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Held v. State

Alec D. Skuntz
University of Montana, Missoula, alec.skuntz@umontana.edu

Held v. State, No. CDV-2020-307, ___ F. Supp. 3d ___, 2021 WL ##### (Mont. Dist. Ct. August 4, 2021)

Alec Skuntz*

I. INTRODUCTION

On March 13, 2020, a group of 16 Montana children and teenagers (collectively, "Plaintiffs") filed a complaint in the First Judicial District, Lewis and Clark County ("Court") against the State of Montana, Governor Steve Bullock, the Montana Department of Environmental Quality, the Montana Department of Natural Resources and Conservation, the Montana Department of Transportation, and the Montana Public Service Commission (collectively, "Defendants").[1] Plaintiffs sought injunctive relief and a declaratory judgment against Defendants for their complicity in continuing to extract and release harmful amounts of carbon which contribute to climate change. Defendants acted pursuant to provisions of the Montana's State Energy Policy, which Plaintiffs assert violate of the Montana Constitution and the public trust doctrine.[2] Defendants filed a motion to dismiss, arguing that Plaintiffs lacked standing. The Court granted Defendants' motion with respect to Plaintiffs' request for injunctive relief; however, the Court denied the motion to dismiss on requested declaratory judgments.

Although the Court continued a common tradition of denying injunctive relief to evade ordering actions which impinge on legislative and executive powers, the Court broke from another recent trend of denying standing to plaintiffs suing states for affirmative action perpetuating climate change. While the courts are wary to test the boundaries of their power, the decision to allow Plaintiffs to argue their requests for declaratory judgments at trial legitimates a constitutional challenge concerning a climate change action in Montana.

Plaintiffs' state constitutional challenge was foundational in the Court's reasoning to allow the declaratory judgments to be heard at trial. Montana's Constitution provides strong environmental protections which make Montana an excellent forum for climate litigation. Further, the Montana Constitution enumerates equal rights for minors which allowed Plaintiffs to demand recognition of their environmental rights. As such, this case is a blueprint for structuring a justiciable controversy as to legitimize climate change actions in court. Although a ruling favoring the Plaintiffs would mostly impact Montana jurisprudence, the creative arguments and awareness raised would impact climate actions nationwide.

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*Alec Skuntz, Juris Doctor Candidate 2023, Alexander Blewett III School of Law at the University of Montana

1. Order on Mot. to Dismiss 1–2:3, Aug. 4, 2021, No. CDV-2020-307 [hereinafter "Order"].
2. Order 2:3–20.

All branches of government must be mobilized or challenged on climate related issues if the worst effects of climate change are to be averted.

II. LEGAL BACKGROUND

Few laws are explicit about climate change protections, and the nascent nature of climate litigation provides little jurisprudence for plaintiffs to build on. Additionally, renewable energy and climate change policy are becoming ever present in our laws, but these policies are underutilized and overshadowed by legacy laws promoting oil and gas. These opposing features are exhibited in Montana's State Energy Policy which instructs the state to consider both "the greatest long-term benefits to Montana citizens," and "increase local oil and gas exploration and development."[3]

This section will explain the state constitutional framework that Plaintiffs use in this case to argue that certain Montana laws and policies conflict with constitutional rights.[4] Specifically, Plaintiffs seek to remove sections of Montana law which are unconducive to mitigating climate change, and which make laws incoherent when considered as a whole.[5] Plaintiffs believe these laws are hostile to sections of the Montana Constitution and that Defendants have a duty to manage resources held in public trust for the best interest of its present and future citizens.

On top of these constitutional obligations, this section will explain the significance of the discretion provided to state agencies to refine the legislature's energy policy interpretation and execution of law. Prioritizing which policies to focus on is an inherent quality of the legal and political system because neither the executive nor their agencies can carry out every law simultaneously.

A. Montana's Constitutional Foundations in Environmental Protection

The Montana Constitution confers on Montanans "the right to a clean and healthful environment and the rights of pursuing life's basic necessities"[6]—a provision that is unique when compared to the traditional rights enumerated in other constitutions.[7] Additionally, the Montana Constitution provides rights to all citizens regardless of age: "the rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons."[8]

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3. MONT. CODE ANN. §§ 90-4-1001(a), (e) (2019).
4. Pls.' Compl. 2:7–18, March 13, 2020, No. CDV-2020-307.
5. Order 3.
6. MONT. CONST. art. II, § 3.
7. Fritz Snyder, *Montana's Top Document Its Transition into the 21st Century*, MONT. LAW., August/September 2009, at 8.
8. MONT. CONST. art. II, § 15.

In furtherance of these rights, the Montana Constitution ensures the "identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites, records, and objects" for the use and enjoyment of all Montanans.[9] These sweeping designations and protections indicate the intent of the drafters to ensure environmental quality and direct policy makers to value the people's ties to the land.[10] Additionally, the wording fills out the idea that Montana is holding these sites and objects in public trust for all people.[11]

The public trust doctrine posits that a central authority holds natural resources like water, land, and air for use by the public and mandates management in the public's benefit.[12] The doctrine exists as a fundamental right and has been supported since its roots in Roman law and through British common law.[13] Though usually a common law doctrine, the Montana Constitution adopts the doctrine by instructing the state and each person to "maintain and improve a clean and healthful environment in Montana for present and future generations."[14] These constitutional sections inform Montanans of the possible extent of land, air, and water that is held by the state in public trust. The Montana Constitution instills public trust ideation when it instructs the state and each person of their rights and duties to a healthy natural environment.

The Montana Constitution further instructs the legislature to "provide for the administration and enforcement of this duty" further placing a great responsibility on legislators to ensure a healthful environment. The Montana Constitution recognizes a need for recourse when protecting environmental resources, mandating the legislature "provide adequate remedies for the protection of the environmental life support system from degradation" and to "provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."[15] These sections show that the instant case's goals of seeking climate solutions falls squarely into constitutional intent. The Montana Supreme Court used the Constitution's strong language to inform a decision broadening arranger liability under Montana's Comprehensive Environmental Cleanup and Responsibility Act, which holds polluters accountable for degrading the environment.[16] The Montana Supreme Court acknowledged and supported Montanan's right to a clean and

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9. *Id*. art. IX, § 4.

10. C.B. McNeil, *A Clean and Healthful Environment and Original Intent*, 22 PUB. LAND & RES. L. REV. 83, 89 (2001).

11. *Id*. at 85.

