Since you're reading *Legal Planet*, you probably know already that the *Juliana* case is an effort to force fundamental reform of federal climate and energy policies. Here's the state of play: (1) the Ninth Circuit ruled that the plaintiffs had no standing because the case violated the separation of powers; (2) the district court tried to sidestep that ruling; and (3) the Ninth Circuit responded with a mandamus writ to end the case. Which brings us to (4): plaintiffs have now gone to the Supreme Court for a mandamus writ of their own to void the Ninth Circuit's mandamus writ.

Hardly anyone who isn't a lawyer has ever heard of a mandamus writ, and here we have mandamus writ stacked on top of mandamus writ. So, we're obviously deep into the land of procedural technicalities. I'm not an expert in this arcane corner of civil procedure, but the plaintiffs seem to have a reasonable argument for mandamus. Notwithstanding that, there is little chance that plaintiffs will get their writ from the Supreme Court.

There are two reasons. First, even if the Ninth Circuit was wrong, granting mandamus is discretionary. From the perspective of at least six Justices, any procedural mistake by the Ninth Circuit was harmless error. I am certain that every member of the conservative majority, rightly or wrongly, views the plaintiffs' constitutional claim as baseless. Remember that this is the group that thought *Roe v. Wade*, which also involved implied constitutional rights, was an outrageous abuse of judicial power. From their point of view, the procedural question in *Juliana* is only whether the Ninth Circuit should have waited a little longer before doing the inevitable and killing the case.

Putting the issue of harmless error aside, there's a deeper reason why the plaintiffs will likely fail. The district judge contemplates a lengthy trial about broad government policies, after which she would opine on their legality. A recent Supreme Court case might illustrate why this is problematic. The Supreme Court recently ruled that states didn't have standing to challenge a presidential policy on immigration enforcement. Suppose that on remand, the trial judge proposed a lengthy public hearing broadly examining all aspects of the Biden Administration's immigration programs, which would be followed by a judicial thumbs up or thumbs down. You can see why the Supreme Court might view this kind of wide-ranging hearing as raising separation of powers concerns.

The plaintiffs rely heavily on a case called *Cheney* that dealt with mandamus. But there's another aspect of the *Cheney* case that the plaintiffs don't discuss: The

Supreme Court chastised the lower court for slighting the serious separation of powers aspect of the case in denying mandamus. I suspect that the Court will also think that putting an immense swathe of government policy on trial also violates the separation of powers — especially in a case where they are deeply skeptical of the underlying constitutional claim.