

# Montana attorney, student lead climate change lawsuits

Mike Greener/Chronicle

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Few adults would stand alone to challenge powerful interests for a cause, but dozens of young people across the nation are doing just that for their entire generation.

Saturday's graduation at Montana State University, a major life event for many, may be somewhat ho-hum for John Thiebes, who has already represented his generation as a plaintiff in a Montana Supreme Court case to protect the earth's atmosphere.

Thiebes is one of several people age 11 to 22 who filed lawsuits against states and the federal government in the past year as part of the Atmospheric Trust Litigation. Organized by the iMatter Campaign, the litigation is part of an effort to compel governments to protect the atmosphere from pollution that is accelerating climate change.

WITNESS, an organization that creates films highlighting human rights issues, partnered with iMatter to tell the stories of several plaintiffs.

"They were all youth who wanted to stand up in a grassroots effort," said WITNESS program manager Kelly Matheson. "We didn't want climate change to be associated with just one area – every youth in the nation is facing problems in the future."

The basis of all the lawsuits is that air falls under the Public Trust Doctrine, an ancient principle that says governments are responsible for protecting certain resources for public use and future generations.

Thiebes, a Kalispell native, worries about how climate change will affect his future. He intends to apply what he's learned in the sustainable crop production program at MSU to farming his family's land near Carter, in north-central Montana. His family has owned the land for only eight years, and the 23-year-old knows his older neighbors might not approve of his action.

"I had to think about it for a few weeks because it's a pretty big deal," Thiebes said. "But there are very few opportunities for my voice to be amplified, so I took the plunge."

While plaintiffs in other states filed at the district court level, in May 2011 Missoula attorney Thomas J. Beers took Thiebes' case directly to the Montana Supreme Court, where he could argue the issue directly without a specific case.

"We have a strong state constitution, one of the few that has provisions that protect the environment," Beers said. "But the court needed to say that the atmosphere was in the public trust."

The constitution requires the state to "maintain and improve a clean and healthful environment." But on June 6, the court ruled that the plaintiffs had not proved that allowing greenhouse gas emissions violates that requirement.

The court acknowledged that novel legal issues were raised, but the plaintiffs had not shown that those issues couldn't be addressed more effectively through either the legislative process or the district courts.

"The last legislative session didn't do much — it's a hugely politicized issue, and not a lot of politicians are willing to risk their necks," Thiebes said. "Going through the judicial branch is one of the last options for citizens."

So far, youth have filed lawsuits in 11 other states and the Ukraine, while others are either preparing to file

or going through administrative hearings before filing, said Our Children's Trust executive director Julia Olsen. Lawsuits in Alaska, Arizona, Iowa, Minnesota, Oregon and Washington have been dismissed or denied in the past few months, and all are being appealed.

Beers plans to file at the district court level. But he is taking his time, trying to find a case that demonstrates the detrimental effects of climate change on Montana residents without entanglements that an opposing attorney could use to sidetrack the issue.

Beers must wait at least another week because he is one of the attorneys representing two nonprofit organizations that speak for around 5,000 children and five youth in the federal case.

The federal lawsuit filed last May asks the courts to compel the government to establish a climate recovery plan that achieves a 6 percent per year reduction in carbon emissions, a target supported by research from several leading climate scientists, including James Hansen of the NASA Goddard Institute for Space Studies.

The suit was filed against six federal agencies, including the departments of Agriculture, Energy and the Interior and the Environmental Protection Agency.

Then the court allowed interveners, including the National Association of Manufacturers, to join the defendants.

The National Association of Manufacturers is the nation's largest industrial trade organization and includes chemical, oil and gas companies with interests in limiting environmental regulation. NAM has repeatedly filed petitions against EPA efforts to regulate greenhouse gases.

NAM filed a motion to dismiss the case, which will be heard May 11 in Washington, D.C. In their brief, NAM attorneys argue that the Public Trust Doctrine isn't violated because pollution doesn't stop people from being able to use the air. They go on to argue that being able to pollute the air is a use of the air.

In a written statement, spokesman Jeff Ostermayer said NAM intervened to ensure that such decisions are addressed only through open legislative processes.

"At issue in this case is whether a small group of individuals and environmental organizations can dictate through private tort litigation the economic, energy and environmental policies of the entire nation," Ostermayer wrote.

Matheson said court was not the first choice but the last resort in these times of legislative deadlock.

"Picture these kids sitting on one side and on the other side is the Obama Administration sitting side-by-side with the oil industry defended by a Department of Justice lawyer," Matheson said.

Beers admitted he was facing some top-notch attorneys but remained optimistic.

"If you do your homework and the position is well-taken, justice will prevail," Beers said. "The science is clear. We just need to get it into the courtroom where we can stand on it and we are prepared to do so."

Thiebes, being a young man who has to keep a job, regrets he can't attend the federal hearing. But he'll be following all the lawsuits with interest as he develops ways to work his farm with a minimal use of fossil fuels.

"We don't need to drop everything we're doing," Thiebes said. "It's finding things that work."

"The biggest fear I have... is that it will have been in vain."

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