

# ENVIRONMENTAL LAW

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## *Held v. Montana*: the Constitutional Climate Lawsuit Against the State

### 1. INTRODUCTION

In an earlier *Trial Trends* article,<sup>1</sup> I described the bold efforts by sixteen Montana youth, then ages two to eighteen (Youth Plaintiffs), in bringing a constitutional climate case against the State of Montana.<sup>2</sup> In a copiously detailed 104-page complaint for declaratory and injunctive relief filed in district court,<sup>3</sup> Youth Plaintiffs alleged that specific statutory provisions in Montana's State Energy Policy<sup>4</sup> and Montana's Environmental Policy Act<sup>5</sup> (MEPA) resulted in the State's<sup>6</sup> implementation of a statewide fossil-fuel based energy system that has contributed to dangerous levels of greenhouse gas (GHG) pollution, contributing to the climate crisis, and violating their fundamental constitutional rights to (1) a clean and healthful environment; (2) safety, health, and happiness; (3) individual dignity and equal protection; and (4) public trust resources.

The challenged provisions of Montana's State Energy Policy directed energy production and utilization which encouraged and resulted in a fossil-fuel based energy system comprised of a multiplicity of agency actions which promoted the increasing development and utilization of coal, oil, and gas, notwithstanding the worsening climate injuries to these young Montanans. The Youth Plaintiffs

challenged the constitutionality of the section of MEPA that Defendants consistently interpreted to exclude from MEPA analysis the impacts of GHG emissions on the climate.

### 2. PRETRIAL PRACTICE

In their effort to avoid trial, the State engaged in extensive motions practice; when that strategy failed the State relied on the conveniently in-session Montana Legislature for help.

In arguing for dismissal for lack of standing, the State relied heavily on the majority opinion of the sharply divided Ninth Circuit Panel in *Juliana v. United States*.<sup>7</sup> However, in denying the State's motion to dismiss, Judge Seeley recognized that relevant portions of the *Juliana* decision supported the Youth Plaintiffs' claims, including on the element of causation of harm:

Youth Plaintiffs need only show that a set of facts demonstrate that the unconstitutional State Energy Policy and MEPA Climate Change Exception were a substantial factor in causing Plaintiffs' injuries. See *Juliana*, 947 F.3d at 1169; See *City of Cut Bank*, para. 6. Based on the facts alleged, Youth Plaintiffs have demonstrated that a genuine factual dispute exists with respect to whether Defendants' actions, taken pursuant to the two

relevant statutory provisions, were a substantial factor in Plaintiffs' injuries.<sup>8</sup>

Moreover, Judge Seeley recognized that the redressability analysis in *Juliana* was contrary to Montana precedent:

However, importantly, Youth Plaintiffs must satisfy a different first prong to establish redressability than the *Juliana* plaintiffs. Youth Plaintiffs need not prove that the relief sought is "substantially likely to redress their injuries." *Id.* at 1170. Instead, Youth Plaintiffs' burden is to demonstrate that the redress sought will "alleviate, remedy, or prevent" harm caused by Defendants.<sup>9</sup>

Judge Seeley concluded the Youth Plaintiffs' claims seeking a judicial declaration that the challenged statutes are unconstitutional, and seeking an injunction against their enforcement, presented fully justiciable controversies whose factual disputes should be resolved by trial. However, on the grounds that they involved political questions, Judge Seeley dismissed the Youth Plaintiffs' claims for injunctive directives requiring the State to conduct an accounting of GHG emissions and to create remedial plan to address the harms caused by the State's contribution to climate change.<sup>10</sup>

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Contending that Judge Seeley's Order was confusing by virtue of dismissing the above-described forms of injunctive relief while refusing to dismiss the request seeking injunctive relief barring enforcement should the statutes be found unconstitutional, the State twice moved for "clarification."<sup>11</sup> Each attempt was rejected, with the Court serially assuring the State that the relief sought was fundamental to the doctrine of judicial review from *Marbury v. Madison*<sup>12</sup> forward, which judicial function did not implicate the political question doctrine:

