

A first-of-its-kind climate trial just ended – will it work?

A landmark US climate trial over whether the state of Montana is violating young people's right to a healthy environment came to an early close on Tuesday. Its outcome could shift policy in a state with one of the biggest coal reserves in the nation and might even influence a slew of other suits outside of Montana.

The case, *Held v. Montana*, was filed by a group of 16 youths ranging from five to 22 years old. They say they "have been and will continue to be harmed by the dangerous impacts of fossil fuels and the climate crisis," according to the complaint filed in March 2020. Similar suits have been filed by young people across the US. But last week, the Montana case became the first in the nation to make it to trial.

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The lead plaintiff in the case is Rikki Held, a fifth-generation rancher in eastern Montana. Her family's land and cattle have been devastated in recent years by the state's increasingly dangerous wildfires. Unfortunately for Held and other plaintiffs, a provision in the Montana Environmental Policy Act bars officials from considering the consequences of climate change when permitting new energy projects.

But Montana's constitution also happens to include rights to a "clean and healthful environment" for residents and "future

generations.” Held and the other plaintiffs contend that its environmental policy violates that right, and to prove it, they’ve taken the state to court. If they’re successful, they could potentially force the state to not only scrap the provision but start assessing the damage that permitting new fossil fuel projects could have on the climate.

Climate change has already made wildfire seasons longer in the US, with fires breaking out more frequently and scorching broader areas than they have in the past. In her , Held described how she’s had to cope with fires surrounding her family’s ranch. Her family lost cattle during a raging wildfire in 2012 – “They were so stressed trying to find water and, with the drought, trying to find grass,” she said. The ranch also lost electricity and running water for about a month because of the blazes, and it would face more fires over the years. “In the summer of ’21, there was a lot of smoke most of the days,” she testified. She remembers ash falling from the sky, towns nearby evacuating, and highway closures affecting her family’s business.

The kids made a compelling case, environmental law experts tell *The Verge*. They spent a full week testifying to the ways they’ve each been individually affected by climate change. And they were joined by scientists who spoke to the harm that burning fossil fuels has on health and the environment. The trial ultimately ended a few days earlier than expected after the state rushed through its arguments on Monday. The state was initially expected to call on Judith Curry, a climatologist notorious for rejecting widely accepted climate science, but she never took the stand. The defendants also decided not to call on its health expert and several other government witnesses, according to the plaintiffs’ legal team.

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“As to the state’s case, it was a joke,” says Patrick Parenteau, professor of law emeritus and senior fellow for

climate policy at Vermont Law and Graduate School. “They didn’t take the case seriously. They called it a publicity stunt.”

In its defense, the state of Montana has argued that Montana shouldn’t be held responsible for a global problem and that action on climate change would need to be decided in legislation – not in court. “Montana’s emissions are simply too minuscule to make any difference,” □□Assistant Attorney General Michael Russell said in an opening statement.

It’s an old argument that defendants have used time and again: that they shouldn’t be made accountable for the consequences of climate change if their greenhouse gas emissions amount to just a fraction of the world’s pollution. But this strategy hasn’t necessarily been effective. It didn’t work in the landmark 2007 case *Massachusetts v. EPA* when the US Supreme Court ruled that the EPA has the authority to regulate greenhouse gas emissions under the Clean Air Act.

“For the most part, courts have not accepted that argument,” says Robert Glicksman, a professor of environmental law at the George Washington University Law School. “I think it would be reasonable for the court in this case to say, ‘Well, if everybody made the same argument, nobody could do anything about climate change.’ And so as long as the emissions from Montana’s policies are contributing to climate change, that’s enough for us to be able to weigh in and issue a legal ruling.”

Judge Kathy Seeley could take months to deliberate before issuing a ruling in this case. But Parenteau thinks there’s a good chance Judge Seeley could find it unconstitutional for the state to ignore the effects of climate change when making permitting decisions. “We’ll see, but it looks to me like she’s going to rule in favor of the plaintiffs – at least on this narrow ground,” he tells *The Verge*.

Even so, that could be a short-lived victory. The judge's decision is likely to face legal challenges regardless of the outcome. That would bring the case before the Supreme Court of Montana, which could be an even more challenging arena for the plaintiffs.

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"When it gets to the Montana Supreme Court, I think all bets are off," Parenteau says. "[The plaintiffs] need to be strong – I think they are. I mean, I hope they're prepared to lose because, God, you know, there are no guarantees in this stuff."

The plaintiffs in *Held v. Montana* are represented by nonprofit law firm Our Children's Trust, which has supported youth in climate cases filed in all 50 states. Right now, only four of those suits outside of the Montana case are still pending. And the decision in Montana might not hold much sway over the outcomes of other cases since each depends on how courts interpret their own state's laws. There's already strong scientific consensus that fossil fuels are causing climate change – the question is whether laws are written in a way that might force a state to do something about it. Unlike Montana, most states don't guarantee constitutional rights to a healthy environment.

No matter the outcome, though, the fact that this case went to trial at all could push similar cases forward. "It's been years in which Our Children's Trust and other plaintiffs have tried to bring these cases to trial, and they've been turned aside or defeated or delayed at every turn," Glicksman says. "I can see other trial courts being willing to move forward now that the ice has been broken." *Held v. Montana* could make it easier for other trials to take place because courts now have an example for how to conduct these kinds of trials.

A climate case youth filed against Hawaii's Department of Transportation is expected to go to trial later this year. Our Children's Trust also represents a group of young people who filed suit against the federal government in 2015. A federal judge ruled in June that the suit, *Juliana v. United States*, could finally head to trial after years of legal challenges from the Obama and Trump administrations.

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