12. Erin Ryan, *The Public Trust Doctrine, Private Water Allocation, and Mono Lake: The Historic Saga of National Audubon Society v. Superior Court*, 45 ENVTL. L. 561, 568–569 (2015).

13. *Id*. at 567.

14. MONT. CONST. art. IX, § 1.

15. *Id*.

16. State ex rel. Dept. of Envtl. Quality v. BNSF Ry. Co., 246 P.3d 1037, 1046 (Mont. 2010)

healthful environment explaining it "constitutes a fundamental right" under the Constitution.[17]

B. Restrictions on the State Environmental Policy Act

The Montana legislature passed the Montana Environmental Policy Act ("MEPA") in pursuit of the government's obligation under article II, section 3, and article IX of the Montana Constitution to ensure the environment is "fully considered" and "the public is informed of the anticipated impacts" of all state actions.[18] MEPA enumerates the constitutional duties of the Montana legislature: to "prevent, mitigate, or eliminate damage to the environment and biosphere" by requiring environmental assessments to outline the anticipated impacts of state projects or actions.[19] MEPA is a procedural act that defines the environmental evaluation process that agencies engaged in state action must conduct and which culminates in an environmental impact statement or environmental assessment.[20]

MEPA review is common in state actions, especially energy sector projects, because there are many environmental repercussions. An exception to this rule, dubbed the Climate Change Exception ("Exception"), bars environmental evaluations from including "a review of actual or potential impacts beyond Montana's borders" or "that are regional, national, or global in nature."[21] As such, the Exception neuters MEPA and allows an informational vacuum to develop. Primarily, the Exception leaves the public with an incomplete picture of environmental consequences of state actions even when an assessment is completed. Additionally, since many energy development, resource extraction, urban development, and infrastructure projects are run by multi-state or multi-national corporations, the Exception invites the state and corporations to craft their environmental assessments to appear less environmentally threatening by excluding out of state impacts.

C. Conflicting State Energy Policy

To secure energy independence in Montana, the 1993 legislature enacted the Montana State Energy Policy to further develop energy resources.[22] Overall, the Montana State Energy Policy ("State Energy Policy") seeks to "promote energy efficiency, conservation, production, and consumption of a reliable and efficient mix of energy sources that

17. *Id*.
18. MONT. CODE ANN. § 75-1-102(1).
19. *Id*. § 75-1-102(2), (3).
20. *Id*. § 75-1-208.
21. *Id*. § 75-1-201(2)(a).
22. MONT. LEGIS. SERVICES DIV., ENERGY & TELECOMM. INTERIM COMM., MONTANA'S ENERGY POLICY REVIEW, at 9 (2010).

represent the least social, environmental, and economic costs and the greatest long-term benefits to Montana citizens."[23]

However, the policy also promotes the "development of projects using advanced technologies that convert coal into electricity, synthetic petroleum products, hydrogen, methane, natural gas, and chemical feedstocks."[24] The State Energy Policy declares a goal to increase utilization of Montana's coal reserves, increase local oil and gas exploration and development, and expand Montana's petroleum refining industry.[25] The policy explains these goals should be achieved "in an environmentally sound manner," including mitigating greenhouse gas ("GHG") emissions; however it justifies the use of oil and gas to provide jobs, strengthen the economy, and supply energy for Montana's transportation needs.[26] The conflicting ideas of promoting fossil fuel extraction while supporting long-term benefits to Montanans is a near impossible task because GHG emissions are already harming Montana citizens.

None of the nine identified key topics addressed in the updated 2010 State Energy Policy focused on the environment and only two topics involved renewable energy.[27] When taken altogether the State Energy Policy is incoherent at best; it allows policy makers to pick whichever sections work well for their interests. These conflicting goals not only illustrate the difficult nature of balancing environmental and economic needs but also underscore the necessity for a more cohesive energy strategy.

III. FACTUAL BACKGROUND

The burning of fossil fuels releases GHG emissions, which exacerbate the effects of climate change.[28] Climate change is not simply a heating of the planet, but a wide array of local and global effects which will result in rapid and unpredictable changes in the environment.[29] Because people build their lives around the predictability of the environment, there have been and will continue to be enormous impacts on individuals and society from a changing climate.[30]. Consequently, people will be forced to adapt or move, both of which are economically and practically burdensome at scale. This impending climate crisis is foreseeable and, with government action, preventable.

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23. MONT. CODE ANN. § 90-4-1001(1)(a).
24. *Id*. § 90-4-1001(1)(c).
25. *Id*. § 90-4-1001(1)(c)–(g).
26. *Id*.
27. MONTANA'S ENERGY POLICY REVIEW, *supra* note 22, at 2.
28. United States Environmental Protection Agency, *Overview of Greenhouse Gases*, https://perma.cc/98YJ-BHE6 (last visited Oct. 12, 2021).
29. *Id*.
30. National Centers for Environmental Information, *Billion-Dollar Weather and Climate Disasters: Overview*, NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION, https://perma.cc/Y9JH-4PWL (last visited Oct. 12, 2021).

Plaintiffs here range from two years old to 18 years old.[31] Each has personal ties to the environment which are negatively affected by climate change and include recreation, cultural and religious practice, ranching and farming, and matters of personal physical and mental health.[32] Plaintiffs allege they have been, and continue to be, harmed by the State Energy Policy and the Exception to MEPA, which both support fossil fuel extraction and utilization leading to increased GHG emissions and climate change.[33] Plaintiffs concede that all states contribute to GHG emissions, but that Montana is a significant contributor.[34] Notably Plaintiffs highlight that in 2017 Montana ranked twelfth highest among U.S. states in energy consumption per capita.[35] That same year, the state was the sixth largest coal producer, allowed one-fifth of total Canadian natural gas exports to pass through the State, and produced one in every two hundred barrels of U.S. oil.[36]

Defendants are state agencies and public officials involved in the decision-making, oversight, and execution of environmental and energy policy in Montana. Plaintiffs describe Defendant State of Montana as a "sovereign trustee over the public trust resources within its domain."[37] A delegate of the 1972 Montana Constitutional Convention described these public trust resources as "all-encompassing" over the "air, water, and land."[38]

