

# In Montana, It's Youth vs. the State in a Landmark Climate Case

Sixteen young Montanans have sued their state, arguing that its support of fossil fuels violates the state Constitution.

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Badge, left, and Lander Busse, teenage plaintiffs in a lawsuit against the state of Montana saying it violated the state Constitution that guarantees “the right to a clean and healthful environment.” Matthew Hamon for The New York Times



By [David Gelles](#)

Mr. Gelles writes about business, policy and climate change.

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KALISPELL, Mont. ❖ Badge and Lander Busse tromped into the forest behind their house on a snowy Sunday in March, their three hunting dogs in tow. It was in these woods, just outside Glacier National Park, that the teenage boys learned to hunt, fish, dress a deer and pick birdshot from Hungarian partridges.

It was also here that the Busse boys grew attuned to the signals of a rapidly warming planet ❖ torrential rains that eroded their hiking trails, wildfires that scarred the land, smoke so thick it forced them indoors.

Watching their cherished wilderness succumb to the effects of climate change enraged the Busse boys, and three years ago, they decided to do something about it. Along with 14 other local youth, they joined with an environmental legal organization and sued the state.

In [their complaint](#), filed in 2020, the young activists seized on language in the Montana state Constitution that guarantees residents “the right to a clean and healthful environment,” and stipulates that the state and individuals are responsible for maintaining and improving the environment “for present and future generations.”

By virtue of those few words, they argue, Montana’s extensive support for fossil fuels like coal, oil and gas is unconstitutional because the resulting

pollution is dangerously heating the planet and has robbed them of a healthy environment.

It is a concise but untested legal challenge to a state government that has taken [a sharp turn to the right](#) in recent years, and is aggressively defending itself. The trial, which legal experts say is the first involving a constitutional climate case, begins on June 12 in the state capital of Helena.

“There have been almost no trials on climate change,” said Michael Gerrard, director of the Sabin Center for Climate Change Law at Columbia Law School. “This is the first that will get into the merits of climate change and what needs to be done, and how the state may have to change its policies.”



Wildfires near Augusta, Mont., in 2017. The lawsuit’s youngest plaintiff was a 2-year-old boy with respiratory issues whose parents said his health is threatened by wildfires made worse by climate change. Matthew Hamon for The New York Times

The origins of the case stretch back nearly a decade. In 2011, a nonprofit called Our Children's Trust [petitioned the Montana Supreme Court](#) to rule that the state has a duty to address climate change. The court declined to weigh in, effectively telling the group to start in the lower courts.

So the lawyers at Our Children's Trust began building their case. They worked with the environmental community to identify potential plaintiffs. They cataloged the ways in which the state was being impacted by climate change. And they documented the state's extensive support for the fossil fuel industry, which includes permitting, subsidies and favorable regulations.

## Understand the Latest News on Climate Change

**Running out of time.** A new report by the Intergovernmental Panel on Climate Change, a body of experts convened by the United Nations, said that [Earth is likely to cross a critical threshold for global warming](#) within the next decade, and nations will need to make an immediate and drastic shift away from fossil fuels to prevent the planet from overheating dangerously beyond that level.

**A species in danger.** Federal officials said that sunflower sea stars, huge starfish that until recently thrived in waters along the west coast of North America and that play a key role in keeping marine ecosystems balanced, [are threatened with extinction and should be protected](#) under the Endangered Species Act.

**Measuring droughts and deluges.** Scientists have long cautioned that warming temperatures would lead to wetter and drier global extremes such as severe rainfall and intense droughts. A new study that used satellites that can detect changes in gravity to measure fluctuations in water shows [where that may already be happening](#).

Our Children's Trust, which is largely funded by foundations, has sued [state governments](#) on behalf of youth in all 50 states, and is behind Juliana v. United States, a closely watched climate case that pits young people against

the federal government and is pending in district court in Oregon. But Held v. Montana is the first of these cases to head to trial.

“We’re really trying to bring the youth generation to the courts, and do so through a human rights lens,” said Julia Olson, [the attorney](#) who founded Our Children’s Trust.

In 2020, Ms. Olson once again took aim at Montana, this time with a bigger legal team, a raft of experts and 16 diverse plaintiffs, including the Busse boys.

The oldest plaintiff, Rikki Held, was 18 at the time and grew up on a 7,000 acre ranch in Broadus, where increasingly unpredictable weather has made it difficult for her family to supply water to their property. The youngest plaintiff was Nathaniel K., a 2-year-old boy from Montana City with respiratory issues whose health is threatened by wildfires made worse by climate change, his parents say.

Sariel Sandoval was 17 when the case was filed, and grew up on the Flathead Indian Reservation, in northern Montana. She recalled how the huckleberries she once picked early in the summer are now harder to find, and how a lighter snowpack has lowered water levels in Flathead lake, impacting her tribe’s fishing.

“When you have this relationship to the land, it’s hard seeing the way climate change is affecting it, the harm that’s being done,” she said.





The Busse boys, Lander, 18, left, and Badge, 15, in their family garage. “A lot of this is just rooted in how many Montanans, including us, live life on an everyday basis, and how ingrained the wildlife and the land and the nature is in who we are,” Lander said. Matthew Hamon for The New York Times

For the Busse boys, bucking authority runs in the family. Their father, Ryan Busse, is [a former firearms executive who grew disillusioned with the industry](#) and challenged the National Rifle Association. And even though their eighth grade biology teacher questioned the science of climate change in the classroom, they came to understand that a planet being warmed by fossil fuels was bad news for their backyard.

