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Hope is a Song in a Weary Throat:* An Interview with Julia Olson

*By Olivia Molodanof and Jessica Durney***

Introduction

In August of 2015, Our Children’s Trust supported twenty-one children from all over the country to file *Juliana v. United States*, a constitutional climate lawsuit against the United States government in the District of Oregon.¹ The youth Plaintiffs claim constitutional violations of due process, equal protection, and public trust principles, alleging that the federal government has affirmatively acted to worsen climate change through continued authorization and support of fossil fuel development, and then failed to adequately address the devastating reality of global warming that it substantially caused.² The children seek a sweeping judicial order directing the federal government to swiftly phase-down carbon dioxide emissions, develop a national plan to restore the Earth’s energy balance and to right the constitutional harms done to current and future generations, and implement the national plan so as to stabilize the climate system.³

After the District Court in Oregon denied the Defendants’ motion to dismiss in November 2016,⁴ the Trump administration filed a mandamus petition in June seeking review of that decision by the Ninth Circuit. Led by Julia Olson, the youth Plaintiffs convinced the Court of Appeals that a trial should go forward, despite the government’s claim that pretrial discovery—of decades of unknown and hidden information regarding federal policy on fossil fuels and climate change—will cause irreparable harm. The Ninth Circuit ruled in their favor on March 7, 2018, denying the defendant’s petition because of their failure to satisfy the factors

* PAULI MURRAY, DARK TESTAMENT AND OTHER POEMS, v.8 (1970).

** Olivia Molodanof is a second-year at the University of California, Hastings College of the Law and a Senior Acquisitions Editor of this Journal. Jessica Durney is a third-year and the Editor-in-Chief. Both would like to wholeheartedly thank Julia Olson for taking the time to speak with them, Gordon Levitt and Monica Chitre at Our Children’s Trust for their assistance, and Professor David Takacs for his guidance and support.

1. Compl., *Juliana v. United States*, No. 6:15-cv-01517-TC, 2015 WL 4747094 (D. Or. Aug. 12, 2015).

2. First Amend. Compl. at ¶ 1, *Juliana v. United States*, No. 6:15-cv-01517-TC (D. Or. Sept. 10, 2015).

3. *Id.* at 94.

4. See *Juliana v. United States*, 217 F. Supp. 3d 1224 (2016).

necessary for an extraordinary writ of mandamus, and instructed the district court in Oregon to proceed to trial.⁵

Some lawyers reading about this case two years ago did not expect a climate change lawsuit like this to last as long as it has, let alone have a trial date set. The Plaintiffs' progress in the past year has radically shifted perspectives on the potential outcome of this case and has set the stage for a new legal frontier that advances environmental justice.

The *Hastings Environmental Law Journal* had the distinct honor of sitting down with the chief counsel for Our Children's Trust, Julia Olson. A Hastings alumna and powerhouse litigator, Julia Olson founded Our Children's Trust and began pioneering issues of environmental justice at the intersection of environmental protection and human rights. She spoke with two of our editors, Olivia Molodanof and Jessica Durney to discuss how her work in the *Juliana* case seeks to protect the youth generation, hold governments accountable for failing to protect that youth generation, and trail blaze in the field of environmental justice to secure the right to a safe and stable climate system for all.

Interview

Durney: You're a UC Hastings graduate and the face of climate change litigation around the country. There is actually a giant picture of you in the hallway of our school.

Olson: Oh, I know, and I'll tell you the story about that. I talk fairly regularly with Dean Faigman who has consulted with us on our case and he never mentioned that photo. It was the day we were at Hastings for the moot court to prepare for my oral argument in the Ninth Circuit on the mandamus petition. As we were walking in and headed over to the elevators, one of my colleagues stopped in her tracks. She was staring down the hallway, looking back and forth at me and then said "Julia, you're on the wall!" I was shocked to see my life-size photo displayed there. We all had a good laugh at that.

