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US Supreme Court allows historic kids' climate lawsuit to go forward

Case aims to compel the government to slash greenhouse-gas emissions.

Emma Marris



A group of children and young people are suing the US government (shown here with lawyer Julia Olson) to force stronger action on climate change. Credit: Robin Loznak/ZUMA Wire

A landmark climate-change lawsuit brought by young people against the US government can proceed, the Supreme Court said on 2 November. The case, *Juliana v. United States*, had been scheduled to begin trial on 29 October in Eugene, Oregon, in a federal district court. But those plans were scrapped after President Donald Trump's administration asked the Supreme Court to intervene in early October and dismiss the case.

The plaintiffs, who include 21 people ranging in age from 11 to 22, allege that the government has violated their constitutional rights to life, liberty and property by failing to prevent dangerous climate change. They are asking the district court to order the federal government to prepare a plan that will ensure the level of carbon dioxide in the atmosphere falls below 350 parts per million by 2100, down from an average of 405 parts per million in 2017.

By contrast, the US Department of Justice argues that “there is no right to ‘a climate system capable of sustaining human life’” — as the *Juliana* plaintiffs assert.

Although the Supreme Court has now denied the Trump administration's request to the dismiss the case, the path ahead is unclear. In [its 2 November order](#), the Supreme Court suggested that a federal appeals court should

consider the administration's arguments before any trial starts in the Oregon district court.

Lawyers for the young people said they would push the district court in Oregon to reschedule the trial for next week.

“The youth of our nation won an important decision today from the Supreme Court that shows even the most powerful government in the world must follow the rules and process of litigation in our democracy,” said Julia Olson, co-counsel for the plaintiffs, in a statement reacting to the Supreme Court decision.

A new generation

Although climate change is a global problem, lawyers around the world have brought climate-change-related lawsuits against local and national governments and corporations since the late 1980s. These suits have generally sought to force the sort of aggressive action against climate change that has been tough to achieve through political means.

Many of the cases have failed, but in 2015, a citizen's group called the Urgenda Foundation [won a historic victory against the Dutch government](#). The judge in that case ordered the Netherlands to cut its greenhouse-gas emissions to at least 25% below 1990 levels by 2020, citing the possibility of climate-related damages to “current and future generations of Dutch nationals” and the government's “duty of care ... to prevent hazardous climate change”. A Dutch appeals court [upheld the verdict](#) earlier this month.

Over the past few years, [the Dutch case has emerged as a model](#) for climate lawsuits in other countries, says Gillian Lobo, a lawyer who specializes in climate-change-related cases at ClientEarth in London. More recently, she says, the *Juliana* lawsuit has inspired its own copycats — some of which have progressed further than *Juliana* itself. “It is a global phenomenon,” Lobo says.

One case modelled on the *Juliana* lawsuit has already produced a striking victory. In January, 25 young people sued the Colombian government for their right to a healthy environment, in a case called *Demanda Generaciones Futuras v. Minambiente*. The Colombian Supreme Court found in the plaintiffs' favour in April. Not only did it order the government to take steps to reduce deforestation and climate change, it also ruled that the Colombian Amazon rainforest is “a subject of rights” that is entitled to “protection, conservation, maintenance and restoration”.

Fuzzy future

The young plaintiffs in the *Juliana* case allege that they have already suffered harm as a result of climate change. Seventeen-year-old Jaime and her family left their home on the Navajo Nation Reservation in Cameron, Arizona, in 2011 because the natural springs on which they depended for water were drying up. Fifteen-year-old Jayden's home in Louisiana was severely damaged by flooding in 2016, and 19-year-old Vic's school in White Plains, New York, closed temporarily in 2012 [after Hurricane Sandy hit](#).

US climate hawks hope that the *Juliana* plaintiffs will ultimately prevail, but President Donald Trump's administration is mounting a multipronged defence. The Justice Department denies that the district court in Oregon has jurisdiction over the broad sweep of federal policies at issue, and that the rights to life, liberty and property set out in the Fifth Amendment to the Constitution translate into the right to a stable climate.

In any case, the department argues, no meaningful redress is possible, given that drastically reducing emissions in the United States might not move the needle on climate change much if other countries' greenhouse-gas output grows. This echoes the argument made in 2007 by the Supreme Court's chief justice, John Roberts, when he dissented from the court majority's decision in a pivotal climate case, *Massachusetts vs. Environmental Protection Agency*. The court's ruling, which Roberts protested, forced the agency to regulate carbon emissions as a pollutant.

Andrea Rodgers, co-counsel for the *Juliana* plaintiffs, says that the Trump administration hasn't challenged the fact that humans are changing the climate. “They haven't presented experts to contest what our scientists are saying about ice melt or sea-level rise or terrestrial impacts or how climate change happens or ocean

acidification,” she says.

To win, Rodgers says, “we have to show that the United States government is liable, but also that there is a remedy that the judge can order”. The United States has seen its greenhouse-gas emissions drop in recent years, as the country shifts its energy mix away from coal and towards renewable sources, but as of 2016, it remains the second-largest emitter after China.

