

Exclusive: Law firm behind Juliana kids climate case takes on EPA

By Lesley Clark

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SAN FRANCISCO — The law firm that won a landmark climate victory on behalf of young Montanans is filing its second lawsuit against the federal government, accusing the nation’s chief environmental steward of violating young Californians’ constitutional rights to a healthy life.

In documents filed Sunday in the U.S. District Court for the Central District of California and shared exclusively with E&E News, 18 young Golden State residents between the ages of 8 and 17 say EPA discriminates against children by allowing dangerous levels of greenhouse gas emissions.

“There is one federal agency explicitly tasked with keeping the air clean and controlling pollution to protect the health of every child and the welfare of a nation — the EPA,” said Julia Olson, executive director and chief legal counsel at the Oregon-based law firm Our Children’s Trust. “The agency has done the opposite when it comes to climate pollution, and it’s time the EPA is held accountable by our courts for violating the U.S. Constitution and misappropriating its congressionally delegated authority.”

Federal environmental regulators, [the lawsuit claims](#), “forged an unlawful path” by failing to keep climate pollution at a level that protects children, who are more vulnerable to rising temperatures, raging wildfires and other effects of a warming planet.

“EPA has exceeded its delegated authority and injured the lives, health, welfare, safety, security, dignity, happiness, potential for longevity, and an open livable future of plaintiffs, as children, in violation of the United States Constitution,” the lawsuit says.

Genesis B. v. EPA is the second federal challenge and the latest in a series of youth climate cases handled by Our Children’s Trust. The law firm scored a major win in August when a Montana judge ruled in the nation’s first youth-led climate trial that state regulators had violated young people’s constitutional right to a clean and healthful environment.

The case — *Held v. Montana*, which is currently on appeal — has galvanized youth activists across the globe and is driving momentum for a burgeoning raft of litigation over planet-warming emissions, including what is likely to be the second-ever kids’ climate trial next year in Hawaii.

Our Children’s Trust also represents young climate activists in *Juliana v. United States*, the law firm’s first federal lawsuit, which faltered in the courts until a federal judge in Oregon revived the case earlier this year.

While *Juliana* targets a swath of government agencies, *Genesis* singles out EPA. Andrea Rodgers, senior staff attorney with Our Children’s Trust, said the firm hopes the narrow focus means the agency “won’t fight this case” as the Obama, Trump and Biden administrations have fought *Juliana*.

EPA, Rodgers added, “has a clear acknowledgement of climate change and the dangers to children.” She noted that the agency published a report in April on how climate change is particularly bad for children.

“This allows them to do essentially what President Biden said, which is to work with the youth — not against them,” Rodgers said.

EPA does not generally comment on pending litigation.

Genesis calls climate the “single greatest driver of the health of every child born today” and claims that young people are “actively being harmed and discriminated against by their government’s affirmative allowance of dangerous levels of climate pollution.”

The lawsuit notes that children are disproportionately hurt by climate change because they are still developing — and that EPA “explicitly and discriminatorily devalues children” when the agency makes decisions about acceptable levels of climate pollution.

Genesis says that EPA’s 2009 endangerment finding, which establishes that greenhouse gas emissions harm the public, specifically named children as a group most vulnerable to climate-related health harms. The lawsuit says that EPA has since refused to set a national pollution standard for carbon dioxide, the most abundant greenhouse gas.

The lawsuit says the federal government is likely to say that climate change is not a problem that a court can resolve. That echoes concerns expressed by a federal appeals court that struck down *Juliana* in 2020.

Our Children’s Trust says those arguments are wrong.

“The greater the constitutional grievance against these disenfranchised young plaintiffs and their class,” the lawsuit says, “the greater the responsibility of the judiciary to act as a check.”

'Ignored, overlooked, and undervalued'

Genesis B., the 17-year-old Long Beach, California, resident who gives the new lawsuit its name, lives in a home without air conditioning, and her family doesn’t have the money to install it.

As higher temperatures become more common, Genesis, whose last name has not been publicized because she is under 18, often has to wait until nightfall to do her homework because it’s too hot to focus during the day. In July, she had to cancel her appearance to receive an award for her activism from a local youth group because of heat exhaustion.