Durney: Environmental students like us dream of being in your seat one day, or rather, standing where you stood, taking on Judge Kozinski. How did you get from the halls of UC Hastings to arguing before the Ninth Circuit about a landmark constitutional climate case? Did you ever imagine that you'd be here?

Olson: Wow, that's a big question! Let's see. No, I did not imagine that, nor did I originally aspire to that. When I left law school, I really wanted to represent grassroots environmental groups and do public interest environmental litigation, and back in '97 there were not a lot of job openings in the field. But I was fortunate to get an associate attorney position at Earthjustice because I had

5. See *In re United States of America*, 884 F.3d 830 (9th Cir. 2018).

clerked there. That lasted a couple of years and then when it was time to move on and find another job, it was the same situation, just not a lot of opportunities. So, I decided to hang my own shingle and fortunately knew a great group of solo practitioners in the Bay Area who were all doing public interest work. I started co-counseling cases with those folks.

One thing that I learned from being at Hastings and then as part of the Bay Area community of public interest environmental lawyers, was that you don't have to go the law firm route and you don't even have to work for a big non-profit organization like Earthjustice. You really can do amazing public interest work and there's a lot of opportunity for cases out there, but you have to be willing to take some risks. So I did that, and from the beginning, one thing that interested me about the law and the work I was doing was looking at things outside the box, and finding creative arguments that hadn't been made before to try to push the bar on environmental protection. One example of that was the Wild and Scenic Rivers Act work I did to protect the Merced River in Yosemite. One of the provisions of that statute requires agencies that oversee Wild and Scenic Rivers to set user capacities for river areas. There just wasn't any case law on that and what that meant at the time. So I decided we should use that provision and push that forward because there was no user capacity in Yosemite and for the Merced River, but there were vast plans to further develop Yosemite Valley and the banks of the river and increase visitation. We went up to the Ninth Circuit three times over a decade and won all three times. But it was a case that people told me I would never win. So I've always liked bringing worthy cases that others are unwilling to bring or think are not likely to be successful, and working hard to win them.

However, many of the cases that I had brought over the years had nine lives. We would win, then the courts would send a decision back to the agency for more environmental review, and then we'd win again, and then the court would send it back to the agency, and finally, after two or three or four rounds, a bad project would go forward because all of the environmental review and analysis had been exhausted. I saw my colleagues and myself playing a lot of defense, trying to stop and hold the line on environmental protection, rather than being proactive and coming up with an offensive strategy. That perspective informed my desire for a new approach on climate change.

In the law, I thoroughly enjoy working collaboratively and strategically, and getting lawyers together to talk about how we can bring collective actions that can have a greater impact. So that was part of the strategy behind the work of Our Children's Trust, to gather a team of attorneys from around the country and even globally, putting our minds together to really put forward the best strategy on climate change, for children and future generations. Ultimately, that led me to this incredible case and these twenty-one young people who I have the privilege and honor of representing in *Juliana v. U.S.*, most recently before the Ninth Circuit. In the process, I have transitioned from thinking of myself as an environmental lawyer to a human rights lawyer.

One thing that has been fascinating about this journey in the last seven years—we have come upon the most obscure legal procedures that they don't

commonly teach you in law school. Learning about the writ of mandamus procedure, which is rare in federal court, was one instance, but we have had several “what do we do with this?” moments and have had to respond to unique procedural or jurisdictional dilemmas. For example, in our Washington State case, where our youth won on the law, we didn’t initially obtain the remedy we sought because the governor of Washington intervened and decided to initiate the climate rulemaking process that we had asked for in the litigation.⁶ But when the State stopped the rulemaking, we went back to court to seek relief from judgment in order to compel the remedy in a timely manner. Sometimes circumstances of a case plunge you into the deep recesses of obscure legal procedure where there are no clear answers, and so you file unusual motions to seek justice for your clients. That can be the fun side of practicing—how to really look creatively at the process of getting to justice, both in terms of legal procedures and also in terms of your legal theories. I’m a firm believer that the law can be responsive and can address the injustices that these young people face.