Defendant Steve Bullock's position as Governor grants him great influence over Montana policy. For instance, governors may veto legislation they do not think is in the interest of the people; set guidelines and goals for state agencies; and wield political power to influence policy priorities.[39] These powers are balanced by certain duties that must be performed. The Montana Constitution mandates the governor "see that all laws are faithfully executed."[40] Governor Bullock was the final bulwark to ensure environmentally harmful bills do not become law. Plaintiffs allege that Governor Bullock allowed extractive industry projects to operate and did not prioritize a clean and healthful environment as mandated by law.[41]

Since the governor has executive power over agencies, Governor Bullock's agenda trickled down to agency actions; this impacts which laws and programs receive attention and which become obscure.[42] The Montana Department of Environmental Quality ("DEQ") is responsible for carrying out policy and using all practicable means to "ensure for all Montanans

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31. Pls.' Compl. 1:18-20.
32. Order 1.
33. Order 2.
34. Order 10:1–3.
35. Pls.' Compl. 47:3–4.
36. Pls.' Compl. 49–52.
37. Pls.' Compl. 26:21–23.
38. LARRY M. ELISON & FRITZ SNYDER, *THE MONTANA STATE CONSTITUTION: A REFERENCE GUIDE*, 168 (2001).
39. MONT. CONST. art. VI, §§ 4, 10.
40. *Id.* art. VI, § 4.
41. Pls.' Compl. 27:17–28:4.
42. MONT. CODE ANN. § 2-15-102(2).

safe, healthful, productive, and aesthetically and culturally pleasing surroundings."[43] The director of the DEQ is appointed by the governor.[44] DEQ permits energy, land use, and water programs which must comply with Montana's environmental laws, including MEPA.[45]

The Montana Department of Natural Resources and Conservation ("DNRC") manages a large portfolio of agricultural, water, forest, real estate, and mineral holdings.[46] DNRC strives to ensure resource availability for future generations while also balancing profitability.[47] DNRC continues to support oil and gas development, as demonstrated in its 2019 Report, which reads, "new wells are being drilled into some of the most productive areas of the Bakken, showing promise to add significant revenue."[48] In June 2020, ten permits were authorized for oil extraction in the Bakken.[49] Plaintiffs contend these oil and gas permits are averse to DNRC's mandate to permit activities that are in the best interest of the state but which do not have detrimental impacts to public welfare or the environment.[50]

The Montana Department of Transportation ("MDT") has broad duties for "the planning, design, maintenance, operation, and management of Montana's state-owned roadways, walkways, rest areas, airports, and numerous public-use facilities."[51] MDT establishes procedures for fuel tax and handles billing, collection, and administration of the tax.[52] MDT explains that while most of Montana is in compliance with the National Ambient Air Quality Standards of the Clean Air Act, ten cities are still designated non-attainment sites for carbon monoxide.[53] This failure to regulate air pollutants shows increased efforts are needed to fulfill mandated protections of public and environmental health.

Finally, the Montana Public Service Commission ("PSC") is charged with the regulation, control, and supervision of public utilities.[54] PSC has broad discretion to decide which energy projects will power Montana and how Montana invests in the energy sector.

These organizations' decisions carry enormous consequences for how energy is used and produced in Montana, and how much weight

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43. *Id*. § 75-1-103(2).
44. MONT. ADMIN. R. 17.1.101.
45. MONT. ADMIN. R. 17.4.601.
46. MONT. DEP'T OF NAT. RES. & CONSERVATION, 2019 REPORT TO THE MONT. LEGIS. (2019).
47. *Id.* at 9.
48. *Id*. at 8.
49. Environmental Documents Oil and Gas, THE MONTANA DEPARTMENT OF NATURAL RESOURCES & CONSERVATION, https://perma.cc/GUA4-J3KY (last visited Sept. 11, 2021).
50. Pls.' Compl. 32:1–8.
51. MONT. DEP'T OF TRANSP., TRANPLANMT PLAN SUMMARY, at 6 (Mont. 2017).
52. MONT. CODE ANN. § 15-70-122.
53. MONT. DEP'T OF TRANSP., TRANPLANMT TRANSPORTATION CONTEXT, at 26 (Mont. 2017).
54. MONT. CODE ANN. § 69-3-102.

environmental quality holds in the government and industry decision-making processes. The State Energy Policy and the Exception to MEPA allow continued degradation to Montana's shared resources. Plaintiffs group the decisions to continue the authorization, implementation, and promotion of GHG emitting projects, activities, and plans as aggregate affirmative acts ("Aggregate Acts").[55] Plaintiffs argue significant reorientation away from fossil fuels towards sustainability are necessary to fulfill the mandates of the Montana Constitution.

IV. PROCEDURAL HISTORY

Plaintiffs filed this action on March 13, 2020, in the First Judicial County of Montana, Lewis and Clark County.[56] Plaintiffs sought declaratory judgment on the following claims: (1) that the State Energy Policy, the Aggregate Acts, and conditions taken thereunder, and the Exception of MEPA violate Montana Constitution article II sections 3, 4 and 17, article IX sections 1 and 3, and the public trust doctrine; (2) that the State Energy Policy, MCA §§ 90-4-1001(1)(c)–(g), is facially unconstitutional; (3) that the Exception to MEPA, MCA § 75-1-201(2)(a) is facially unconstitutional; and (4) that Defendants' conduct is violating Plaintiffs' constitutional right to a clean and healthful environment which includes the right to a stable climate system that sustains human lives and liberties.[57]

Plaintiffs also sought injunctive relief to (1) permanently enjoin Defendants and all persons acting in concert with them from subjecting Plaintiffs to the State Energy Policy and the Exception to MEPA; (2) order Defendants to prepare a complete accounting of Montana's comprehensive GHG emissions; (3) order Defendants to develop a remedial plan or policies to reduce GHG emissions in Montana to protect Plaintiffs from further constitutional infringement; (4) order a special master be appointed to assist the Court in reviewing the remedial plan for efficacy; (5) retain jurisdiction in the district court over this action until such time as Defendants have fully complied with the orders of this Court; (6) award Plaintiffs their reasonable attorneys' fees and costs; and (7) grant any alternative relief the Court deems just and equitable.[58]

Defendants moved to dismiss the complaint, alleging Plaintiffs lacked case-or-controversy standing, that their claims were barred by prudential limitation, and that they failed to exhaust administrative remedies.[59]

V. HOLDINGS

55. Pls.' Compl. 102:13–103:3.
56. Pls.' Compl. 104.
57. Pls.' Compl. 102:13–103:3.
58. Pls.' Compl. 103:4–104:2.
59. Order 2:21–24.

