The young and the restless: Kids sue government over climate change

by Claire Thompson
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As the U.S. delegation drags its feet at the climate talks in Durban, South Africa, this week, a pack of kids back home is trying to force the old folks into action, the American way: They're suing the bastards.

In May, a group of young people, led by 17-year-old Alec Loorz (founder of Kids vs. Global Warming), filed 10 lawsuits, one against the federal government and the others against individual states, to compel the government to take action on climate change.

"The generations before us ... just kind of thought of the world as limitless," said Glori Dei Filippone, 13, a plaintiff in the case who hails from Des Moines, Iowa. "My generation and the one after it are going to have to work hard to fix this mess."

By the time Filippone is old enough to run for office, it could already be too late to reverse the destruction wrought by climate change -- all the more reason to put pressure on the government today.

The lawsuits are based on a legal theory developed by University of Oregon law professor Mary Wood called "atmospheric trust litigation." The theory "rests on the premise that all governments hold natural resources in trust for their citizens and bear the fiduciary obligation to protect such resources for future generations," according to Wood's web page.

Julia Olson, of Our Children's Trust, a nonprofit group supporting the lawsuit, likened this obligation to the duty parents have to protect money in a kid's college trust fund. If the trustees of that fund went and squandered the money, the child could sue them. So these kids are expanding that idea and suing the government for squandering their future.

While most of the state-level cases are facing motions to dismiss, Olson said she feels optimistic about the federal
case. A judge in Washington, D.C., will hear arguments for a preliminary injunction in the case -- the plaintiffs want the judge to force the government to take immediate action, arguing that any delay could create further harm, and possibly irreparable damage, to those involved.

Specifically, the motion for preliminary injunction asks the federal government to prepare a national climate recovery plan by March that caps national CO2 emissions at 2011 levels and, starting in 2013, reduces them by 6 percent each year.

"There's never been a case that's asked the government to have a national coordinated climate recovery plan," Olson said. "It's really a first in terms of going to the judge and asking for something really substantive."

The preliminary injunction hearing was scheduled for Dec. 15 in San Francisco, but it was recently transferred to Washington, D.C., due to the national significance of the case. No word yet on the date.

Atmospheric trust litigation expands on the public trust doctrine, an ancient common-law principle traditionally applied to water resources or wild land that establishes the government's duty to protect such assets for the benefit of the public. Wood's theory declares that the atmosphere, too, is "a fundamental natural resource necessarily entrusted to the care of our federal government ... for its preservation and protection as a common property interest," as a brief from the lawsuit puts it.

The public trust doctrine has been used in environmental law for years, but targeted at specific regulatory decisions or government agencies. By contrast, Olson explained, "if the court orders the government to create this plan, I see it as sort of an umbrella over all the climate work that's happening right now."

With climate legislation repeatedly stalled in Congress, and the president turning his back on climate change to focus already on reelection, the lawsuit is betting on an alternate route through the judicial branch.

"I really feel like this is going somewhere," Filippone said, "so I'm glad to be a part of it."

Hear from more of the youth plaintiffs and find out why they got involved here.

_Claire Thompson is an editorial intern at Grist._

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