Molodanof: Thank you for the background. This case and the work that you’re doing is not only interesting and exciting for law students, but it has also been monumental for people who don’t work in the law or aren’t familiar with the legal world, because it is so outside of the box and it really is an incredibly creative way to bring about change. As such, the *Juliana* case has received a ton of media attention. You’ve been interviewed by CNN and *Slate*. There have been articles written by *National Geographic* and every environmental interest group in the country about this case. But *Juliana* isn’t the only case that Our Children’s Trust has pursued. You’ve filed suits or petitions for rulemaking in all fifty states as well. Is it fair to say that this federal lawsuit is just one piece of the puzzle in Our Children’s Trust’s plan? Why this approach?

Olson: When it comes to climate change and young peoples’ rights, every government, every sovereign around the world, has an obligation to children and future generations. In most cases, most sovereign governments, particularly those who are responsible for the most carbon dioxide emissions, are really betraying young people and future generations. The *Juliana* case is targeting the single largest government, or party, responsible for climate change around the world. Every government has a role to play and if we don’t hold them all accountable, or at least the vast majority, then we are not going to solve this problem. The idea behind our campaign and our strategy is to target the most important governments because if some of the big ones transform fossil energy systems to clean energy and decarbonize, then there is going to be a ripple effect around the world. So we’ve largely targeted the United States and states within the United States, but we are also working in countries like Canada and Australia and India. We’re working

6. Foster v. Washington State Dept. of Ecology, 184 Wash.2d 465 (2015).

with European youth to bring an action. It's a global strategy and I believe that even a few important wins will lead to transformative changes.

Durney: With this kind of global strategy, do you have different goals for each of the state cases, and perhaps even some of the other broader, international cases? Or do they all work towards and in connection with the idea of a global strategy?

Olson: Well the goal is the same for all of them. Sometimes the pathway is different, but the goal is having emission reductions that are science-based and will actually result in climate stabilization. Also, it's having sequestration efforts undertaken by governments to protect soils and wetlands and forests. The goal is the same—to have Courts articulate and uphold fundamental human rights that young people hold alongside the rights of future generations. And then to set standards for both emissions and sequestration that help us protect our climate system, the oceans and ice sheets on the planet, and everything else that we need to secure for the survival and wellbeing of generations to come. We are also deeply committed to working with partners around the world to ensure that the transition away from fossil fuels and climate destruction towards sustainability and protection of human rights is a just transition. Our children deserve nothing less.

Molodanof: You discussed the climate-based changes that need to happen in our environment and the ways that governments not only view the law with respect to younger generations—is the goal for these changes to happen through state legislatures and by Congress, or is your hope that a court ruling will fundamentally change the mindset of people? Has the significant media attention you've received along with the public perception that has formed around this case accomplished something beyond a successful court ruling?

Olson: The first thing I want to clarify—a lot of people will tell us that “no matter what happens, you've already won because you're winning in the court of public opinion, and you've elevated the voice of youth, and you're bringing so much more attention to the climate movement.” I completely disagree with that. I think that those successes represent incredible and valuable progress, but we haven't won until governments around the world are no longer allowing our world to be powered by fossil fuels, and until we've stopped the ice sheets from melting. I have never brought a case that I didn't think I could win, and so our goal is to win this case, the *Juliana* case, all the way up to the Supreme Court, which is totally doable, even under the current composition of the Court.