While Justice Marshall thought it "a proposition too plain to be contested," the State is apparently unsure whether the judiciary has the power to declare statutes unconstitutional. This court assures the State that it can. Youth Plaintiffs' requests for relief 1-4 simply ask this court to determine whether the State Energy Policy, Mont. Code Ann. 90-4-1001[1](c)-(g), and the Climate Change Exception to the Montana Environmental Policy Act (MEPA), Mont. Code Ann. 75-1-201(2) (a), with their appurtenant acts and policies, violate the Montana Constitution—particularly the "clean and healthful environment" clause of Art. II, Sec. 3, and the "non-degradation" provision under Art. IX, Sec. 1. . . .<sup>13</sup>

The Court's Order on Second Rule 60(a) Motion for Clarification again confirmed that Plaintiffs' Request for Relief #5 does not violate the political question doctrine, observing:

In its first order on clarification, this court explained that request for relief #5 "would be a logical

extension and result" if the State Energy Policy and Climate Change Exception are declared unconstitutional. The State, unwilling to accept that reasoning, has asked for more. Again, the State points to *Juliana* as a *deus ex machina* that will rescue it from judicial review. It won't. . .

...Request for Relief #5 simply asks the court to enjoin the State from subjecting Youth Plaintiffs to allegedly unconstitutional statutes. Once again, it is well within the purview of the judiciary to: a) declare statutes unconstitutional, and b) prevent the State from enforcing unconstitutional statutes.<sup>14</sup>

Sandwiched between the State's motions for clarification, on June 10, 2022, the State filed its first Petition for Writ of Supervisory Control with the Montana Supreme Court (OP 22-0315), requesting the Montana Supreme Court exercise supervisory control and "dismiss Request for Relief #5 from this case." On June 14, 2022, the Montana Supreme Court swiftly issued an Order denying the State's Petition. (OP 22-0315).

Having run the gauntlet of the State's serial motions to dismiss, extensive discovery ensued in preparation for the trial scheduled to begin June 12, 2023. The parties conducted thirty-six depositions, and exchanged twenty-two expert reports, over 50,000 pages of documents, and responses to dozens of interrogatories.

Discovery closed on January 9, 2023. On February 1, 2023, the State filed a motion for summary judgment, pursuing once again assertions that the Youth Plaintiffs lacked standing and that their claims raised only political questions appropriately decided by the

political branches, not the judiciary. On February 14, 2023, Plaintiffs filed their response to the State's Motion for Summary Judgment, along with sixteen declarations from Plaintiffs, experts, and counsel.

Meanwhile, the Montana Legislature convened. On March 16, 2023, Governor Gianforte signed House Bill 170 into law, repealing the entirety of the Montana State Energy Policy Act, § 90-4-1001, MCA. On March 31, 2023, the State filed a Motion to Partially Dismiss for Mootness, which sought to dismiss Plaintiffs' claims premised on the Energy Policy Act, on the grounds that House Bill 170 mooted Plaintiffs' claims concerning the statute. On April 14, 2023, Plaintiffs filed their response together with nine declarations from experts.

Further complicating matters, in response to Judge Moses' April 6, 2023, Order on Summary Judgment in *MEIC, et al. v. DEQ, et al.*, Cause No. DV-56-2021-0001307, the Montana Legislature set out to "clarify" the MEPA provision at issue in this proceeding, § 75-1-201(2)(a), MCA. On May 10, 2023, Governor Gianforte signed House Bill 971 into law, which amended § 75-1-201(2) (a), MCA by explicitly prohibiting Montana's agencies from considering "an evaluation of greenhouse gas emissions and corresponding impacts to the climate in the state or beyond the state's borders" in their MEPA reviews. This enactment in turn formed the basis for the State's Motion to Stay Proceedings.

On May 12, 2023, the Court held Oral Argument on the State's pending motions, but this didn't bring an end to the State's motions based on the Legislature's fast and furious enactment of 11th hour laws.

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With trial fast approaching, on May 18, 2023, the State filed a Motion to Dismiss MEPA Claims based on the enactment of House Bill 971. On May 19, 2023, Governor Greg Gianforte signed into law Senate Bill 557, amending other provisions of the Montana Environmental Policy Act, § 75-1-201, MCA, limiting remedies available should there be a successful challenge to the sufficiency of a MEPA review conducted pursuant to the "climate blind" provisions of HB 971. Simply stated, the State was attempting to defeat the Youth Plaintiffs' constitutional climate case not in the courtroom, but in the backrooms of the Legislature.

