

State ban on local regulation of plastic spurs suit

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Bozeman's Cottonwood Environmental Law Center filed a lawsuit against the state of Montana last week, challenging a law that blocks regulation of single-use plastics by local governments and citizens.

The lawsuit, filed in the Lewis and Clark County District Court, challenges the constitutionality of House Bill 407. It alleges the law violates the constitutional rights for Montanans to bring forward ballot measures and have a clean and healthful environment.

The Montana Legislature passed HB407 in 2021. It specifically bans cities and towns from passing ordinances, or citizens from passing ballot initiatives, to regulate single-use plastics.

Bill proponents said the legislation was important so that businesses aren't operating across a patchwork of local laws that regulate single-use plastics differently.

Isaac Cheek, grassroots conservation coordinator for Cottonwood, said the lawsuit is a response to the legislation limiting local activism. The goal is to return that power to local governments and citizens who were already pursuing single-use plastics bans but were blocked by the law, he said.

The lawsuit represents nine individual plaintiffs, including citizens from Missoula, Billings, Arlee and Bozeman and a city council member from Billings.

Plastic/ from A3

“Citizens and cities want to do something about plastics to protect a clean and healthful environment, which is our constitutional right. And this bill takes that away,” Cheek said.

The litigation is the result of an ongoing fight to overturn HB 407, which Cottonwood has collaborated on with organizations including Beyond Plastics Gallatin Valley and Families for a Livable Climate.

In 2022, both Bozeman and Missoula city councils passed ordinances in

support of overturning HB407 and pledged support of considering single use plastic bans.

The ordinances also voiced support for House Bill 413, which was introduced in the 2023 session to overturn HB407. But the bill was voted down in committee, causing activists to turn to the courts.

Cheek served the complaint to the Attorney General’s office last Wednesday, Nov. 29. The timeline of the lawsuit is unclear right now, but the state has 42 days to respond to the complaint, he said.

The Attorney General’s Office did not return a request for comment from the Chronicle Wednesday.

Cheek said regulating single-use plastics is hugely important for the environment and public health. He pointed to the recent global Minderoo-Monaco report, published in March 2023, which chronicles the human health impacts of plastics.

Some petrochemicals used in plastics are carcinogens that can impact reproductive health, the report found.

“This is a health issue that we need to be aware of and do something about as soon as possible,” Cheek said. “We’re not just talking about like, I hate seeing plastic bags on the side of the road. We are talking about grave human health impacts and environmental impacts for plants, animals, and to the soil.”

Other cities have taken action to phase out single-use plastics, and that legislation is far more efficient than policy on the national level, Cheek said.

“Local governments are pretty nimble and can pass good, comprehensive policies pretty quickly. And if they don’t work, they can change them,” he said.

It’s important for local governments to have the option to take action if they want to, Cheek added. If successful, the lawsuit

could set precedent around the country to limit similar “ban on bans” legislation.

In Bozeman, the commission passed an ordinance on Dec. 20, 2022, declaring “its intention to favorably consider the adoption of an ordinance regulating certain single-use plastics in coordination with local businesses if HB 407 is repealed.”

The ordinance said regulating certain single-use plastics is needed so “local governments can fulfill their constitutional duty to improve a clean and healthful environment.”

Cheek said there have been early conversations between the city and local businesses, like the Bozeman Co-op and Town and Country, about what regulation could entail.

“But everyone’s kind of on the same page that the first issue is overcoming HB407,” Cheek said. “So we haven’t nailed down any specifics of what an ordinance might look like.”



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