The only real fear or concern I have is: Will we get there in time? Will we win and get the remedy in time? We are looking for the big remedy. Let me give you an example of the need for a full and complete science-based remedy and the harm of incrementalism. In Washington State, Governor Inslee and the legislature in Washington have been operating under a law that requires the State to reduce emissions by fifty percent by 2050. That's on track with at least three degrees

Celsius of warming, if everyone operated under that scenario. So Washington State basically legalized climate destruction by saying “we will only reduce emissions by fifty percent.” We are challenging that law, and in the complaint, we wrote that it is the equivalent of saying “we are only going to desegregate fifty percent of the schools” or “we are only going to fund public education for children by fifty percent” or rather, “we are only going to fund fifty percent of schools” where there is a constitutional mandate to adequately fund schools in Washington.⁷ Laws that legalize climate destruction, by setting limits on how much emissions are allowed rather than eliminating emissions entirely, are depriving young people of their fundamental rights. The remedy in the *Juliana* case will bring the energy system in the United States into Constitutional compliance, and the only way to do that is to decarbonize the energy system, and quickly. I think the courts have a vital role to play in holding that constitutional line in the face of political branches that do not have the will to comply with the Constitution and protect young people’s rights. So, the goal is to win in the district court after trial, to win in the Ninth Circuit, and to win in the Supreme Court, and until that happens, my work will not be done on behalf of these youth.

Durney: The environmental justice movement tends to focus on disproportionate impacts on particular communities, especially communities of color. In the *Juliana* case, you’re arguing that the group of people unfairly harmed are children or the youth generation. Do you see your case defined as an environmental justice case? How so?

Olson: Absolutely. Ten of the youth on the case identify as people of color, which is almost half of the young people I represent. There’s a lot of diversity among these young plaintiffs in terms of socioeconomic status, people who live near fossil fuel infrastructure that causes health impacts, and young people who are really vulnerable because of where they live geographically in terms of sea level rise and storm surges and wildfires.

These young people are impacted in many, many different ways, but they believe that the work they are doing is about climate justice, environmental justice, and human rights, and we are going to be telling a lot of those stories. For example, Jaime, who is Diné of the Navajo People in Arizona, grew up living on the Navajo Reservation. She tells the stories of her elders, her grandparents, and the importance of the springs and the spiritual connection she has to the land and the water. She and her mom had to move off of the reservation because the springs have dried up. They don’t have access to water. They were having to truck in water and it was too expensive. So, here’s a young woman, a beautiful artist, traditional dancer and activist, who has these deep connections to the land and her history, which goes back long before the white people came, now threatened by

7. Compl., Aji P. v. State of Washington, No. 8-2-04448-1 SEA (Wash. Super. Ct. Feb. 16, 2015).

climate change. A couple of years ago she went through her *Kindaalda*, the traditional Navajo coming of age ceremony for women, where they go into a special space and call upon their ancestral spirits. Jaime questioned: “Are the spirits still there and will they hear us? Because we have so degraded the land and the water where the spirits reside, will they hear our prayers?” That deep loss of spiritual place and tradition for Jaime and her people, and for indigenous people all over the world is just one of the many stories of injustice that’s happening right now.

There are several stories within our Plaintiff community on the *Juliana* case of environmental justice. In addition, a lot of the environmental justice issues in our country are tied directly to the fossil fuel industry. Just by the very nature of the remedy we seek in the case—of completely moving away from that infrastructure and that source of energy—we are going to be redressing environmental justice issues of children who have to grow up next to coal-fired power plants, for example. And of course, the transition that happens needs to be a just transition for communities of color and people on the front lines who have other disproportionate impacts in terms of where we put our energy and waste facilities.

The remedy in our case will not specifically require a particular siting of facilities or those localized environmental justice impacts, but certainly after we get the remedy on the requirement to decarbonize our energy system, we will be watching and “watch-dogging,” along with a lot of other groups, to ensure that disadvantaged communities don’t unjustly bear the brunt of the transition as well.

Molodanof: It seems that the forces that lead to disproportionate environmental injustice in marginalized communities, like mass hazardous and toxic harms and greenhouse gases, are the same forces that are destroying the planet. Do you see those forces operating in these cases with climate change impacts to the youth Plaintiffs? You mentioned Jaime, and what she and her community have experienced on the reservation and within indigenous communities. How is the *Juliana* case influencing the broader concept and conception of environmental justice?