On May 23, 2023, the Court issued an Order granting the State's Motion to Dismiss for Mootness, and dismissing without prejudice Plaintiffs' claims involving the State Energy Policy and the State's aggregate acts taken pursuant to the State Energy Policy on redressability and prudential standing grounds. However, the Court denied the State's Motion for Summary Judgment and allowed all of Plaintiffs' MEPA claims to proceed to trial.

On June 2, 2023, the State filed another Petition for Writ of Supervisory Control (OP 23-0311), requesting again that the Montana Supreme Court exercise supervisory control over the District Court, reverse the District Court's denial of the State's Motion for Summary Judgment, and stay the trial set to begin June 12, 2023.

On June 6, 2023, the Montana Supreme Court denied the State's Petition for Writ of Supervisory Control, observing the State had "not demonstrated that HB 971's amendments alter the allegations the Plaintiffs make in the Complaint" concerning the MEPA provision. (OP 23-0311 at 3).

### 3. THE TRIAL

At long last, the trial began on June 12, 2023, and lasted seven Court days, ending on June 20. From the opening statement forward, we framed the trial as about the equal rights of children and their need *now* for "extraordinary protection" from the extraordinary dangers of fossil fuel pollution and climate crisis to which their State government is exposing them. We repeatedly cited to the Montana Constitution as the source of the Youth Plaintiffs' claims, reminding the Court that our Constitution's solemn commitment to future generations is integral to the fundamental rights and responsibilities that follow, including the Constitution's mandate that, "The state and each person *shall maintain and improve* a clean and healthful environment...for present *and future generations*," and which extends to the protection of the public trust resources of Montana.

Each of Plaintiffs' witnesses added to the powerful narrative that compelled relief for the proven harms. Setting the stage, we heard first from the youngest delegate to the 1972 Constitutional Convention, Mae Nan Ellingson, who explained that at age 24 a compelling reason she decided to run as a delegate was to try to do something to protect Montana's environment, especially its air quality. As she explained, it was the intention of the delegates to adopt the strongest state constitutional environmental protections in the country to protect Montana's air, water, and lands for these youth and all future generations. Ms. Ellingson also testified about the successful efforts of the younger delegates to include the pioneering provisions of

Article II, Sec. 15, which explicitly extends all constitutional rights to Montana's youth under the age of 18, becoming the first state constitution in the country to do so.

Despite the work of Ms. Ellingson and the other delegates, the testimony of the Youth Plaintiffs and their expert witnesses showed that because of the now unstable climate system, caused by fossil-fuel-generated GHGs, Montana's environment is neither clean nor healthful. Dr. Steve Running, University of Montana professor emeritus and a co-recipient of the Nobel Prize in 2007 for his work with the Intergovernmental Panel on Climate Change, explained key points of climate science, including:

- GHGs trap heat received from the sun, and more GHGs in the atmosphere lead to more heat retained in Earth's atmosphere instead of being radiated back out into space, disrupting Earth's energy balance and causing energy imbalance.
- Carbon dioxide is the GHG that is most responsible for trapping excess heat in Earth's atmosphere creating the "energy imbalance" that drives warming temperatures and climate disruption.
- There is overwhelming scientific consensus that Earth is warming as a *direct result of human-caused GHG emissions, primarily from the burning of fossil fuels.*
- Because of the significant accumulation of CO2 that has occurred to date, every ton of CO2 that is added to the atmosphere matters, and makes the climate crisis that these Youth Plaintiffs are experiencing, worse.

