

✘ It's not news that the 21 children (some now adults) who are suing the United States for the right to a safe and stable climate are sympathetic and telegenic. They are the primary reason [Juliana v. United States](#) has garnered so much attention, including a lengthy, highly positive [segment](#) on 60 Minutes. But the Juliana youth are not just telegenic. They are also key to one of the most important legal questions in the case: whether the plaintiffs have the right to bring the case at all, under the constitutional doctrine of standing. The lawyers for the youth plaintiffs - from the organization Our Children's Trust - have used their obligation to establish standing in a strategically brilliant way: they have not just gone through the motions to meet the requirements of the doctrine, but have used standing as an opportunity to showcase the children and the very real harms they are already experiencing — and will continue to experience — from a warming planet.

Tomorrow, June 4th, the U.S. Court of Appeals for the Ninth Circuit will hear an appeal of a lower court [decision](#) in the *Juliana* case. The lower court held — in a sweeping decision — that the youth plaintiffs have “standing” to sue the federal government. The court also found that the plaintiffs have stated a valid legal claim that the United States government has an obligation to maintain a safe and stable climate in order to protect the life, liberty and property of the children as required by the Due Process Clause of the 5th Amendment of the U.S. Constitution. Furthermore, the federal government has a public trust obligation to protect certain resources under the Due Process Clause.

It's the standing part of the case I focus on in this post.

Since 1972, the U.S. Supreme Court has [made clear](#) that environmental organizations suing in federal court must demonstrate that at least one or more of their members have standing to sue. This is a constitutional requirement under Article III of the Constitution, which limits federal court jurisdiction to “cases and controversies.” To establish standing, a plaintiff (in this case at least one of the children or the other plaintiffs) must show three things: 1) that they have been “injured in fact;” 2) that their injury is “fairly traceable” to the conduct of the defendant; and 3) that a favorable ruling from the court would “redress” their injury.

Environmental organizations have for many years argued in favor of lenient standing requirements, starting with *Sierra Club v. Morton* in 1972, where they argued that they should be able to establish “organizational” standing instead of showing that their individual members were harmed by the behavior being sued over. After losing a number of standing cases beginning in 1987, environmental plaintiffs achieved two big victories in [Laidlaw v. Friends of the Earth](#) in 2000 and in [Massachusetts v. EPA](#), the landmark climate change case. There the Court held that states like Massachusetts face somewhat relaxed standing requirements in environmental cases. Plaintiffs like the Juliana kids do not receive this “special solicitude” that states do and must present strong evidence to meet the three

doctrinal requirements of standing.

What is impressive about the standing evidence in *Juliana* is that, rather than grudgingly complying with the doctrinal requirements, the lawyers for the *Juliana* youth plaintiffs have embraced them. Coincidentally, I wrote an [article](#) two decades ago arguing that environmental lawyers should view standing requirements as an opportunity rather than an obstacle. Standing allows lawyers to humanize what can otherwise be dry and technical cases, to connect those who feel intensely about the environmental issue at stake in a case to the issues before a court. The *Juliana* lawyers apparently feel similarly. They have filed a number of what I think are the most compelling documents in the case: a series of affidavits from each of the children documenting the harms they are already facing and will continue to face as the earth continues to warm. These are accompanied by affidavits from experts connecting the kids' injuries to climate change, to the behavior of the federal government and to the remedy the plaintiffs are seeking. Together, these affidavits provide strong evidence that the children have met their standing burden. They also tell a powerful story.

The affidavits of the children help establish the first doctrinal requirement of standing, that the plaintiffs have been "injured in fact." [Here](#) is an excerpt from one of the most compelling, from thirteen year old Jayden F., from Rayden, Louisiana about her experience when her town faced catastrophic flooding (in a house supposedly not at risk for flooding):

FLOODWATERS AND SEWAGE RUINED MY HOME

5. At 5:00 a.m. on August 13, 2016, my siblings woke me up. I noticed there was water coming from under the door to my room. My room is at the back of the house with a door that goes outside. When I stepped out of my bed, I stepped in water that came up to my ankles. I stepped right in the middle of climate change. When I opened my bedroom door to the rest of our home, the water flowed into other parts of the house.
6. I was scared and did not know what to do. We called our Mom and told her what was happening. Mom told us that she was trying to get home to us, but that she did not know when she could get there. The roads were flooding, with cars floating down highways. It took her all day to get home to us. Her car was swept up in the flood. On her way home, my Mom had to walk through floodwater up to her thighs. She finally made it home late that night of August 13.
7. All day, floodwater continued to pour into our home. To try to keep us safe, we began using towels and blankets to cover the bottom of all of the doors

that went outside. Yet the floodwaters kept pouring in, through doors, toilets, sinks, bathtubs, and even the roof. The floodwaters also came up through the foundation, underneath the carpet. Our home had cracks in our foundation due to subsidence, so the water was even coming up from below our house.