Olson: I think it all comes down to the politically powerless minority. We can talk about what industry does and how industry can go into communities and spend less money to buy land or site facilities in poor communities because the poor communities don’t have as much political or financial power to stand up to those companies coming in. But government always has a role to play here, and so really, to me, it is about government being culpable for permitting companies that make money off of polluting our air and water and our lands and everything else, including children’s health. The government has been allowing that for decades and decades, and it’s time for government to not just protect the wealthy and the political majority, but to really look at communities that are powerless, including children and future generations who have no vote.

We argue that children are a class that should have special protection under constitutional fundamental rights analysis. They are a class that can't vote, they can't politically influence these decisions the way that other citizens can, and they have a long history of discrimination. The Supreme Court has recognized the special status of children in other child-centered cases. The difference with climate change is that greenhouse gas pollution will often impact the health of local communities when it is emitted, but then once it goes to the atmosphere and it mixes, it becomes a national and global problem that is heating our planet. We are starting to see communities in the United States that are not marginalized, that are wealthy and do have more power, also being impacted. The cities of San Francisco and Oakland are examples of local governments taking action to seek relief from their climate damages. Even so, those communities will have a greater ability to adapt to harm than marginalized communities. So there is always going to be more impact to marginalized and poorer communities, and to children who will long bear the increasingly severe injuries of climate disruption if the source of the harm is not abated.

Durney: During the oral argument before the Ninth Circuit back in December, you and the government both used the phrase “extraordinary circumstances” quite frequently to describe this case. Can you talk to us more about the difference between how you see this case as extraordinary versus how the government views it? How might this view of the case as “extraordinary” affect the outcome in Court and outside of court?

Olson: For the plaintiffs, this is an extraordinary case because of the injuries they face and because of the harms being perpetrated by the federal Defendants. It's rare—I mean I can't think of another case where what is at stake is the survival and liberties of entire generations of people. It's extraordinary—that what the government is doing threatens Levi's entire island, with inundation from sea level rise. What makes this case extraordinary is the harm and the threat to generations, that will last for millennia. That is really what we are looking at.

What is not extraordinary are the constitutional arguments that we're making. Those are rooted in the history and traditions of our nation and rooted in Supreme Court precedent. And it's also not extraordinary that young people would be the plaintiffs or would be rising up in this way. It's incredible that they are taking on this burden as youth, but it's not extraordinary because young people have always done this. They are following in some very big footsteps of youth throughout history who have been at the forefront of social justice movements.

On the other side, when the federal Defendants say this case is extraordinary, what they are referring to is that they think it's extraordinary that the courts would step in to issue any order related to how the United States' energy system can and should operate. They think it's extraordinary that we would ask the courts to require the federal government to come up with a national comprehensive climate recovery plan for reducing emissions at levels that are needed to create a safe and secure climate system for young people. And it's extraordinary for Defendants because they have now been accustomed to fifty years of being able to support,

permit, subsidize, and substantially cause all of this greenhouse gas pollution that is destroying the climate system without having any check on their power or their abuses of that power. They've become so accustomed to doing whatever they want with our energy system and our public lands and waters, that they think it's extraordinary to have a constitutional check on that power. Yet, it's what the Founders wanted—it's why we have this tension between the three branches of government so the courts can be a check on those abuses of power waged by the political branches. But of course, if you're in that position of power, and you're wanting to hold onto it, as the Trump administration is, you may not be happy with the youth in *Juliana* who are standing up for their fundamental rights and asking the federal courts for help.

Molodanof: Historically, courts have never recognized a constitutional right to even a natural environment free of pollutants, let alone to a stable climate. However, in her opinion denying the government's motion to dismiss, Judge Aiken stated: "exercising my reasoned judgment, I have no doubt that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society."⁸ Were you surprised by this? What does this mean for Our Children's Trust moving forward with the *Juliana* case?

Olson: I was not surprised. I was moved by the Court's eloquence and the beauty with which she wrote that opinion. But I wasn't surprised by the result. When you read everything that we have—all of the evidence, all of the case law we've been studying, the founding documents of our nation—it's not surprising based on the facts of this case and the time we are in at this moment in history that she would make that ruling. And the reason courts haven't recognized an implied liberty right to a climate system capable of sustaining life before is because the courts have not been presented with a case where that right was threatened so profoundly.