James Hansen, a climatologist at Columbia University in New York City and a long-time climate activist, is an expert witness in the case — but he is also a plaintiff, representing “future generations” not yet born. (His 20-year-old granddaughter, Sophie Kivlehan, is also a plaintiff.)

Hansen has been fighting for action on climate change since he first testified on the subject before the US Senate in 1988. He says that if the *Juliana* plaintiffs lose their case, he will simply try another way. “We need to win as soon as possible,” Hansen says, “but if we lose, we don’t give up — we come back with a stronger case.”

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Supreme Court refuses to block young people’s climate lawsuit against U.S. government



Willamette University student Arabella Wood, right, rallies with others in Eugene, Ore., on Oct. 29, 2018, to support a climate change lawsuit brought by 21 young people against the federal government in 2015. On Nov. 2, the U.S. Supreme Court refused a federal government request to disallow the lawsuit. (Andy Nelson/AP)

By [Robert Barnes](#) and
[Brady Dennis](#)

November 2 at 9:21 PM

The Supreme Court on Friday night refused to halt a novel lawsuit filed by young Americans that attempts to force the federal government to take action on climate change, turning down a request from the Trump administration to stop it before trial.

The suit, filed in 2015 by 21 young people who argue that the failure of government leaders to combat climate change violates their constitutional right to a clean environment, is before a federal judge in Oregon. It [had been delayed](#) while the Supreme Court considered the emergency request from the government.

Justices Clarence Thomas and Neil M. Gorsuch would have stopped the suit. The other justices did not indicate how they voted on the government's request.

The court's [three-page order](#) said the government should seek relief from the U.S. Court of Appeals for the

9th Circuit. It noted the government's assertion that the "suit is based on an assortment of unprecedented legal theories, such as a substantive due process right to certain climate conditions, and an equal protection right to live in the same climate as enjoyed by prior generations."

The justices acknowledged that the 9th Circuit had previously turned down the government but said those decisions came when there was a "likelihood that plaintiffs' claims would narrow as the case progressed." That no longer seems the case, the unsigned opinion said, suggesting the possibility that the 9th Circuit might see things differently now.

And it left open the possibility that the government could return to the Supreme Court.

The goal of the lawsuit is to compel the government to scale back its support for fossil fuel extraction and production and to support policies aimed at reducing the greenhouse gas emissions that contribute to global warming.

"We've been confident throughout this case that we would get to trial, and I believe we will get to trial," Julia Olson, the attorney for the youths and executive director of Our Children's Trust, said in an interview with The Washington Post on Friday evening. "We have overcome everything the government has thrown at us. It is not luck. It is the strength of the case and the strength of the evidence and the strength of the legal arguments we are making."

The Obama and Trump administrations had repeatedly asked lower courts to dismiss the lawsuit, questioning its merits, saying discovery requests were "burdensome" and arguing that the suit would usurp the authorities of Congress and federal agencies.

The plaintiffs "seek nothing less than a complete transformation of the American energy system — including the abandonment of fossil fuels — ordered by a single district court at the behest of 'twenty-one children and youth,'" Solicitor General Noel Francisco [wrote in a brief](#) to the Supreme Court.

"As the government has maintained since first moving to dismiss this suit in 2016, [the] assertion of sweeping new fundamental rights to certain climate conditions has no basis in the nation's history and tradition — and no place in federal court."

Francisco acknowledged that he was asking for "extraordinary relief" by asking the high court to intervene before a trial began. But he said the unique nature of the lawsuit deserved such an exception.

If the long trial were allowed to proceed, "it could well be years into the future" before the government could "seek relief from such an egregious abuse of the civil litigation process and violation of the separation of powers."

The government has made similar arguments in lower courts, but time and again, judges allowed the case to proceed. The government also went to the Supreme Court this summer seeking a stay, but the court in an unsigned opinion called the request "premature."

In a 103-page filing this week intended to keep the trial on track, the plaintiffs argued that the Trump administration would not suffer "irreparable" harm in having to go through with the case.

"This case clearly poses profoundly important constitutional questions, including questions about individual liberty and standing, the answers to which depend upon the full evaluation of evidence at trial," the lawyers wrote, adding: "These young plaintiffs, mere children and youth, are already suffering irreparable harm

which worsens as each day passes with more carbon dioxide accumulating in the atmosphere and oceans.”

The young activists also used the chance to once again demand that the courts compel the government to “cease their violation of plaintiffs’ rights, prepare an accounting of the nation’s greenhouse gas emissions, and prepare and implement an enforceable national remedial plan to cease the constitutional violations by phasing out fossil fuel emissions and drawing down atmospheric CO₂.”

Olson said the youth plaintiffs were filing a request with the district court in Oregon for a hearing soon in hopes of moving toward the long-awaited trial.

Officials at the Department of Justice could not be reached immediately for comment Friday.