The Court granted Defendants' motion to dismiss on Plaintiff's injunctive relief claims (2), (3), (4), and (5) and denied the motion on the remainder of the claims.[60] The Court held that it could not grant the Plaintiffs' requested injunctive relief because it would exceed the court's authority.[61]

A complaint must contain claims which are justiciable by the court.[62] Justiciability is composed of three parts: (1) an existing and genuine right or interest; (2) a controversy which the court may provide an effective judgment; and (3) the possibility of a court ruling which will have the effect of final judgment.[63] Montana Rules of Civil Procedure allow the court to dismiss a case when the court lacks subject-matter jurisdiction or when plaintiff fails to state a claim upon which relief can be granted.[64]

Here, the Court agreed with the Defendants that granting the Plaintiffs requested injunctive relief would require legislative powers that are not within the role of the court which made these issues non-justiciable.[65] However, the Court held the requested declaratory relief would provide a possibility for remedy and was within the Courts power to rule on.[66] The Court ruling on the unconstitutional nature of the Exception to MEPA and the State Energy Policy offers a modicum of relief for Plaintiffs which is enough to make the issue justiciable.[67]

A. Standing

The Court held that Plaintiffs' request for declaratory judgment could be heard at trial if Plaintiffs had standing.[68] Standing requires three elements: (1) injury, (2) causation, and (3) redressability.[69] The alleged injury must be "a concrete harm that is actual or imminent, not conjectural or hypothetical."[70] Causation must show a reasonably traceable connection between the conduct complained of, and the injury.[71] A claim is redressable when the court has the power to provide relief and "a likelihood that the requested relief will redress the alleged injury."[72]

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60. Order 25:2–4.
61. Order 19:23–25.
62. Northfield Ins. Co. v. Mont. Ass'n of Ctys., 10 P.3d 813, 816 (Mont. 2000).
63. *Id*.
64. MONT. R. CIV. P. 12(b).
65. Order 21:4–12.
66. Order 24:9–19.
67. Order 24:9–19.
68. Order 6:20–22.
69. Hefferman v. Missoula City Council, 255 P.3d 80, 91 (Mont. 2011) (citing Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61 (1992)).
70. *Id*.
71. *Id*.
72. *Id*.

The Court relied upon *Juliana v. United States*,[73] a Ninth Circuit decision, as a guide in determining the legitimacy of Plaintiffs' standing. In *Juliana*, a group of young plaintiffs claimed their Fifth Amendment due process right to a life-sustaining climate system was violated by federal environmental policy authorizing the permits, subsidization, development, and consumption of fossil fuels.[74] Similar to this case, the *Juliana* defendants argued that plaintiffs failed to raise any justiciable claims. The *Juliana* court analyzed standing, ultimately finding both injury and causation, but a lack of redressability. Therefore, the claims could not be heard by the court. However, this Court distinguishes *Held* from *Juliana* because the requested declaratory judgments had actionable and effective redress.[75] Consequently, Plaintiffs' claims passed the standing test where *Juliana* plaintiffs failed; thus, the controversy in *Held* could be heard at trial.

Satisfying case-or-controversy standing requires plaintiffs to show a clear past, present, or threatened injury to a property or civil right.[76] This injury must be "alleviated by successfully maintaining the action."[77] Here, to establish standing for their claims, Plaintiffs had to show that: (1) GHG emissions were detrimentally affecting their health or ability to use the environment; (2) the State Energy Policy and the Exception to MEPA were causing increased GHG emissions; and (3) that a court's decision finding these laws and policies unconstitutional would reduce GHG emissions and contribute to a clean and healthful environment.[78] Defendants alleged that Plaintiffs could not establish causation or redressability because fossil fuel energy policy is decentralized across many laws, not simply MEPA and the State Energy Policy.[79]

1. Injury

The Court did not dwell on injury because Defendants do not contest this element of standing; however, it is a significant piece of this case and merits some discussion. Plaintiffs alleged the Aggregate Acts and policy choices by Defendants in the Exception to MEPA and the State Energy Policy increased Montana's GHG emissions.[80] These Aggregate Acts include Defendants' authorization of surface coal mining, coal-fired power plants, pipelines, and prioritization of fossil fuel over renewable energy projects.[81] The resulting increase in GHG emissions has resulted in

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73. 947 F.3d 1159 (9th Cir. 2020).
74. *Id*. at 1164.
75. Order 24:9–19.
76. Hefferman v. Missoula City Council, 255 P.3d 80, 91 (Mont. 2011).
77. *Id*. at 92.
78. *Id*. at 91.
79. Defs.' Br. in Supp. of Mot. to Dismiss 8, Apr. 24, 2020, No. CDV-2020-307.
80. Pls.' Compl. 38:3–11.
81. Pls.' Compl. 38:12–41.

decreased soil and crop productivity, ocean acidification, atmospheric river disruption, temperature increase, desertification, and reduced snow packs.[82] Plaintiffs alleged that Montana citizens were not informed about the climate change impacts caused by state action as required by MEPA.[83] Plaintiffs further alleged that the State Energy Policy promotes fossil-fuel use, which disproportionately harms a vulnerable younger generation.[84]

Defendants contended that the State Energy Policy plays a discretionary role and promotes "a reliable and efficient mix of energy."[85] Therefore, Defendants alleged the injury is not due to the State Energy Policy or the Exception to MEPA.[86] However, Defendants do not dispute that Plaintiffs have and continue to suffer injury; instead, they allege the Plaintiffs lack causation and redressability.[87]

2. Causation

The Court held that the complaint sufficiently argued a causal link between state conduct and the GHG emissions contributing to Plaintiffs' injuries.[88] Causation is demonstrated through a traceable connection between the injury and the complained of conduct.[89] This may be established when there are mutiple links in the casual chain, so long as the links are not hypothetical.[90] Injury may be caused by any single defendant even if the injury was caused by the conduct of multiple parties.[91] Partial causation provides opportunity to seek a remedy when the perpetrators of the injury are numerous, difficult to identify, or have varying degrees of association.[92]