I recently watched a great speech of Justice Breyer where he talked about how the Justices and other judges rely on advocates to help inform them of legal and social issues arising in our nation.⁹ He mentioned how heavily dependent he is upon the briefs filed and arguments made by advocates. It is the job of advocates, he argues, to bring issues of our time to the court and to educate the court about what the social need is, and how law should inform what the Court should do.¹⁰ He said, "my hope is that by making very clear that the judges are not only willing, but they must understand what's going on here, that will encourage . . . practitioners . . . to look up things that take place in other countries, and we will

8. *Juliana*, 217 F. Supp. 3d at 1250.

9. Justice Steven Breyer, Address at the 2016 Annual Meeting for the American Society of International Law (Mar. 30, 2016).

10. *Id.*

eventually receive the benefit of that in the form of briefs.”¹¹ It’s our job as advocates to educate the courts. If advocates don’t do that, then Courts don’t have an opportunity to make these important constitutional pronouncements.

The significance of Judge Aiken’s particular recognition of that liberty right is it really defines what the case is about. However, Plaintiffs could prevail in the case on other substantive due process claims because there are already recognized rights under the Fifth Amendment that the Plaintiffs argue are being infringed, irrespective of the newly recognized right. I think the newly recognized right to a climate system capable of sustaining human life should be upheld as we go up on appeal, because it gets to the heart of the matter and is inclusive of a right we all share that is implicit in ordered liberty, much like the inclusive right to marry as defined by the Court in *Obergefell v. Hodges*, without being too narrowly defined.¹²

The way Judge Aiken has defined that liberty right makes it very clear that it’s about protecting a climate system that can sustain our life and our liberties, including those of Posterity. It’s not about requiring that the planet be untouched by human conduct and activity. It’s not about a pristine environment as if we as humans didn’t live here at all.

Durney: Could you help us flesh out substantively what would that look like? What does a climate system capable of sustaining human life mean as an operation of the law? How would this get implemented in the law?

Olson: Well, the Court has to set a standard. When Courts find that there’s a right, and that the right has been infringed, they have to set a standard for government coming into compliance with the Constitution and upholding that right. Often times, scientific understanding informs that right and the realization of our liberties.

So one example is in the prison reform litigation in California, which led to *Brown v. Plata*.¹³ Prisoners argued that their Eighth and Fourteenth Amendment rights were being violated and it was because the prisoner population was vastly exceeding the capacity of the prisons, at 200% capacity, jeopardizing the safety and health of those incarcerated. After hearing from experts, including scientists, psychologists, physicians, and engineers, and looking at the capacity of the prisons to hold prisoners and protect their rights while incarcerated, the Court set a standard for constitutional compliance. After all of that expert testimony, the Court settled on a maximum of 137.5% capacity for the prisons to rectify the constitutional infringement of people’s rights.

Similarly, in the context of our case, the Court needs to set a standard for levels of atmospheric carbon dioxide that should be returned to or sustained in

11. *Id.*

12. *See Obergefell v. Hodges*, 135 S. Ct. 2584 (2017).

13. *See Brown v. Plata*, 563 U.S. 493 (2011).

order to protect young people and future generations. What the Court can do is the same thing it did in *Brown*, which is hear testimony from experts about what those safe levels should be. Unlike many other cases, there's extensive, solid, hard physical science on what different levels of carbon dioxide lead to in terms of temperature increase and sea level rise, which are two very important factors in terms of protecting young people's constitutional rights. What our experts are telling us right now is that we need to return to 350 parts per million of atmospheric CO₂ or below by 2100, but in subsequent centuries, our foremost ice sheet and sea level rise experts say we really need to head back towards preindustrial levels of carbon dioxide in the atmosphere, which were 280 parts per million. Courts can set constitutional standards based on expert opinion and then require government to come into compliance with emission levels that are on track to return to safe CO₂ levels.

