

Top Issues to Watch After Kids' Climate Suit Lands in Ninth Circuit

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A case filed in 2015 by 21 minors, *Juliana v. United States*, seeks to hold the U.S. government liable for climate change. After an Oregon federal judge granted an interlocutory appeal to the defendants following a [denial](#) of their motion to dismiss, the case is now pending before the Ninth Circuit.

The case presents [novel arguments](#), including whether the government has failed to protect public trust resources – in this case, the atmosphere – for present and future generations. This new theory, called “Atmospheric Trust Litigation,” attempts to create a link between the preservation of natural resources and basic constitutional rights. This theory posits that the government has an affirmative duty to protect natural systems, because (1) resources are owned by all citizens under the public trust doctrine, (2) the atmosphere is one such resource kept in trust, and (3) the government is a “trustee” that has the responsibility to prevent future damage and repair past harms. How the Ninth Circuit will view these issues remains an open question.

Beyond these questions, the case presents issues of whether courts can consider claims like these *at all* or whether such claims should be left to the executive branch and Congress to remedy. Here is a breakdown of these issues.

Are there “Concrete and Particularized” Injuries?

“Standing” doctrine precludes courts from resolving issues where the plaintiffs were not themselves harmed. Under this doctrine, plaintiffs must be able to show that the actions of the defendant caused an injury-in-fact that resulted in “concrete *and* particularized” harm in order to have “standing” to sue. This standard was articulated most recently by the Supreme Court in [Spokeo v. Robins](#).

Juliana plaintiffs allege that they suffer from a variety of harms, including but not limited to droughts, loss of marine and agricultural food sources, loss of drinking water, increased flooding, loss of recreational enjoyment in the forms of safe hiking, hunting and fishing, increased asthma due to smoke from increased wildfires, and increased allergies due to heightened grass and tree pollen counts – events all allegedly caused by climate change. But the government argued in its opening [brief](#) that plaintiffs’ injuries are “archetypal general grievances” arising from a “diffuse, global phenomenon that affects every other person in their communities, in the United States, and throughout the world.” In other words, the alleged effects of climate change may be too general to

satisfy the standard. We don't yet know how the plaintiffs will respond.

Did the Government Cause the Injuries?

Plaintiffs allege that these various harms were caused by the government's failure to adequately regulate greenhouse gas emissions (GHGs), which has resulted in carbon dioxide (CO₂) levels rising, which in turn has adversely affected the Earth's atmosphere, causing various harmful effects. But the government argues that the causal link between its environmental policy and the plaintiffs' injuries is a tenuous one, in part (1) the relationship between GHGs and the atmosphere is complex and (2) because it is difficult to tell whether third-party actions have also contributed to climate change and to the plaintiffs' injuries.

Can the Court Grant a Remedy?

The plaintiffs also broke new ground with the type of [remedy](#) requested – whether a court even has the authority to give these young plaintiffs what they are asking for is unclear. Specifically, plaintiffs want the government to “prepare a consumption-based inventory of U.S. CO₂ emissions” and “prepare and implement an enforceable national remedial plan to phase out fossil fuel emissions and draw down excess atmospheric CO₂ so as to stabilize the climate system,” among other things. This creates serious standing *and* separation of powers issues since the legislative and executive branches of government – not courts – are responsible for environmental policy and rulemaking.

A couple of things could happen next. The Ninth Circuit could side with the government's standing and merits arguments and remand the case to the district court with an order to dismiss. Or the Ninth Circuit could give the go-ahead for the case to proceed to trial in the district court, making this the first trial of its kind. No matter what comes next, this case will probably be appealed to the Supreme Court at some point, given the weighty issues involved.

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