Plaintiffs contended that Defendants' Aggregate Acts were directly linked to increased GHG emissions.[93] They also alleged that Defendants obstructed progress in reducing GHG emissions. Specifically, they argued that PSC disparages renewable energy projects and cuts utility contract lengths of solar projects while promoting reliance on fossil fuels.[94] Plaintiffs also alleged that DNRC and DEQ issued permits, licenses, and leases for the Keystone XL Pipeline without disclosing any

82. Pls.' Compl. 60:13–61:16.
83. MONT. CODE ANN. § 75-1-102(3)(a).
84. Pls.' Compl. 97:13–21.
85. Defs.' Reply Br. in Supp. of Mot. to Dismiss 5, June 11, 2020, No. CDV-2020-307.
86. Defs.' Br. in Supp. of Mot. to Dismiss 7.
87. Order 7:17–20.
88. Order 9:13–17.
89. Hefferman v. Missoula City Council, 255 P.3d 80, 91 (Mont. 2011)
90. Juliana v. United States, 947 F.3d 1159, 1169 (9th Cir. 2020).
91. WildEarth Guardians v. U.S. Dep't of Agric., 795 F.3d 1148, 1157 (9th Cir. 2015).
92. *Id.*
93. Pls.' Compl. 38:3–8.
94. Pls.' Compl. 38:12–39:9.

health or climate consequences to the public.[95] Plaintiffs contended these actions—the majority of which are receiving continuing support from Defendants—substantially contributed to the GHG emissions and the climate change foundational to their injuries.[96]

Defendants argued that the State Energy Policy is a "symbolic and aspirational"[97] guideline which seeks to promote "reliable and efficient mix of energy" to create "a balance between a sustainable environment and a viable economy."[98] Defendants also contended that MEPA is a procedural statute and, therefore, any defects also are procedural "and thus limited to a particular administrative decision."[99] Since MEPA's requirements are procedural, no agency is required to reach any particular decision when it exercises its independent authority, nor does MEPA provide additional regulatory authority to the agency.[100]

The Court found that because Plaintiffs challenged the constitutionality of the Exception, they did not seek a judicial review of agency procedural decisions, but rather a review of the decision-making framework.[101] Defendants listed numerous statutory authorities and policies tied to oil and gas to show that Plaintiffs' arguments excluded the entirety of GHG emitting programs.[102] Defendants argued this prevents a showing of causation because Plaintiffs only brought an action against two policies.[103] This argument simply admits the pervasive nature of the relationship between government and extractive industries; and further illustrates the need to disentangle the entities to enable meaningful progress against climate change.

Here, the Court held that Plaintiffs had met the necessary burden to show causation.[104] Even though the Defendants are not "the exclusive source of [Plaintiffs'] injury," the Court found that the government was substantially involved in the production of carbon emissions, as held in *Juliana*.[105] This Court adopted the *Juliana* court's findings that "carbon emissions from fossil fuel production, extraction, and transportation" caused plaintiffs' injuries because the alleged injuries were caused by carbon emissions from fossil fuels.[106] Further, the *Juliana* court held that the United States was responsible for a significant amount of GHG emissions and that the policies and actions of the government continue to

95. Pls.' Compl 41:3–14.
96. Pls.' Compl 57:1–6.
97. Defs.' Br. in Supp. of Mot. to Dismiss 10.
98. Defs.' Reply Br. in Supp. of Mot. to Dismiss 5 (quoting MONT. CODE ANN. §§ 90-4-1001(1)(a), (2)(d) (2019)).
99. Defs.' Reply Br. in Supp. of Mot. to Dismiss 9–10.
100. Order 12:11–14; Bitterrooters for Planning, Inc. v. Mont. Dep't of Envtl. Quality, 401 P.3d 712, 719 (Mont. 2017).
101. Order 12:15–20.
102. Defs.' Br. in Supp. of Mot. to Dismiss 8–9.
103. Defs.' Br. in Supp. of Mot. to Dismiss 8–9.
104. Order 9:13–17.
105. Order 9:13–17.
106. Juliana v. United States, 947 F.3d 1159, 1169 (9th Cir. 2020).

increase emissions.[107] The Court agreed with the *Juliana* reasoning and held that Montana was a significant contributor to GHG emission.[108] Accordingly, the Court held there was causation, or at least a factual dispute to which actions and policies were a substantial factor in Plaintiffs' injuries.[109] This Court applied the same logic and found that, for the requirements of standing, Defendants' actions have a causal connection to Plaintiffs' injuries.

3. Redressability

Although the Court held that the injunctive relief was outside the purview of its remedial power, the sought after declaratory judgments had a possibility of redressability.[110] Therefore, the Plaintiffs are allowed to be heard at trial.[111] Montana courts may only review claims where plaintiffs' "alleged harm is of a type that available legal relief can effectively alleviate, remedy, or prevent."[112] This barrier becomes pivotal in climate change actions because the remedies required are usually so extensive that it may exceed the courts power. The *Juliana* court held that plaintiffs could show both injury and causation, but lacked redressability because the argument that the government was violating the United States Constitution was unlikely to remediate the injury.[113] The complaint broadly grouped all government policy into the cause and sought similar broad redress in the form of a "comprehensive scheme to decrease fossil fuel emission and combat climate change."[114] The *Juliana* court found it would be "unlikely by itself to remediate alleged injuries absent further court action."[115] *Juliana* plaintiffs also requested the court issue injunctive relief to cease all permitting, subsidizing, or authorization of fossil fuel projects, and to require a remedial plan be made by the state.[116] The court found this would require more than an injunction and that a court order for a remedial plan would exceed the judicial role disrupting the balance of power between the government branches.[117]

Here, the Court distinguished *Juliana* from *Held* because Plaintiffs request for declaratory relief can be provided by the Court unlike the requested injunctive relief.[118] Plaintiffs asserted that the State Energy Policy and the Exception to MEPA are causing them current and continuing harm. Plaintiffs asserted that the Exception allowing

107. *Id*.
108. Order 10:1–5, 11:21–23.
109. Order 9:13–25.
110. Order 16:23–17:3
111. Order 18:18–23.
112. Larson v. State By and Through Stapleton, 434 P.3d 241, 262 (Mont. 2019).
113. Order 16:4–12.
114. Juliana v. United States, 947 F.3d 1159, 1171 (9th Cir. 2020).
115. *Id*. at 1170.
116. *Id*. at 1170–1171.
117. *Id*. at 1172.
118. Order 16:23–25.