8. Floodwaters were pouring into our home through every possible opening. We tried to stop it with towels, blankets, and boards. The water was flowing down the hallway, into my Mom's room and my sisters' room. The water drenched my living room and began to cover our kitchen floor. Our toilets, sinks, and bathtubs began to overflow with awful smelling sewage because our town's sewer system also flooded. Soon the sewage was everywhere. We had a stream of sewage and water running through our house.
9. My brother went to the police station to try to get help, but there was no one there to help. There were only some sandbags for people to take. No one knew what to do. Later, a police officer friend of my Mom came by to check on us after my Mom called him, but there was nothing he nor anyone could do to stop the floodwaters.
10. The hard rain and floods continued for two weeks. Even during the days of the flooding, we had nowhere to go. We could not go outside because of all the rain and floodwaters. There were no shelters. All of the grocery stores were closed. We were basically stranded. So we kept sleeping in our house that was full of sewage and floodwater damage.
11. When my Mom returned that first night of the flood in our home, she and my older brother and sister began trying to clean up. The water that came into our home was orange. It smelled so foul in the house, so they wore masks and gloves while they pulled up our carpet.
12. The flood destroyed my home and many of our belongings, including our furniture and mattresses, and my little brother's toys. We had to pull out all of our carpet because it was soaked with sewage water. We have to scrape all the affected linoleum off of our floors. We think many of our walls, including the walls in my room, have to be torn down because the sewage floodwater also got into the insulation in our walls, which creates black mold. We have to do this work right away because we have to prevent black mold from growing. We also have rain damage to our ceiling and roof that

needs to be repaired.

13. When the government workers came to examine the damage, they said we had at least four inches of water in my house.
14. Now we are collecting supplies, and we are in the demolition phase to try to get rid of all of the damaged parts of our home.
15. My family is all sleeping in our living room because we cannot sleep in our bedrooms. There is still foul water in the walls there.
16. A few days after the flood, my siblings and I began to get real sick. Everyone in my family had flu-like symptoms with fevers and sore throats, as well as stomach pain and diarrhea. My whole body felt hot and my hands were very cold. I had bad headaches, a sore throat, and an upset stomach. We are not alone. Most people we know in the town of Rayne are also sick. We think it is from the polluted water that we have all been exposed to.

Jayden's declaration is not the only compelling one. In finding that the plaintiffs have provided strong evidence to establish standing, the district court [relied on](#) declarations from Kelsey Juliana about the polluted air she has breathed due to Oregon wildfires, and injuries to indigenous and cultural resources from plaintiffs Mico, Jamie and Xiuhtezcatl, among others. The affidavits also show the emotional harms the kids are experiencing, including 11 year old [Levi](#), who has nightmares about storms washing away his house on a Florida barrier island.

Lawyers for the *Juliana* youth also submitted compelling [expert declarations](#) to meet the other two requirements, that the injuries of the children are "fairly traceable" to the federal government's conduct and that a favorable court ruling would "redress" the injuries. These expert declarations describe the rapid increase in greenhouse gases in the atmosphere, the human contribution to that increase, and the unprecedented weather events that are already occurring and will continue to occur at an increasing rate as a result. The declarations tie injuries from flooding, wildfires, increased air pollution and other harms to increasing greenhouse gas emissions. A declaration from climate scientist James Hansen shows that a failure to curtail greenhouse gases will cause further harm to youth plaintiffs residing in Louisiana, New York, Oregon, Florida and Washington. They also show in detail the ways in which the federal government has supported and subsidized the fossil fuel industry, through leasing activities on federal lands and waters, through the building of infrastructure to support the transport of fossil fuels, through financial subsidies for oil and gas exploration, and more. They also remind the court that the U.S. has contributed more

greenhouse gases to the atmosphere than any other country. Finally, they demonstrate that the U.S. can phase out its reliance on fossil fuels largely with existing technology over the next several decades. In short, these declarations tell a powerful story, spelling out in persuasive detail what, exactly, is at stake in the litigation.

By contrast, the federal government submitted no evidence to contradict the plaintiffs' standing declarations. They instead argue that plaintiffs have failed to allege "concrete" injuries, that the causal link between the injuries and the government's behavior is too weak, and that even if the court were to order the defendants to stop supporting and subsidizing the fossil fuel industry, other countries would keep on emitting greenhouse gases. Therefore a court order would not "redress" the youths' injuries. The district court dismisses all of these arguments in its [opinion](#).

Tomorrow's argument will focus on many issues, not just standing. But in the case for standing, the plaintiffs have not only submitted strong evidence to meet the doctrinal requirements. They have also made clear to the court exactly what is at stake for the children who are before them, and for the planet.