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Dr. Cathy Whitlock, professor emeritus from Montana State University, and lead author of the 2017 Montana Climate Assessment and other important Montana reports warning of the crisis we are now facing, described in her testimony the multiple ways that climate change is degrading and depleting Montana's unique and precious environment and natural resources on which Plaintiffs depend for their well-being. Montana has already warmed between two and three degrees Fahrenheit between 1950 and 2015, significantly more than the global average. Montana's warming climate has serious economic impacts. Plaintiff Rikki Held's family has a 3,000-acre ranch that has been severely impacted by drought, resulting in economic losses for the ranch. The Powder River that flows through the Held ranch runs nearly dry some summers and in recent years has flooded in the spring, damaging pastureland. Higher temperatures in Montana are also leading to increased severity, frequency, and extent of wildfires—which we have all experienced. Several Youth Plaintiffs, including Taleah, Lander, and Badge testified they have had their homes directly threatened by wildfires and have been forced to prepare to evacuate.

Dr. Dan Fagre, who spent 30 years studying the glaciers of Glacier National Park, explained how "glaciers are climate on the landscape." His repeat-photography of shrinking glaciers compellingly documented that climate change is dramatically altering Glacier National Park, one of Montana's world-renowned landmarks: most of the approximately 150 glaciers found in the Park in 1850 are already gone.

Dr. Jack Stanford, preeminent freshwater ecologist, who spent

most of his professional career as director of the University of Montana's Flathead Lake Biological Station, explained the interconnectivity of the hydrologic cycle and Montana's freshwater ecosystems, and how the waters in Montana's rivers, lakes, aquifers, glaciers, snow, and plants are inextricably interconnected with atmospheric waters, and that climate change is already significantly affecting the water levels and temperatures of Montana's rivers and lakes. Boating and fishing on certain rivers and lakes in Montana has already been adversely affected because of low river flows and high water temperatures, which impact the Youth Plaintiffs' ability to fish and recreate on the State's rivers and lakes. The testimony of several Youth Plaintiffs, including Badge, Lander, and Kian, told how, as a result of our formerly cool streams running increasingly warm, the once vital fisheries important to them as both a prime source of not only recreation but of their identities and family traditions, are now severely imperiled.

The testimony of Dr. Lori Byron, a pediatrician from Hardin, established that children such as Plaintiffs are uniquely vulnerable to the consequences of climate change, which harms Plaintiffs' physical and psychological health and safety, and interferes with family and cultural foundations. This is because the physiological features of children make them disproportionately vulnerable to the impacts of climate change. Children's organs, including their lungs and brain, are still developing—which makes youth more vulnerable to climate-related stressors. Not surprisingly then, children comprise the majority of current sufferers of disease due to climate disruption,

which includes the exacerbation of asthma and allergies. Trial testimony established that Youth Plaintiffs Olivia, Mica, Ruby, Jeffrey and Nate each suffer from such climate-induced diseases.

Mr. Michael Durglo, Head of the Tribal Preservation Department of the Confederated Salish and Kootenai Tribes, and Chairman of the Tribes' Climate Change Advisory Committee, testified on how climate change is disrupting cultural practices and access to traditional food sources, which was amplified by the testimony of Youth Plaintiff Saniel, a member of the Confederated Salish and Kootenai Tribes, who described how climate change was interfering with her efforts to learn and practice indigenous cultural practices.

As its primary defense, the State asserted Montana is not responsible for levels of GHG emissions of any significance. At trial, Plaintiffs needed to establish that the State is responsible for dangerous levels of GHG emissions that cause and contribute to climate change and harm Plaintiffs. This proof was introduced through the testimony of several of Plaintiffs' expert witnesses. The testimony of Anne Hedges, an environmental and energy policy analyst at the Montana Environmental Information Center with 30 years of experience with Montana's system of fossil fuel permitting, established that, for decades, the State has been aware of the effects and dangers of climate change in Montana. Ms. Hedges testified that although there was a brief period when Montana's DEQ did at least begin to disclose estimates of GHG emissions from projects including proposed coal-fired power plants, such information aroused public opposition to proposed coal fired power plants and coal mines.

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Thus, in 2011 the fossil fuel industry struck back, turning to supporters in the Montana Legislature to pass laws that 1) prohibited the consideration of GHGs when reviewing permit applications pursuant to MEPA, and 2) prioritized fossil fuel projects under the Energy Policy Act. The testimony of Ms. Hedges described that following 2011 and continuing today, the State has approved numerous large fossil fuel related permits that are responsible for enormous quantities of GHG emissions—*without*, pursuant to the MEPA Limitation, considering or disclosing GHG emissions or climate change impacts that as the climate scientists described in their testimony are exacerbating the climate crisis and causing further harms to Montana’s environment and its citizens—especially its youth.

