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U.S.

A Bellwether Climate Case in Montana Seeks More Action Under State Constitution

A group of young people in the Treasure State argue that fossil-fuel policies violate the state's right to 'a clean and healthful environment'

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A coming trial is at the forefront of a wave of legal challenges from young plaintiffs seeking more action to address climate change and the effects of fossil fuels on the environment. PHOTO: MATTHEW BROWN/ASSOCIATED PRESS

A first-of-its-kind climate trial is set to kick off Monday in Montana, where a judge will determine whether the state's constitution obligates public officials to do more to address global warming.

The case, brought by more than a dozen Montana residents who were between 2 and 18 years old when it was filed in March 2020, is among a wave of similar suits brought by youth across the country who argue that future generations will bear the consequences of a warming planet.

The plaintiffs argue that Montana's constitution, which has since 1972 explicitly guaranteed the right to "a clean and healthful environment," requires effective action protecting water, wildlife, public lands and the atmosphere.

The state's reliance on fossil fuels and their production, the youth argue, is at odds with that guarantee. They are asking the court to declare it unconstitutional, which could require state officials to consider climate impacts in future policy decisions, such as fuel and mining permit approvals, or efficiency and emissions standards.

The case is the first to receive a full airing after previous attempts at the state and federal level over the past decade were tossed, usually on procedural grounds. A bench trial in Helena is expected to last two weeks and would likely include significant scientific argument over the impact of fossil-fuel production and use on the environment.

"Depending on how this trial goes, maybe Montana will push the bounds of climate leadership. It could show what it means to take responsibility for future generations seriously as Montana's constitution requires it to do," said Cara Horowitz, director of the environmental-law program at the University of California, Los Angeles law school.

The state has opposed the suit on procedural grounds, arguing in court documents that the constitutional challenge is overly broad. Montana Attorney General Austin Knudsen's office didn't return a request for comment.

"There are no relevant facts to find, and there are no existing Montana laws or policies for the District Court to interpret, apply, or attempt to fashion some form of relief," attorneys for the state wrote in an unsuccessful attempt earlier this month to pull the case up to the state's supreme court.

Global greenhouse-gas emissions reached record levels in 2022 and are projected to continue their upward trajectory, according to a March report from the United Nations Intergovernmental Panel on Climate Change.



Four plaintiffs ranging in age from 14 to 19 in the trial set to begin Monday in Helena, Mont. PHOTO: THOM BRIDGE/INDEPENDENT RECORD/ASSOCIATED PRESS

The plaintiffs—children of farmers, outdoor enthusiasts and athletes, as well as young members of Native American communities—detailed the effect of rapidly shifting climates on their daily lives. They cited everything from wildfire smoke keeping them indoors or away from sports training, to unpredictable weather damaging crops and killing livestock, as evidence that the Treasure State’s constitutional protections weren’t being met.

They are represented by Our Children’s Trust, a nonprofit public interest law firm that has led many of the climate cases for more than a decade.

“The constitutional law that we’re using is 50 years old, and some of the provisions in the Montana Constitution are as old as the founding of the state,” said Julia Olson, the group’s chief legal counsel.

Montana’s Republican-majority legislature has supported fossil-fuel infrastructure in the resource-heavy region, and passed a new law this session that explicitly prohibits the analysis of greenhouse gases and climate effects in environmental impact reviews by state agencies.

Judge Kathy Seeley has previously stated she wouldn’t issue a ruling that narrowly laid out what next energy steps the state should take, if she rules for the plaintiffs. Instead, a win for the youth would comprise an order finding the state of Montana had violated its own constitution.



Judge Kathy Seeley, who will hear arguments in the coming bench trial, has stated she won't narrowly lay out next steps on energy policy for Montana if she rules for the plaintiffs. PHOTO: THOM BRIDGE/INDEPENDENT RECORD/ASSOCIATED PRESS

Similar cases are moving forward in other parts of the U.S. Proceedings in a long-dormant federal case filed in Oregon are heating up after a judge this month allowed the plaintiffs to file an amended lawsuit. That case is also expected to go to trial. In Hawaii, plaintiffs seeking similar relief under that state's constitution are preparing for a fall trial.

The Montana case will be a harbinger of what's to come, according to Rebecca Bratspies, director of the CUNY School of Law's Center for Urban and Environmental Reform.

Even a loss for Montana's plaintiffs could set important precedent and hold lessons for future climate-litigation strategies and the breadth of climate-science evidence allowed by the court, she said.

"I don't think there was a sense until somewhat recently that litigation in courts, under state constitutions, might be a path forward," Bratspies said.

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