

Kids' climate trial might be dead. Here's what it means:

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There's been a flurry of activity in the lead-up to the trial in a landmark climate lawsuit brought by a group of young people against the federal government.

Our Children's Trust, which is representing the plaintiffs, has been selling T-shirts that say "YOUTH V. GOV" and "SEE YOU IN COURT." Reverends are preaching about the case from the pulpit. There's a podcast. And rallies are planned nationwide for Monday, the trial start date.

But the trial may not actually happen.

The Supreme Court temporarily stayed proceedings in *Juliana v. United States* last week, leaving the plaintiffs' supporters in the lurch as justices consider the case's future.

Lawyers for the plaintiffs are optimistic that the trial will still occur — "We feel good," Julia Olson, the lead attorney, said hours after filing her team's response to the stay — and are planning accordingly.

But if the trial does not happen, experts say it will mark a series of lost opportunities to galvanize national attention on climate change, educate the public about the topic, and demonstrate that the government has studied it and its risks since the middle of the 20th century.

"It would be very well-publicized; it might educate people," said Sean Hecht, an environmental law professor at the University of California, Los Angeles. "There's something newsy about covering a trial."

A group of 21 kids and young adults first brought the case against the government in 2015, arguing that its actions have denied them their right to a safe climate. They want a court-ordered mandate forcing the government to phase out fossil fuels. That the trial was even scheduled to occur was a milestone: The case survived multiple attempts by the government to dismiss it before Chief Justice John Roberts issued the stay last Friday.

David Bookbinder, chief counsel at the Niskanen Center, a libertarian advocacy group, said the trial and the ensuing spotlight from the press would be a significant moment for the climate movement.

"It would be a mainstream media boost on climate, absolutely," he said, "and that would be extremely helpful."

Hecht said the court proceedings could also serve to dispel the false notion among some in the public that climate science isn't firmly established.

"There's a popular narrative on the political spectrum that the science isn't settled, even today,"

he said.

The Justice Department, which represented the Obama administration when the case was filed in 2015 and now represents the Trump administration, is unlikely to dispute climate science in court (Climatewire, Oct. 12).

Still, no trial would mean no chances to press the government in front of a judge on its specific climate positions.

Holly Doremus, an environmental law professor at the University of California, Berkeley, wants to know what the government may concede on the science.

"I think it would be interesting to see what the Justice Department would do on that," Doremus said, adding that she's also curious how the government would respond about delaying efforts to address rising emissions, putting future generations at risk. "To what extent is it OK that the government chooses the present over the future?"

The plaintiffs have retained 18 expert witnesses, including Nobel Prize-winning economist Joseph Stiglitz and Gus Speth, a former Council on Environmental Quality chairman in the 1970s, to present their conclusions about the facts and dangers of climate change. The government has been planning to bring in doctors and federal researchers.

To be sure, many of the presentations might not ensnare the public, Doremus said. "I don't know that the public would grab on to those details," she added.

But Doremus and other legal experts said the trial would serve to underscore the fact climate change has historically been a nonpartisan issue.

As the case developed, Our Children's Trust researchers combed through government archives and libraries for records relevant to the suit. They dug up troves' worth of files, which translated into hundreds of court records, including some that date back to the 1950s and 1960s.

Curtis Morrison, who works as a lawyer in Los Angeles, helped lead that task. He's combed through thousands of government records on climate change in preparation for the trial.

He said he came away thinking that climate change has been established fact for longer than most people realize, and that presidents of both parties have feebly addressed it.

The records also directly and repeatedly link climate change to burning fossil fuels.

"Democratic and Republican administrations alike, to various degrees, have taken their knowledge of climate danger and nonetheless expanded their use of fossil fuels," Morrison said.

"Sometimes in the same paragraph," he added.

The plaintiffs have submitted reams of records from dozens of government agencies and time periods to the U.S. District Court for the District of Oregon, where the trial would occur.

If you want to learn about Navy climate programs in the 1990s, there is a record for that. Or perhaps the Clinton White House and its communications with industry groups are more intriguing? That's available in the court docket, too.

The bulk of these records are public. But without trial, they wouldn't be presented in conjunction with testimony from experts. Nor would they likely gain as much attention as they would under the glare of a news media spotlight.

Charlie Tebbutt, a lawyer based in Eugene, Ore., who wrote a friend-of-the-court brief in favor of the plaintiffs, said the public would lose out on an all-inclusive presentation of climate change history and knowledge.

"The whole history of knowledge of climate change," he said, "and how long we've known it for and the depth at which we've known it. And when I say we, I mean the United States government."

He continued, "All of that is ready to be told in one story."

Tebbutt is a fan of the plaintiffs and their experts, to put it mildly.

"This is the greatest assemblage of Marvel superheroes ever assembled, and they're trying to save the Earth from obvious destruction," Tebbutt said. "The only one who can stop that is Doctor Doom. Let's hope he won't."

The Justice Department today will file briefs with the Supreme Court once again arguing that the case should be quashed for good. Then it will be up to justices to decide whether the trial moves forward.

Perhaps the greatest loss without trial, experts said, will be a missed chance to humanize the price paid due to rising greenhouse gas levels.

If trial happens, the plaintiffs are expected to take the stand in court and speak about how climate change and its byproducts — storms, rising waters, drier conditions — affect them.

"The public at large might respond to concrete stories," Doremus said. "People's children and grandchildren — that might draw sort of a broader and more emotional response."