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Climate lawsuits are breaking new legal ground to protect the planet

Despite recent defeats, activists are optimistic that courts will provide relief from climate change.



Climate litigant Nathan Baring speaks during a Senate Climate Task Force meeting in Washington D.C. in September. Credit: Mark Wilson/Getty

Twenty-year-old Nathan Baring is a third-generation Alaskan. Within his lifetime, he has seen winters shorten, cod fisheries collapse and cultural traditions suffer. He grieves for an Arctic that is disappearing before his eyes. "There is a very distinct loss of place here," he says.

Baring decided to take action. He is one of 21 young plaintiffs who, in 2015, filed a lawsuit seeking to force the US government to reduce greenhouse-gas emissions. A federal appeals court dismissed the case, known as *Juliana v. United States*, in January.

But other attempts to fight climate change in the courts have been more successful. This week, the UK court of appeal blocked plans to build a third runway at Heathrow airport, saying that the expansion violated the country's obligations to the Paris climate agreement.

Such decisions are inspiring and instructing activists and municipalities around the world as they attempt to force action against climate change. As litigants fight scores of such cases, recent rulings such as these make one thing

clear. “There is no silver litigation bullet for climate change,” says Michael Gerrard, director of the Sabin Center for Climate Change Law at Columbia University in New York.

On 18 February, the International Bar Association released a [model for how to litigate climate change](#), laying out legal arguments and precedents that might help future plaintiffs.

<https://www.ibanet.org/Climate-Change-Model-Statute.aspx>

What is likely to succeed seems to vary around the world, however — and as plaintiffs learn from their experiences in the courts, they are adjusting their tactics. The Heathrow case is the first major ruling based on the Paris agreement and could spur more suits that rely on those obligations. In other parts of the world, plaintiffs are increasingly focusing on seeking damages from polluters themselves.

A matter of trust

The *Juliana* case is one of more than two dozen cases that have been brought around the world on the basis of ‘public trust’ arguments, which say that the state has a duty to protect public resources from harm. Such arguments are closely linked to the idea that the fundamental right to life is inextricably tied to a healthy environment. Although the US court found that the plaintiffs had been harmed by the government’s inaction on climate change, the judges ultimately ruled that it was not within the court’s power to legislate climate policy.

But outside the United States, the human-rights approach is the legal strategy that has had the most success so far in forcing governments’ hands, says John Knox, an expert on international environmental law at Wake Forest University in Winston-Salem, North Carolina. Suits based on these types of argument have been brought on every inhabited continent.

In *Urgenda Foundation v. State of the Netherlands*, a case brought by an environmental group and nearly 900 Dutch citizens in 2015, the Dutch supreme court mandated that the government achieve a 25% reduction in greenhouse-gas emissions from 1990 levels by the end of 2020 to protect its citizens from the harms of a warming climate system. And in *Demanda Generaciones Futuras v. Minambiente*, Colombia’s Supreme Court ordered the government to implement protective measures to halt deforestation in the Amazon — that case was brought by 25 young Colombians. Like *Juliana*, both cases rested on the idea that the right to life is endangered by threats to the environment. Their success suggests that we can expect to see more suits brought by citizens against their governments, says Knox. Meanwhile, climate activists are watching closely to see how these governments comply with the court-ordered actions.

Damage limitation

So why did *Juliana* fail where similar cases have succeeded? Its scope — asking the courts to force the US government to not only stop permitting and subsidizing fossil-fuel use, but to also implement a plan for reducing atmospheric carbon dioxide levels — meant it was “always going to be a long shot”, says Ann Carlson, who studies environmental law at the University of California, Los Angeles. The court was reluctant to make these sorts of complex policy decisions. And given the increasingly conservative makeup of many US federal courts, Carlson thinks it is unlikely that future cases based on similar arguments will succeed.

Instead, Gerrard and Carlson anticipate that US activists and municipalities will pivot from targeting governments to going after the producers of emissions themselves — a strategy seen as more pragmatic because it seeks to impose cash penalties, which can, in some cases, be used for climate-mitigation efforts.

At least a dozen cases in the United States are now taking this tack. In *County of San Mateo v. Chevron Corp.*, several Californian cities and counties are seeking funds from major fossil-fuel corporations to fund infrastructure for sea-level-rise adaptation. Oral arguments in the latest appeal were heard on 5 February, but a ruling has yet to be handed down. And several other individuals and localities, including the state of Massachusetts, are currently suing ExxonMobil and other companies for allegedly deceiving consumers about the risks of fossil-fuel use.

Although these damage-seeking cases are most popular in the United States, similar arguments for compensation are beginning to be made elsewhere. In November 2015, a Peruvian farmer named Saúl Lliuya brought a case in German courts against the German utilities company RWE, the largest emitter of CO₂ in the European Union. Lliuya, who lives near a glacial lake, alleges that RWE's emissions are partially responsible for the dangerously high water levels seen at the lake as nearby glaciers have melted. He is seeking 0.47% of the costs of flood-protection measures for his town, equal to RWE's proportion of global CO₂ emissions from 1751 to 2010.