environmental review to eschew consideration of out-of-state impacts in the review process is unconstitutional.[119] Plaintiffs interpreted the Exception to mean that Defendants cannot consider the cause and impact of climate change and GHG emissions in an environmental review thereby hindering a decrease in GHG output.[120] Defendants contended the Exception is only in place to streamline the review process, which would be significantly slower if regional or global impacts needed to be considered.[121] Defendants also argued that a realistic remedy is not available because "the scope of Plaintiffs' claims cannot be distilled to a constitutional challenge of one or two statues."[122]

Under the facts alleged, the Court held that declaring these laws unconstitutional would provide Plaintiffs with a remedy for their injuries because a declaratory judgment in their favor would partially remove or correct the injuries suffered and would be sufficient to establish redressability.[123]

B. Prudential Standing

Defendants argue that Plaintiffs lack prudential standing, which restricts the courts to their appropriate judicial role.[124] Prudential standing provides another insulating layer to what cases may be brought before a court.[125] Defendants also contend that Plaintiffs requested relief is precluded by the political question doctrine because it presents a controversy better resolved by the legislature.[126] According to the Court, granting the requested injunctive relief would exceed the court's role, but granting the requested declaratory relief would not.[127] Prudential standing and the political question doctrine instructs courts to avoid adjudication of issues "more appropriately in the domain of the legislative or executive branches or the reserved political power of the people."[128] This doctrine is in place to ensure balance between the branches of government.[129] Here, Defendants argued that Plaintiffs' requested relief raised a political and policy-based question and argued that judicial involvement would be inappropriate.[130]

The Court agreed with Defendants and held that Plaintiffs' requested remedial plan to reduce GHG emissions and court oversight of

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119. Order 4:9–14.
120. Pls.' Compl. 35:23–36:5.
121. Defs.' Br. in Supp. of Mot. to Dismiss 5.
122. Defs.' Br. in Supp. of Mot. to Dismiss 12.
123. Order 18:18–19:3.
124. Defs.' Br. in Supp. of Mot. to Dismiss 14.
125. Order 21:4–22:8.
126. Defs.' Br. in Supp. of Mot. to Dismiss 16.
127. Order 16:23–25.
128. Larson v. State By and Through Stapleton, 434 P.3d 241, 252 (Mont. 2019).
129. *Political Question Doctrine*, BLACK'S LAW DICTIONARY (11th ed. 2019).
130. Order 19:14–25.

the plan for an indeterminate duration would exceed its judicial role.[131] The Court based this decision off the *Juliana* court's conclusion denying plaintiffs' request for a remedial climate plan due to the necessity of both legislative and executive discretion required for a plan.[132] Therefore, the Court dismissed Plaintiffs requested injunctive relief.[133]

Plaintiffs sought to use *Columbia Falls*,[134] where the Montana Supreme Court found a school funding system unconstitutional, to show precedent for ordering extensive remedial work.[135] However, the Court distinguished *Columbia Falls* from *Held* because the remedial order in the former was significantly less than Plaintiffs' requested relief.[136] The requested relief in *Held* would require both the legislature and executive to create new laws, policies, and regulations, whereas in *Columbia Falls* the court order deferred to the legislature to address the problem.[137] Furthermore, the Court agreed with Defendants that a comprehensive accounting of all GHG emissions would violate the political question doctrine and exceed the scope of judicial authority.[138]

However, the Court reasoned that Plaintiffs' request for declaratory relief did not violate the political question doctrine and was within its power to decide.[139] District courts are allowed the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed."[140] Therefore, the Court's decision to deny injunctive relief would not inhibit an award of declaratory relief.

C. Administrative Remedies

Finally, the Court held that it was proper for Plaintiffs to eschew administrative remedies in place of a constitutional challenge.[141] Defendants argued that Plaintiffs did not exhaust their administrative remedies, so the Court did not yet have jurisdiction over the claim.[142] Defendants cited to the Montana Administrative Procedures Act ("MAPA"), which mandates that plaintiffs "exhaust all administrative remedies available within the agency" before seeking judicial review for an agency's final decision.[143] Defendants point to areas of the complaint where Plaintiffs use several specific administrative decisions as evidence

131. Order 19:25.
132. Juliana v. United States, 947 F.3d 1159, 1171–1172 (9th Cir. 2020).
133. Order 21:4–20.
134. 109 P.3d 257 (Mont. 2005).
135. Order 20:8-14.
136. Order 20:15–23.
137. Order 20:21–21:3; Columbia Falls Elementary Sch. Dist. No. 6 v. State, 109 P.3d 257 (Mont. 2005).
138. Order 21:11–21.
139. Order 22:3-8.
140. MONT. CODE ANN. § 27-8-201 (2019).
141. Order 23:23–24:8.
142. Order 22:10–13.
143. MONT. CODE ANN. § 2-4-702(1)(a).

of GHG emitting environmental policy.[144] Here, however, Plaintiffs specifically state they are "not seeking review of any contested case under MAPA."[145] As such, the Court reasoned that Plaintiffs were bringing a constitutional challenge, not MAPA review of an agency decision, so judicial action was appropriate.[146]

The Court also based its reasoning on the Montana Supreme Court decision *Montana Environmental Information Center v. Department of Environmental Quality* ("MEIC"),[147] which held that the district court had jurisdiction over the plaintiff's claim because plaintiffs sought a *constitutional* review of a statutory provision that allowed an agency to circumvent non-degradation environmental review.[148] Filing a constitutional claim allowed the plaintiffs to avoid exhausting administrative remedies before bringing their action.[149]

Similarly, the *Juliana* court held that administrative remedies need not be exhausted when the claims cover a broad swath of government actions, including the process of decision-making.[150] Instead, administrative procedural requirements are designed for discrete agency decisions.[151] For these reasons, this Court held the claims are appropriate in district court.[152]

VI. ANALYSIS & IMPACT

Held challenges the inconsistent directives of Montana law which continue to enable GHG emitting policy that exacerbates climate change. Inconsistency is demonstrated by the effect of adding climate change or renewable energy policy to the State Energy Policy. Adding new sustainability laws to old legal frameworks, which already contain support for fossil fuels, results in weakened implementation of new laws. The legal system becomes incoherent without removing older sections of law which are hostile to new law. Montana's long history of mineral, oil, and gas extraction has influenced state laws and regulations to favor these industries. Overtime, relevant corporations and their supporting organizations have entrenched favorable policy into Montana's legal system—as evidenced by sections (c)–(g) of the State Energy Policy supporting oil and gas development.[153] However, sections (c)–(g) are directly followed by sections which recognize the importance of, and mandate support for, renewable energy.[154] In *Held*, Plaintiffs recognized these contradictory ideas in the State Energy Policy and MEPA, and

