

Climate change is not just a long-range problem; it's one that will get much worse in the future unless major emissions cuts are made. For instance, sea levels will continue to rise for centuries. But the people who will be harmed by these changes can't go to court: they haven't been born yet. How can their interests be represented in court? And even people now alive who might still be around in, say, 2100, will have trouble proving any injury is "imminent," as the Supreme Court requires for standing.

Current Supreme Court precedents recognize three possible ways to get future injuries into court. The first is to find a present-day, real world effect due to a possible future disaster. In the [Duke Power](#) case, a citizens group was challenging a federal law that limits the liability of nuclear reactors for major accidents. The law would only affect them directly at some unknown future date when (if) there was a major nuclear accident at the site. That date might be decades in the future or might very likely never arrive at all. Yet the Court held that they had standing. The reason was that, without the liability shield provided by the federal law, insurance companies would not insure suppliers of nuclear equipment, which would mean that the reactor would never be built. And without the reactor, the plaintiffs would not suffer more immediate forms of environmental harm. That was enough to get standing. Thus, if the possibility of future harm has present-day effects on plaintiffs, that can be enough to get them into court.

Another possibility is that state governments may have standing to complain about future harms. In [Massachusetts v. EPA](#), the Court held that the state had standing to litigate over carbon regulation because climate change would result in sea level rise, which would endanger the state's sovereign interest in its own lands. The Court's holding may extend beyond states to include ordinary citizens, or perhaps the interests of other institutions that exist today but will suffer harm in the future. On the other hand, Justice Kennedy was the swing voter in that case; with his departure from the Court, standing law could change.

Finally, a plaintiff who gets into court based on some current harm can raise claims relating to an agency's analysis of future harms. For instance, the plaintiff might argue that a coal-fired plant causes air pollution which aggravates the plaintiff's asthma. Having done so, the plaintiff could argue that a regulation favoring the power plant failed to properly account for future harm in its cost-benefit analysis. For an illustration of this strategy, see the D.C. Circuit's decision in *National Guardians v. Jewell*, discussed [here](#).

These workarounds are all well and good, but they may not always be possible – and in any event, they leave no one in the courtroom to officially represent the interests of future generations. This might prevent some cases from being brought; more importantly, it obscures the true stakes in the lawsuit.

Is there another way? Maybe there could be. As I suggested in a past [blog post](#), there's actually precedent for appointing a representative of future generations – in traditional property law, of all places.

Consider a will that leaves property to John Doe for his life and then to whatever descendants who are alive at the time of his death. (Technical note: in many states, they would have to be born within 21 years of his death.) If Mr. Doe is young when he receives the property, those grandchildren might not yet have been born. They are called “contingent remaindermen.” But even though they don't yet exist, their interests might be adverse to his, if he wants to take actions that will produce immediate cash for him but reduce the long-term value of the property. (The classical example is logging the woods on the property.) A court can appoint a lawyer (what's called a guardian ad litem) to represent their interests in court. There's even a California statute about this that's worded broadly enough to cover climate change litigation.

Thus, appointing a lawyer to represent the interests of future generations in climate change cases would be novel, but it wouldn't be a complete shot in the dark. If it can be done in a private setting of a dispute over land, there's no reason it couldn't be done in the broader setting of a dispute over climate change. It's time for the legal system to recognize that our actions today can have very longterm results, and that the interests of future generations deserve their day in court.