judges think about the problem. The lawsuit also succeeded brilliantly as an exercise in public mobilization. In the long run, that mobilization is crucial.

For better or worse, it seems clear that Juliana won't be the magic bullet for changing U.S. climate policy. But I'm sure the smart iddealistic lawyers who brought the case have more new ideas in store for us.