144. Defs.' Br. in Supp. of Mot. to Dismiss 17.
145. Pls.' Resp. to Defs.' Mot. to Dismiss 18, May 29, 2020, No. CDV-2020-307.
146. Order 24:9–19.
147. 988 P.2d 1236 (Mont. 1999).
148. Order 23:3–13.
149. Order 23:3–13; *Mont. Envtl. Info. Ctr.*, 988 P.2d at 1236.
150. Juliana v. United States, 947 F.3d 1159, 1168 (9th Cir. 2020).
151. Order 24:1–5; *Juliana*, 947 F.3d at 1167.
152. Order 24:6–8.
153. MONT. CODE ANN. § 90-4-1001(1)(c)–(g) (2019).
154. *Id.* § 90-4-1001(1).

sought declaratory and injunctive relief to focus the legal framework in a forward-looking direction.[155]

Furthermore, the State Energy Policy goals specifically require Montana's agencies and public officials to "consider that the state's energy system operates within the larger context of and is influenced by regional, national, and international energy markets."[156] This shows policy makers are encouraged to reflect on national and international energy markets, but due to the Exception they are not mandated to consider the impacts of those markets when conducting environmental review.[157] This further illustrates the bias in Montana's legal framework which prejudices against environmental awareness and action.

Held highlights the importance of constructing a complaint to request relief which is appropriately narrow, but still effective in achieving progress in fighting climate change. The environmental rights provided by Montana's Constitution and the tradition of public trust doctrine enabled Plaintiffs' success in this action.

A. Constructing a Constitutional Challenge

The drafters crafted the Montana Constitution to be wielded as an instrument for environmental rights. This case demonstrates the importance of how environmental and climate change legal challenges are framed and that prayers for relief must avoid being both over-broad and under-inclusive. As seen in *Juliana*, a complaint which too broadly applies blame for climate-related harm results in a court's inability to act due to a lack of redressability. Conversely, in *Held*, Plaintiffs sought declaratory relief against specific laws and policies, and framed their entire argument in a constitutional challenge—and were therefore successful.

Defendants alleged that MEPA cannot cause Plaintiffs' injury because it is not substantive, but procedural and therefore statutory review is limited to specific administrative decisions.[158] The Court disagreed with this reasoning because Plaintiffs put forward a constitutional challenge which applied generally across the agencies.[159] To succeed, Plaintiffs had to choose proper constitutional and statutory challenges with judicial remedies. Had their complaint been specifically concerned with discrete agency actions, the Plaintiffs may have been barred by MAPA's requirements. Tailoring a complaint to avoid MAPA by bringing a constitutional challenge shows future plaintiffs how to seek meaningful remedies more efficiently.

Although declaratory relief appears to be the best route for justiciability reasons, injunctive relief provides arguments and context that inform the record. Additionally, injunctive relief which is specifically tailored to safely pass redressability and the political question doctrine

155. Pls.' Compl. 97:13–21, 101:12–21.
156. MONT. CODE ANN. § 90-4-1001(2)(a).
157. *Id.* § 75-1-201(2)(a).
158. Order 12:7–14.
159. Order 24:9–19.

may be granted by the courts. Because there is little jurisprudence about climate change actions each decision allows concerned parties to understand which legal theories may result in a successful action.

B. Enabling Anticipatory Action through the Constitution

Climate change is a phenomenon which must be addressed in a preventative manner to decrease the most painful outcomes. Constitutional protections and jurisprudence which recognize the importance of preventative action against climate change should allow climate actions to move forward more easily in Montana's courts. The history of Montana's Constitution supports lower barriers to environmental and climate change litigation. Specifically, when the current Montana Constitution was written in 1972, environmental rights were an emerging issue and Montana's inclusion of environmental provisions was a benchmark in contemporary constitutions. This was recognized in *MEIC*, when Justice Trieweiler reminded Montana of the purpose of our constitutional protections:

> Our constitution does not require that dead fish float on the surface of our state's rivers and streams before its farsighted environmental protections can be invoked. The delegates repeatedly emphasized that the rights provide for in subparagraph (1) or article IX, section 1 was linked to the legislature's obligation in subparagraph (3) to provide adequate remedies for degradation of the environmental life support system and to prevent unreasonable degradation of natural resources.[160]

This rebuke of the legislature's abdication of its duty to protect and promote a healthful environment is encouraging for future climate challenges. The Montana legislature has replaced far-sighted intentions with a myopic understanding of the environmental goals written just fifty years ago.

Defendants in this case posited that Plaintiffs' complaint considered "hypothetical future administrative decisions" which would illicit an inappropriate advisory opinion.[161] However, Plaintiffs asserted that they were focused on the constitutional challenge to the Exception, not a judicial review of procedural agency decisions.[162] The Court held that the complaint is mostly concerned with mutiple past administrative decisions which will continue to harm Plaintiffs if left in place.[163] Further, in *MEIC*, the Montana Supreme Court stated Montana's Constitution supports environmental "protections which are both anticipatory and

160. Mont. Envtl. Info. Ctr. v. Dept. of Envtl. Quality, 988 P.2d 1236, 1249 (Mont. 1999).

161. Defs.' Reply Br. in Supp. of Mot. to Dismiss 10.

162. Pls.' Resp. to Defs.' Mot. to Dismiss 18

163. Order 15:7–14, 24:14–19.

preventative."[164] This determination by the Montana Supreme Court is vital for climate related disputes; the ideal situation for mitigating climate change is to curb GHG emissions in anticipation of the worst environmental effects.

Montana's Constitution makes it clear that prevention of environmental degradation was intended by its drafters. The Montana courts recognition of the legal power of this preventative intent is a boon for climate change litigation.