Durney: In the Netherlands' Supreme Court in *Urgenda Foundation v. Netherlands*,¹⁴ the Court held that the State had an obligation to do more to avert the imminent danger posed by climate change, and set greater standards than their international treaty contributions, despite the Netherlands being only minimally responsible for the greater increase of GHG emissions globally. The Court held that the State was thus required to set a more stringent standard to lower GHG emissions. Is this an example of courts demanding more from the Executive Branch? Is this the goal with *Juliana*?

Olson: Yes, courts sit in equity and they can creatively come up with remedies that redress the constitutional injury that people have suffered, while respecting the role of the political branches. The *Urgenda* case, which was litigated by my friend and colleague Roger Cox, was also about the duty of government, but under tort law, so it was a little bit different, but with similar arguments. The *Urgenda* decision illustrates that courts can wrestle with climate science and require governments to do more to reduce national emissions in order to protect their citizenry from climate danger.

One thing I do a lot of, and it's actually quite fun, is listen to Supreme Court oral arguments. Oyez.org is such a great resource for that. A couple cases I listened to recently were about water disputes between Florida and Georgia and then New Mexico, Colorado, and Texas. These cases were before the Court this winter.¹⁵ When you sit back and listen, you can hear the Justices wrestling with these equity issues about who should get the scarce water resources and the practical solutions to complex problems of scarcity. Courts, sitting in equity, can

14. See Rb. Den Haag 24 juni 2015, ECLI:NL:RBDHA:2015:7196 (*Urgenda Foundation/Netherlands*) (Neth.).

15. See *Florida v. Georgia*, Oyez, <https://www.oyez.org/cases/2017/142-orig> (last visited Apr. 19, 2018); *Texas v. New Mexico and Colorado*, Oyez, <https://www.oyez.org/cases/2017/141-orig> (last visited Apr. 19, 2018).

issue remedies that they find appropriate for the circumstances based on the testimony of experts and scientific understanding. This is something that courts do all the time.

Increasingly in this world, where our scientific understanding has advanced on so many issues, science comes into the courtroom and informs those equitable decisions in cases and controversies. I don't have a concern about the Court's ability to fashion a remedy in *Juliana* that will be equitable and will redress the harm to the plaintiffs. The Court can stay within its province by setting the constitutional standard and ordering compliance, while allowing the political branches to figure out how to best implement the remedy. While it is possible that Congress could step in with a legislative solution to swiftly decarbonize our energy system if it wished, as it intervened with the Civil Rights Act and the Voting Rights Act to rectify constitutional infringements during the Civil Rights movement, the Executive Branch also has broad authority under existing law to implement a court-ordered remedy. *How* the executive and legislative branches decide to come into constitutional compliance is a separate issue from the Court requiring the United States to decarbonize in order to protect fundamental rights.

Molodanof: The work that you and Our Children's Trust are doing with *Juliana* and cases across the country and around the world is an incredible representation of how environmental justice and the concept of it are expanding, and how you can use these creative, out of the box ideas to push and create change. Do you have any further comments about how your organization is impacting the concept of environmental justice and EJ work around the country?

Olson: Unquestionably there is a lot of amazing local work that's being done on environmental justice issues by so many organizations, including the NAACP. We met with Jacqui Patterson a few weeks ago, who runs the NAACP's climate and environmental justice program. She gave a talk at the University of Oregon highlighting the incredible work that they are doing in communities across the country, empowering young people and grassroots organizing in communities on the frontlines of environmental pollution and compromised health. I think our constitutional climate work will help set big-picture constitutional standards and a decarbonization mandate that will have a profound effect on issues of environmental justice at the local level. A win in *Juliana* will give people working on EJ a constitutional baseline to challenge fossil fuel development and a platform for demanding a just transition away from fossil fuels in their own communities. Our work is very much modeled after the strategic litigation the NAACP has done historically, especially throughout the Civil Rights Movement.