The testimony of Peter Erickson, a scientist specializing in GHG accounting, established it is possible to calculate the amount of GHG emissions resulting from fossil fuel extraction, transportation, and consumption activities in Montana that are authorized by the State. His testimony established that the total CO<sub>2</sub> emissions associated with Montana’s fossil fuel-based economy are on the order of 166 million tons of CO<sub>2</sub> being released annually into the atmosphere. This is equivalent to annual CO<sub>2</sub> emissions from countries like Argentina, the Netherlands, or Pakistan (with a population of 200 million people compared to 1.1 million in Montana).

Notably, the testimony also established that while the State continues its pattern and practice of approving permits and licenses for new fossil fuel activities, the State has *never denied* a permit or license for fossil fuel activities in Montana. Moreover, supporting the efficacy

of redressability, the testimony established that Montana’s land contains a significant quantity of fossil fuels yet to be extracted. In fact, Montana has the nation’s largest estimated recoverable coal reserves—which account for nearly one-third of recoverable coal reserves in the U.S.

It was against this compelling backdrop that the Court considered the constitutionality of both the 2011 and 2023 amendments to MEPA, which prohibited the Defendant agencies from considering climate change impacts when reviewing permit applications for fossil fuel related projects. As the testimony of Mark Jacobson, the world’s preeminent renewable energy transition expert, established, fossil fuel energy is the least efficient form of energy available to the State. Dr. Jacobson explained how Montana could transition entirely off fossil fuels and still meet its current and future energy needs. However, both the 2011 and 2023 versions of the challenged law prevented the full review and consideration of technologically and economically available alternatives to fossil fuel systems in Montana—which would otherwise help to redress and alleviate the Youth Plaintiffs’ injuries. In other words, the overwhelming evidence established there is no interest, compelling or otherwise, that justified the State’s deprivation of Plaintiffs’ fundamental right to a clean and healthful environment “for present and future generations,” including a stable climate system, nor was the MEPA Limitation narrowly tailored to effectuate any such interest.

With the Plaintiffs’ case in chief completed after 5 days of testimony, the State put on a truncated defense consisting of (1) three agency

witnesses, who conceded the challenged MEPA Limitation prohibited the State’s agencies from considering climate change impacts when reviewing permit applications for fossil fuel related projects, and (2) one expert, economist Dr. Terry Anderson, whose testimony Judge Seeley ruled was “not well-supported, contained errors, and was not given weight by the Court.”<sup>15</sup> Conversely, Judge Seeley found each of the Youth Plaintiffs’ experts were well-qualified and credible.<sup>16</sup>

## 4. THE DECISION

Judge Seeley issued her Findings of Fact, Conclusions of Law, and Order on August 14, 2023.<sup>17</sup> The 103-page Order determined the Youth Plaintiffs have standing to bring their claims; they had proven Montana’s GHG emissions to be traceable to the challenged MEPA provisions; and Montana’s GHG emissions and climate change have been proven to be a substantial factor in causing climate impacts to Montana’s environment and harm and injury to the Youth Plaintiffs.<sup>18</sup> Judge Seeley’s August 14 Order struck down the MEPA Limitations, codified at § 75-1-201(2)(a), MCA, and § 75-1-201(6)(a)(ii), MCA, as unconstitutional and permanently enjoined their enforcement.<sup>19</sup>

Importantly, those determinations are solidly predicated on the copiously detailed Findings of Fact<sup>20</sup> that describe the impacts and injuries caused to the Youth Plaintiffs, including:

92. Every ton of fossil fuel emissions contributes to global warming and impacts to the climate and thus increases the exposure of Youth Plaintiffs to harms now and additional harms in the future. [SR 168:17-169:7;

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CW 279: 14-20, 314:20-315:8, 318:2-5; PE-40].

\* \* \*

98. According to the Intergovernmental Panel on Climate Change (IPCC), "Climate changes is a threat to human well-being and planetary health (*very high confidence*). [SR-48]. There is a rapidly closing window of opportunity to secure a liveable and sustainable future for all (*very high confidence*).... The choices and actions implemented in this decade will have impacts now and for thousands of years (*high confidence*)." [SR 149:15-150:7; P143; SR-48, SR-63; LB-43].

