

Climate activists target states with lawsuits

By MATTHEW BROWN, Associated Press

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BILLINGS, Mont. – A group of attorneys representing children and young adults began to file legal actions Wednesday in every state and the District of Columbia in an effort to force government intervention on climate change.

The courtroom ploy was backed by activists looking for a legal soft spot to advance a cause that has stumbled in the face of stiff congressional opposition and a skeptical U.S. Supreme Court.

The goal is to have the atmosphere declared for the first time as a "public trust" deserving special protection. That's a concept previously used to clean up polluted rivers and coastlines, although legal experts said they were uncertain it could be applied successfully to climate change.

The spate of lawsuits, led by an Oregon-based nonprofit called Our Children's Trust, were based on "common law" theories, not statutes adopted by state or federal lawmakers. Documents in the cases were provided in advance to The Associated Press.

Conservative opponents warned the effort could overload the judicial system and paralyze the economy with over-regulation.

Attorneys involved in the lawsuits said a victory in even one or two cases would give environmentalists leverage, leading to new regulations to rein in greenhouse gas emissions that scientists say are driving global temperatures higher.

State-level lawsuits were planned in Alaska, Arizona, California, Colorado, Massachusetts, Minnesota, Montana, New Mexico, Oregon and Washington, organizers said. A federal lawsuit was to be filed in California, while regulatory petitions filed elsewhere would ask state environmental agencies to tighten restrictions on vehicle and industrial plant emissions.

A 16-year-old climate activist listed as a plaintiff in one of the cases, Alec Looz of Ventura, California, said he latched onto the effort because he thought "it would give us teeth, give us a bigger voice than just yelling and marching."

"People have tried pushing legislation and that hasn't worked. Obama hasn't been able to push anything through. The only option we have is the judicial system — taking this to the courts," said Loorz.

Loorz said he began giving public presentations on climate change when he was 13, soon after seeing former Vice President Al Gore's movie, "Inconvenient Truth."

Another case that relied on unconventional legal tactics to address climate change got a tepid reception during arguments last month before the U.S. Supreme Court. That matter involved several states that sought to rein in power plant emissions by declaring them a public nuisance.

A ruling is pending, but Harvard Law School professor Jody Freeman said justices had questioned whether courts were the appropriate forum for the issue.

"I am generally skeptical the plaintiffs will succeed in the courts pressing for common-law remedies from judges," Freeman said.

Columbia University law professor Michael Gerrard described the public trust suits as a "bold move" by activists looking to use all available options to impose greenhouse gas restrictions. Still, he joined Freeman in saying the pending decision in the public nuisance case would heavily influence the outcome of the state-level lawsuits.

A more optimistic view came from Gus Speth, chairman of the White House Council on Environmental Quality under President Jimmy Carter.

Speth, now at the Vermont Law School, said public trust litigation over climate change could work if its backers can find a judge willing to innovate a new area of law.

Yet that outcome could only result if a judge is willing to buy into what conservative analyst Hans von Spakovsky called "a creative, made-up legal theory."

"This is a complete violation of our whole constitutional system. These kinds of public policy issues are up to either the state legislatures or Congress to determine, not judges," said von Spakovsky, a senior legal fellow at the Heritage Foundation.

Eddy and others involved in Wednesday's lawsuits credited University of Oregon law professor Mary Christina Wood as laying the legal groundwork for their litigation.

Wood told the AP that mainstream environmental groups had approached climate change with the same tactics used to combat industrial developments or protect endangered species. But

she said lawsuits based on existing environmental laws had come up short.

What is needed, Wood said, is a sweeping challenge to the government's failure to address climate change. And having young people as plaintiffs in the cases gives added moral authority, she added.

The plaintiffs include college students, high school activists, and children of conservationists and attorneys, along with at least one environmental group WildEarth Guardians.

"We should be getting youths in front of the courts, not polar bears," Wood said, referring to widely publicized attempts to have courts declare polar bears endangered as rising temperatures melt Arctic ice.

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