Unable to vote, young people are “politically and economically powerless in our constitutional democracy and cannot meaningfully participate in and influence the policy decisions,” the *Genesis* lawsuit says.

The suit accuses the federal government of violating the equal protection and due process clauses of the Fifth Amendment, which provide that no one shall be “deprived of life, liberty or property without due process of law.”

Federal judges have been reluctant to second-guess governments’ energy policies. But unlike Our Children's Trust's first lawsuit against the U.S. government, which asked for a court-ordered plan to phase out fossil fuels, *Genesis* only seeks a ruling that EPA has fallen short of its duty to address climate change.

The lawsuit argues that youth have been “consistently ignored, overlooked, and undervalued.”

Genesis details a litany of climate-induced conditions the young challengers say they grapple with daily. They’ve lost weeks of school and can’t participate in sports because of closures due to wildfires and unhealthy air. One lost a home to a wildfire.

Like most of the young people involved in the case, Genesis has grown accustomed to wearing a mask to go outside during wildfire season.

She’s been a vegan since the age of 6 to lessen her contribution to climate change, but she still experiences anxiety and worries about her future — and that of her four younger siblings.

The first U.S. kids' climate case

Genesis comes six months after a federal judge gave new life to Our Children's Trust's best-known lawsuit, *Juliana*, which was filed when Barack Obama was in the White House and became [the subject of a Netflix documentary](#) — and has stumbled in the face of three administrations' efforts to quash the case.

As they do in *Genesis*, the 21 *Juliana* challengers argue that the federal government’s support for fossil fuels violates what young activists say is a constitutional right to a stable climate.

Juliana was rejected by the 9th U.S. Circuit Court of Appeals in 2020, when the court found that the case raised questions for the "political branches" of government, rather than the judiciary.

Judge Ann Aiken of the U.S. District Court for the District of Oregon, [however, revived the case in June](#), giving the young activists permission to revise their original lawsuit "to cure any deficiency."

"[W]hen government conduct catastrophically harms American citizens," said the judge, a Clinton appointee, "the judiciary is constitutionally required to perform its independent role and determine whether the challenged conduct ... is unconstitutional."

Aiken at one point ordered settlement talks between the climate activists and the Biden administration. Those efforts collapsed in late 2021 without a resolution.

The Department of Justice has argued that *Juliana* should be dismissed because the young people have failed to bring a claim that a court can resolve.

Even if a court ordered the United States to phase out fossil fuels, it would not "suffice to stop catastrophic climate change or even ameliorate" the young people's injuries, [DOJ environment chief Todd Kim](#) said in June.

California leads on climate lawsuits

Genesis solidifies California's status as a hotbed of climate litigation.

The new lawsuit comes three months after California's Democratic [Gov. Gavin Newsom and Attorney General Rob Bonta](#) sued the oil and gas industry, becoming the latest and largest player among a growing number of state, county and city governments looking to hold fossil fuel companies financially accountable for the effects of climate change.

Five California cities, including San Francisco and Oakland, and three counties, including San Mateo, were already active on the climate liability front, filing some of the first lawsuits against fossil fuel companies in 2017 and 2018.

California's climate liability lawsuit, filed this year in state court, accuses five of the world's largest oil companies and their subsidiaries, along with the American Petroleum Institute, of violating state nuisance and product liability laws, as well as destroying natural resources. California has asked a state judge to order oil producers to pay for the costs of dealing with climate change and penalize companies for lying about the dangers of burning fossil fuels.

The Golden State's climate liability case — and others like it — could put the oil industry on the hook for hundreds of billions of dollars if the lawsuits are successful.

Genesis does not seek any financial compensation from the industry or EPA. California's presence in the liability fight — and its position at the forefront of climate impacts — made the state a natural home for Our Children's Trust's second federal lawsuit, Rodgers said.

"It's daunting what these young people have had to go through," she said. "Losing your home to fire, evacuated from floods. The number of days of school that have been lost is astounding."