

## Legal Sidebar

# Climate Change Litigation Update: “Children’s Crusade” Case Against the United States Goes Forward

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Recently, an Oregon federal district court judge denied the U.S. government’s [motion to dismiss](#) a [lawsuit](#) brought by a group of 21 individuals, all age 20 or younger, and other plaintiffs seeking to compel the federal government to reduce carbon dioxide emissions. The case, *Juliana v. United States*, is part of the so-called “[children’s crusade](#)”—a campaign of state and federal lawsuits and rulemaking petitions related to climate change coordinated by an Oregon nonprofit, [Our Children’s Trust](#), on behalf of American youth. While only a preliminary ruling, the [54-page opinion](#) has prompted some [media outlets](#) to [speculate](#) whether the “[kids](#)” lawsuit may potentially force a change in the United States’ policy toward climate change through litigation.

Lawsuits implicating issues related to climate change are not a new phenomenon in the [United States](#) or [internationally](#). Litigation in the United States (discussed in this [report](#)) has largely focused on addressing climate-related issues through existing federal environmental statutes, like the [National Environmental Policy Act](#) (NEPA) and the [Clean Air Act](#). But efforts to address climate issues through common law (as opposed to statutory) claims have been [largely unsuccessful](#). Mostly notably, in *American Electric Power Co., Inc. v. Connecticut*, the Supreme Court held that a group of plaintiffs could not rely on the federal common law of public nuisance to seek a decree setting greenhouse gas (GHG) emission standards on the operators of fossil fuel-fired power plants because the Clean Air Act “displaced” those claims. The *Juliana* case, which focuses on duties that allegedly arise under the [Constitution](#) and the common law, may potentially indicate that at least some courts may be willing to consider climate-related claims outside the context of existing environmental statutes.

### What Did the Court Decide in *Juliana*?

The *Juliana* case centers on an allegation that federal officials promoted policies that contributed to “the increase in the atmospheric concentration” of carbon dioxide, while knowing of the alleged dangers of those policies. The [plaintiffs](#) ask the court to order the federal government to “implement an enforceable national remedial plan to phase out fossil fuel emission” and “stabilize the climate system,” among other requests for relief. There are multiple causes of action in the [complaint](#), which the district court organized into two categories: (i) alleged violations of plaintiffs’ [substantive due process rights](#) to life, and liberty, and property in the Constitution and (ii) common law violations of the public trust doctrine (discussed below). The district court did not rule on the merits of these claims, nor did it issue a finding that the government bears legal or factual responsibility for increased carbon dioxide emissions. But the court did conclude that it has subject matter jurisdiction over the case and that the plaintiffs alleged facts that, if proven to be true, could entitle them to relief.

The *Juliana* court’s ruling is far from a guarantee of a victory on the merits. In the past, the “children’s crusade” had [success](#) in at least one state administrative rulemaking petition, but it has not obtained a judgment on the merits on a constitutional or common law claim, and one court [dismissed](#) a case after [denying](#) a preliminary motion to dismiss. Even if the *Juliana* plaintiffs succeed on the merits at the district court level, that court’s conclusions of law would be reviewed [de novo](#) if an appeal were filed—meaning no deference would be given to the district court’s legal reasoning.

## Possible Implications of the *Juliana* Decision

While there remains a significant chance that the *Juliana* case ultimately will be decided in the government's favor, the district court's decision is still noteworthy in several respects. In response to earlier cases in the youth litigation campaign, [some state courts](#) held that efforts to change the government's policy toward GHG emissions, including carbon dioxide emissions, raise nonjusticiable [political questions](#) that must be addressed in the politically accountable legislative or executive branches. The *Juliana* court, on the other hand, concluded that the case did not satisfy the six criteria established by the Supreme Court in *Baker v. Carr* that could "signal the presence of a political question." The *Juliana* court also rejected the government's argument that the plaintiffs lacked [standing](#) under [Article III](#) of the Constitution's "[case](#)" or "[controversy](#)" requirement. According to the district court, the plaintiffs' alleged injuries were not "generalized grievances" about the alleged effects of climate change writ large, as the government argued, and were sufficiently "concrete and particularized" to satisfy Article III. And unlike the federal common law nuisance claims in *American Electric Power Co., Inc.*, the *Juliana* court held that existing federal environmental statutes did not displace the plaintiffs' causes of action.

The court's treatment of the [plaintiffs' public trust claim](#) may also represent a unique ruling in the context of climate change litigation. The public trust doctrine is a common law principle [with ancient origins](#) whereby the government has a duty to safeguard certain natural resources for the benefit of the public. [One court](#) dismissed a prior children's crusade [case](#) against the federal government on the ground that only states have actionable public trust obligations, but the *Juliana* court held that the plaintiffs also may bring a public trust claim against federal government.

The public trust doctrine is traditionally associated with [tidelands](#) and the [beds of navigable waterways](#), and the government argued that the doctrine should not be extended to create a duty to preserve the earth's atmosphere. While the *Juliana* court stopped short of deciding that the atmosphere is part of the public trust, instead focusing on alleged rising sea levels and harm to the territorial sea, it left open the possibility of a future ruling that the public trust doctrine creates a federal government duty to protect the atmosphere. Thus far, no court has ruled on the merits of an "atmospheric public trust" claim against the federal government, and [state courts have taken divergent views](#) on the viability such a claim against state governments under their respective state constitutions and laws.

One state court has [already cited](#) the *Juliana* decision in the course of ruling that a [climate change case](#) against the State of Washington and other defendants may go forward, and the *Juliana* opinion may be seen as persuasive authority in other climate-related cases, especially if it withstands appeal.

## Next Steps in *Juliana*

The parties in the *Juliana* case are set to engage in discovery over the coming months, and the plaintiffs [hope to depose](#) Rex Tillerson, the Trump Administration's [nominee](#) for Secretary of State, regarding his work related to climate change while at ExxonMobil (among other [topics](#)). The Oregon district court [reportedly](#) expects trial to take place in mid-2017.

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