“A lot of this is just rooted in how many Montanans, including us, live life on an everyday basis, and how ingrained the wildlife and the land and the nature is in who we are,” said Lander, who is now 18, lounging on a couch in his living room, surrounded by taxidermied game from the surrounding woods.

The plaintiffs joined a growing global movement of young people raising the alarm about climate change, most famously embodied by Greta Thunberg, the 20-year-old Swede.

But their activism has come at a social cost. “We can’t really openly talk about this case without being flamed by our friends at school,” said Badge, 15.

Nevertheless, many of the plaintiffs, including the Busse boys and Ms. Sandoval, expect to testify at trial.

In its response to the lawsuit, the state disputed the overwhelming scientific consensus that the burning of fossil fuels was driving climate change and denied that Montana was experiencing increasingly severe weather linked to rising temperatures.

The offices of Montana Gov. Greg Gianforte and state Attorney General Austin Knudsen, both Republicans, declined to comment on the case. “We must focus on American innovation and ingenuity, not costly, expansive government mandates, to address our changing climate,” the governor’s spokeswoman, Kaitlin Price said. “The United States must also have an all-of-the-above energy policy, like Montana does, to make our country energy independent and secure again.”

It was in 1972 that the Montana Constitution was amended to include the language guaranteeing citizens “the right to a clean and healthful environment.” That was at a [constitutional convention](#) where revisions were made to reduce the influence of the copper and coal industries, big players in Montana politics since the 1880s. The original Constitution, drafted in 1889, was heavily influenced by mining executives, and the resulting laws were highly deferential to industrial interests.

“Some historians called it a corporate colony: all the profits were going out of the state and residents weren’t seeing the benefits,” said Michelle Bryan, a law professor at the University of Montana. “The 1972 Constitution was kind of Montana’s declaration of independence from corporate mining.”



The Signal Peak Energy L.L.C. Coal Mine in Roundup, Mont. Coal and copper industries have been major players in Montana politics since the 1880s. Matthew Hamon for The New York Times

At the constitutional convention, Montanans wrote language that emphasized the rights of residents to enjoy the land, and included the crucial provision now at the center of *Held v. Montana*.

“The framers were prescient in drafting considerations that protect the environment,” said Jim Nelson, a retired judge who sat on the Montana Supreme Court for 19 years. “They made a point that we should maintain that for future generations as well. That’s a very important mandate.”

Despite its new eco-conscious Constitution, Montana remained a major fossil fuel producer. Today, it is the fifth largest coal producing state and the 12th largest oil producing state in the country. And a 2011 change to



the state's energy policy barred the state from considering climate change when deciding whether to issue new permits for fossil fuel projects.

When the Held case was filed, Montana's governor was Steve Bullock, a Democrat. Though Mr. Bullock called climate change "one of the defining challenges of our time" his administration defended the state against the complaint.

In November of 2020, Mr. Gianforte moved into the governor's mansion with a pro-business agenda that sidelined concerns about the climate. He withdrew Montana from the U.S. Climate Alliance, a coalition of states working to cut greenhouse gas emissions, and signed two laws designed to prevent the closure of coal-fired power plants.

Last year, the Montana attorney general attempted to derail Held v. Montana by requesting that the state Supreme Court take supervisory control away from the current trial judge, and asking that discovery in the case be blocked just as depositions were to begin. The Supreme Court denied those requests, and a trial date was set.

Both sides have been conducting depositions. Ms. Sandoval said the state's lawyers grilled her on the legal arguments. "It was really nerve wracking," she said. "I felt like I was just being tested on my knowledge of all of it."

Government lawyers also attempted to interview Nathaniel K., the youngest plaintiff, who is now 5 years old. The judge denied that request.



Julia Olson, an environmental attorney and founder of Our Children's Trust. "We're really trying to bring the youth generation to the courts, and do so through a human rights lens," she said. Amanda Lucier for The New York Times

No matter who prevails, the case is likely to be appealed to the state Supreme Court. And even if the young Montanans win on appeal, they are not expecting immediate changes.

Rather, the plaintiffs are seeking "declaratory relief." That is, they want the judge to acknowledge that fossil fuels are causing pollution and warming the planet and declare the state's support for the industry unconstitutional.

Such a judgment would serve another important purpose. Right now, there is barely any case law stating that the burning of fossil fuels is rapidly and dangerously warming the planet. A victory for the Montana youth would help create a foundation for other climate cases. Pennsylvania and New

York have similar constitutional guarantees to a healthy environment and there is a [group](#) trying to add them to every state constitution.

“It could establish a lot of facts and principles that are broadly applicable,” said Mr. Gerrard of Columbia University.

There is also a chance if the state’s energy policy is deemed unconstitutional, Montana regulators could be forced to take climate change into account when approving industrial projects.

“Coming to trial in June, we will have an opportunity for the plaintiffs and our experts to testify in open court, to tell a story about what government’s been doing and how it’s impacting Montana’s environment,” said Nate Bellinger, the lead attorney for Our Children’s Trust on the case. “In a courtroom, the truth still matters.”