Saúl Lliuya's approach to fighting climate change? Take it to the greenhouse-gas producers. Credit: Anthony Kwan/Getty

Although the case was initially dismissed, an appeals court has since ruled that Lliuya's complaint was admissible, and the court has ordered the parties to submit expert evidence — the first time such a case has moved to the evidentiary stage. The case is “very interesting” in its approach, Gerrard says, and victory could spur similar lawsuits around the world.

Although the recent ruling in *Juliana* was disappointing for plaintiffs, they say that they are heartened by the court's finding that they had been harmed by the government's inaction on climate change. They are currently preparing to appeal the ruling, and are still optimistic about getting a chance to argue their case in front of a jury. “We have many paths forward,” Baring says. “This is certainly not the end of the road for us.”

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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

[PDF version](#)



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 last month after President Donald Trump's administration asked the Supreme Court to intervene 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 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 to reschedule the trial 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](#) last 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'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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10 OCTOBER 2018

Dutch court rules that government must help stop climate change

Appeals court upholds earlier ruling that the government is accountable for efforts to combat global warming.

Quirin Schiermeier



Citizens celebrating their court victory over government. Credit: Chantal Bekker/GraphicAlert/Urgenda Foundation

A court of appeal in The Hague has upheld a precedent-setting judgment that forces the Dutch government to step up its efforts to curb greenhouse-gas emissions in the Netherlands.

In 2015, a district court in The Hague [had ruled in favour of the Urgenda Foundation](#), a Dutch citizens' climate-change group that filed the lawsuit on behalf of 886 plaintiffs.

The foundation asked for more-stringent government action to protect the low-lying country from the harmful effects of climate change. The government appealed against the verdict, arguing that courts have no right to take decisions on this matter.

The appeal judges disagreed. On 8 October, the court of appeals confirmed that the government must take measures to cut domestic greenhouse-gas emissions to at least 25% below 1990 levels by 2020.

The Netherlands has pledged to reduce emissions by 49% by 2030, but has so far achieved only a 13% drop from 1990 levels. The court cites the state's legal duty of care for its citizens, which is enshrined in the European Convention of Human Rights.

The ruling coincides with a [landmark report by the Intergovernmental Panel on Climate Change](#) outlining the drastic global action required to stabilize Earth's climate at a safe level.

And similar court cases are now ongoing in several countries, including the United States, Belgium, Norway and Ireland.

"Climate litigation has become a powerful tool in holding decision-makers accountable for climate inaction," says James Thornton, the London-based chief executive of ClientEarth, an international group of environmental lawyers. "This is the climate case that started it all, inspiring similar lawsuits worldwide."

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25 OCTOBER 2019

Canadian kids sue government over climate change

Lawsuit alleges that the federal government has violated citizens' rights by promoting and enabling fossil-fuel development.

Jeff Tollefson



Children and young people in Canada have participated in a series of recent protests calling for action on climate change. Credit: Michael Wheatley/Alamy

A group of children and young adults filed a lawsuit on 25 October alleging that the Canadian government has

violated their constitutional rights by promoting and enabling fossil-fuel development in spite of acknowledged risks from global warming.

Fifteen people aged between 10 and 19 filed the lawsuit in federal court, arguing that climate change will impinge on their right to “life, liberty and security”. The lawsuit also argues that climate change will interfere with basic equality rights, given that the most severe effects of climate change will be borne by future generations.

“Basically, what we’re arguing is that the courts must hold this generation to account for harms that are being done to the next,” says Chris Tollefson, co-counsel for the plaintiffs and a specialist in environmental law at the University of Victoria in Canada.

Ira Reinhart-Smith, a 15-year-old plaintiff from Caledonia, Canada, says that he got involved with climate activism — [including the Fridays for Future school-strike movement](#) — last year. “This lawsuit is helping me express my anger and my fear,” he says. “My generation and generations to come are going to be exposed to things that the world has never been exposed to before.”

The lawsuit is the latest in [a series of legal challenges](#) aiming to force governments around the world to act on climate change. It comes just days after an election in which Canadian prime minister Justin Trudeau — whose administration has acted more aggressively on climate change than his predecessors — eked out a win, although his Liberal Party lost its majority in parliament.

Test case

Because there is no explicit right to a healthy environment under the Canadian constitution, the case hinges on an untested legal theory: that the adverse impacts of global warming will impinge on other fundamental rights, says Nathalie Chalifour, co-director of the Centre for Environmental Law and Global Sustainability at the University of Ottawa. Given the inevitable impacts of climate change on lives, property and culture, she says, the argument is sound.

“I believe this case really does have legs,” Chalifour says. If the plaintiffs prevail, the lawsuit could give Trudeau political cover to act more aggressively to curb greenhouse-gas emissions, she adds.

Tollefson says the legal team is hoping that the Trudeau administration will come together with the plaintiffs and concede many of the factual issues in the case, including the underlying climate science. But Tollefson says the plaintiffs also plan to argue that a simple ruling ordering the government to take action is not enough. Instead, he says, they will ask the courts to retain control and oversee the matter until the government has developed and implemented an appropriate climate policy.

“Where we see governments drag their feet, it’s entirely appropriate for the courts to stay involved,” Tollefson says.

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