C. Age Inclusive Constitution

The Montana Constitution was crafted to support young Montanans by providing them full rights regardless of their age.[165] These rights are ideal for climate change related complaints because young people have a greater stake in the future climate of Earth. Millennials and Gen Z are the most climate change aware generations and are more willing to reduce the use of, or give up, fossil fuels.[166] The prioritization of dealing with climate change and transitioning to renewable energy is valued higher in younger generations than old; this result is similar across both political parties.[167] All people live at the whim of their environments. Through the Montana Constitution young people are gifted with the rights to act when their environment is not conducive to their health and enjoyment.

Plaintiffs cannot participate in democracy by voting and some cannot even legally work.[168] With these constraints in place their participation in government action is limited and their access to full rights is even more important. However, even individual adults have little influence over where their energy is made and what projects the state invests in. Montana's GHG contributions are largely in the hands of a few government officials and agencies. Montana's Constitution endowing full rights to minors and its focus on environmental protection demonstrates the intentional design to empower youths in defending their claim on all things held in public trust.

D. Our Environment Held in Public Trust

Held is paramount in shaping the extent of Montana's role in protecting the land, air, and water held in public trust to ensure a healthful environment. A clear victory for these young Plaintiffs is presented by Defendants' choice to not rebut the injury element in their motion to dismiss. This choice shows that even resistant institutions can no longer deny the harmful effects of GHG emissions and downstream climate

164. *Mont. Envtl. Info. Ctr*, 988 P.2d at 1249.
165. MONT. CONST. art. II, § 15.
166. Alec Tyson, Brian Kennedy & Paul Ford, *Gen Z, Millennials Stand Out for Climate Change Activism, Social Media Engagement With Issue*, PEW RES. CTR. (May 26, 2021), https://perma.cc/NNR6-M5J9.
167. *Id*. at 3.
168. MONT. CODE ANN. §§ 13-1-111, 41-2-108.

change consequences. Helpfully, the *Juliana* court concluded that climate change was rapidly increasing.[169] This and every other court opinion which accept the existence of climate change results in judicial precedent more rooted in environmental reality. This reality in conjunction with an understanding that the Montana Constitution mandates avoidance of environmental degradation results in a powerful argument that state action must be taken to avoid climate change. Delegate C.B. McNeil highlighted the extent of environmental protections provided by the Montana Constitution:

> Subsection 3 mandates the legislature to provide adequate remedies to protect the environmental life-support system from degradation. The committee intentionally avoided definitions, to preclude being restrictive. And the term 'environmental life-support system' is all-encompassing, including but not limited to air, water, and land; and whatever interpretation is afforded this phrase by the legislature and courts, there is no question that it cannot be degraded.[170]

The clarity of this intent provides authority for the Montana Constitution to be used as a tool foundational for environmental rights. *Held* shows how future climate change litigation may rely on the strong foundation and interpretation of these environmental rights. The Montana Supreme Court recognizes that the Montana Constitution provides the authority to grant rights for the public, both living and future, to benefit from what the state holds in public trust.[171]

Fortunately, two fronts of cultural and economic realization have culminated to present Montana with the clear consequences of inaction. First, there is a deeper societal understanding that climate change is occurring and that collective action on a grand scale is required to mitigate it. Plaintiffs presented a wide array of data to illustrate Montana's role in GHG emissions.[172] These emissions cause increased temperature of Montana's waters and atmosphere, intensified wildfire fire seasons, and health concerns for developing children.[173] Montanans value the quality of, and access to, their public lands. As these trends increase Montanans will recognize the public land, air, and water resources are in danger from a changing climate and mismanagement.

Second, the precipitous drop in cost for renewable energy and a reevaluation of the true cost of carbon further presents a clear economic

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169. Order 5:3–7.
170. ELISON & SNYDER, *supra* note 38.
171. Mont. Coal. for Stream Access, Inc. v. Curran, 682 P.2d 163 (Mont. 1984).
172. Pls.' Compl. 47:3–51:17.
173. Pls.' Compl. 59, 67, 74, 80.

direction for Montana.[174] Government officials seek to balance the economic and environmental factors of Montana's energy landscape. It is widely understood that GHG emissions affect the climate—now society needs to decide how to place value on these effects. Montana PSC has inconsistently applied carbon-adders[175] to utility calculations showing that Montana is struggling to accept the additional cost of GHG emissions.[176] Concurrently, renewable energy has become a price competitive alternative to carbon resources. This evidences that the largest roadblock in protecting Montana's environment is an entrenchment of extractive interests in our government and political cowardice.

The court's acknowledgement that it has the power to recognize GHG emissions, their connection to climate change, and the injurious nature of a changing climate is a necessary step for mitigating the climate crisis. Although using the judicial branch for climate action is an inefficient route, the ability to bring suit for climate change injury shows a viable way for citizens to demand government action.

VII. CONCLUSION

Held provides a roadmap for future climate change litigation by elucidating Montana's jurisprudential approach to climate arguments. The constitutional challenge strategy allowed Plaintiffs to streamline judicial review through avoidance of exhausting administrative remedies. This is important because climate change is not an impending threat but an active one. The young Plaintiffs sought expansive remedies and the Court will now only hear the ones considered judicially reasonable. Although the remedies are reasonable for the judiciary, they relief sought is underwhelming when the enormity of climate change is taken into context. The success of *Held* is in building legal arguments, pushing the courts to recognize climate change, and utilizing the environmental rights of Montana's Constitution. This case highlights the importance of intergenerational equity and the abdication of government from recognizing that future citizens have a right to enjoy land, air, and water held in public trust.

The Montana Constitution declares "the dignity of the human being is inviolable."[177] There is nothing dignified about leaving the next generation to choke on dirty air, be sickened by polluted water, or tread scarred soil. Here, the Court's decision will provide 16 children and teenagers a platform at trial to hold the government accountable for their continued assault on an environment held in public trust. This case will

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174. Michael Taylor, Pablo Ralon & Sonia Al-Zoghoul, *Majority of New Renewables Undercut Cheapest Fossil Fuel on Cost*, INT'L RENEWABLE ENERGY AGENCY (June 22, 2021), https://perma.cc/AFC5-93MN.

175. Vote Solar v. Mont. Dept. of Pub. Serv. Reg., 473 P.3d 963, 972 (Mont. 2020) (A carbon-adder is an economic tool that attempts to incorporate the environmental and social cost of emitting GHG into electricity generation costs).

176. *Id.* at 969.

177. MONT. CONST. art. II, § 4.

help Montana understand that the value current generations place on the environment is great, but the value for posterity is incalculable.