So I'll leave you with one of my favorite stories to tell right now. I'm reading Pauli Murray's autobiography.¹⁶ In 1944, she was attending the all African

16. PAULI MURRAY, PAULI MURRAY: THE AUTOBIOGRAPHY OF A BLACK ACTIVIST, FEMINIST, LAWYER, PRIEST, AND POET (1989).

American law school at Howard University. She was the only woman in her class and she was number one in her class. This was during the period when the NAACP's work on racial discrimination and segregation was focused on challenging the inequality in public facilities. NAACP's lawyers were challenging *equal* in *Plessy v. Ferguson*'s "separate but equal" standard and trying to get equal facilities and funding for African-American communities and children.¹⁷ In discussing this work one day in her law school class, Pauli Murray argued to her professor and the class that a case should be brought to challenge "separate" as unconstitutional. Everyone laughed at her. She articulated her argument and she also wrote a paper on it. But she also bet her law professor ten dollars that within twenty-five years, *Plessy* would be overturned. And nobody in the class believed it at the time.

That same law professor went on to co-counsel *Brown v. Board of Education* with Thurgood Marshall and used Pauli's work from her law review paper to inform the claims they brought in *Brown*.¹⁸ *Brown*, and *Mendez v. Westminster School District of Orange County*¹⁹ before *Brown*, which desegregated California schools, emanated from children saying, "We want to go to that school." It wasn't just the NAACP and parents advocating for children. It was youth uprising saying "enough," in ways similar to what young people are doing with today's injustices. They are saying "enough is enough, we don't want this system anymore—it does not serve us." There are amazing stories about some of the young plaintiffs in *Brown*, also at the forefront of mobilizing for their rights. Pauli Murray also from a young age thought outside the box and was a pioneer for justice. She inspired legal thinking that informed Ruth Bader Ginsburg's work seeking equal rights for women, in a nation dominated by the political power of men. Pauli Murray's story is one that should never be lost. I've been telling every law professor I know, "you need to teach about this; when you're teaching *Brown*, teach about Pauli Murray, especially to law students."

Pauli Murray was also a poet. In *Dark Testament and Other Poems* she wrote:

Hope is a crushed stalk
Between clenched fingers
Hope is a bird's wing
Broken by a stone.
Hope is a word in a tuneless ditty—
A word whispered with the wind,
A dream of forty acres and a mule,
A cabin of one's own and a moment to rest,
A name and place for one's children
And children's children at last . . .

17. See *Plessy v. Ferguson*, 163 U.S. 537 (1896).

18. See *Brown v. Board of Ed. of Topeka, Shawnee Cnty, Ka.*, 347 U.S. 483 (1954).

19. See *Westminster Sch. Dist. of Orange Cnty v. Mendez*, 161 F.2d 774 (1947).

Hope is a song in a weary throat.
Give me a song of hope
And a world where I can sing it.
Give me a song of faith
And a people to believe in it.
Give me a song of kindness
And a country where I can live it.
Give me a song of hope and love
And a brown girl's heart to hear it.²⁰

Molodanof: Thank you for sharing Pauli's story. I think it's an understatement to say that she is an inspiration for young social justice advocates across the globe. And encouraging law students to think outside the box is crucial. In law school, a lot of the time, there can be a very stringent way of thinking. The opportunity for us to work on this, for example, is a chance for us to think outside the box. Stories like Pauli's are inspirational. The classroom is where it starts, where professors encourage this creative kind of thinking.

Olson: That's great. I think the best lawyers who I know are lawyers who fully understand the law, and the rules in the box, and how the box works and operates. Understanding that foundation is crucial to really grasping what the rules mean and how the system works. Then, once you master the fundamentals, there is room for creativity and thinking in different ways. That is when you are able to deconstruct the box, or move outside the box, or expand the box when justice so demands.

20. PAULI MURRAY, DARK TESTAMENT AND OTHER POEMS, v.8 (1970).