\* \* \*

101. Dr. Byron provided expert testimony that climate change and the air pollution associated with it are negatively affecting children in Montana, including Youth Plaintiffs, with a strong likelihood that those impacts will worsen in the absence of aggressive actions to mitigate climate change. Dr. Byron outlined ways in which climate change is already creating conditions that are harming the health and well-being of the Youth Plaintiffs. Dr. Byron testified that reducing fossil fuel production and use, and mitigating climate change now, will benefit the health of the Youth Plaintiffs now and for the rest of their lives. Dr. Byron is a well-qualified expert, and the Court found her testimony informative and credible.

\* \* \*

108. The physical and psychological harms are both acute and chronic and accrue from impacts to the climate such as heat waves, droughts, wildfires, air pollution, extreme weather events, the loss of wildlife, watching glaciers melt,

and the loss of familial and cultural practices and traditions. [LB 498:12-25, 524:11-22; LVS 1178:13-1179:6, 1196:6-11, 1200:7-1201:25, 1202:6-24, 1204:21-1205:19, 1206:19-1209:12, 1218:2-16, 1219:25-1220:11, 1221:19-21; MDJ 595:18-596:2, 597:6-18, 600:23-604:14, 606:11-607:2, 608:1-13, 609:23-610:10].

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138. The unrefuted testimony at trial established that climate change is a critical threat to public health. [LB 536: 10-537:14].

\* \* \*

139. Actions taken by the State to prevent further contributions to climate change will have significant health benefits to Plaintiffs. [LB 534:25-535:9].

\* \* \*

194. The unrefuted testimony established that Plaintiffs have been and will continue to be harmed by the State's disregard of GHG pollution and climate change pursuant to the MEPA Limitation.

The import of the trial and resulting decision has not been lost on court observers.<sup>21</sup> Retired Montana Supreme Court Justice Jim Nelson described the trial and resulting decision as follows:

[A]t trial, the Plaintiffs' attorneys spent the better part of a week putting on a meticulously detailed, evidence and law-based case unequivocally proving that the 16 young Plaintiffs' Montana Constitutional rights to a clean and healthful environment (Article II, section 3), and to the State's, the Governor's and the Legislature's mandatory duty to "maintain and improve" that clean and healthful

environment by adopting laws to implement those rights (Article IX, section 1), were violated.

The State, represented by the Attorney General's office, spent the better part of half a day presenting the testimony of a couple of high-priced (as in taxpayer funded) "experts" who were eviscerated on cross-examination and who were found to be not credible by Judge Seeley.

For her part, Judge Seeley entered a 103 page meticulously and professionally crafted decision grounded in the trial evidence, in Montana's statutory and Constitutional law, in the two fundamental rights mentioned above, and in the State's and legislature's abject failure to discharge their mandatory duties to "maintain and improve a clean and healthful environment for this and future generations"—all to the detriment of the 16 youth Plaintiffs.

Indeed, in my nearly 20 years of serving as a Justice on the Montana Supreme Court, I cannot recall reading a better District Court decision. It is unassailable.<sup>22</sup>

## 5. NEXT STEPS

An appeal is certain. Although Judge Seeley's August 14 Order provides for the Youth Plaintiffs' submission of a motion for fees and costs, and the trial court's reservation of jurisdiction to issue its final judgment to include the issue of attorneys' fees and costs,<sup>23</sup> both parties support certification for the expeditious appeal on the merits, which motion is pending before Judge Seeley. ■

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<sup>1</sup> See Trial Trends, Summer 2020.

<sup>2</sup> *Held et al., v. State of Montana et al.*, filed in Montana's First Judicial District Court (No. CDV-2020-307), Judge Kathy Seeley presiding. Trial counsel for plaintiffs included Roger Sullivan of McGarvey Law, Barbara Chilcott and Melissa Hornbein of Western Environmental Law Center, Nate Bellinger and Phillip Gregory of Our Children's Trust, as well as substantial support from other OCT attorneys including Julia Olson, Mat dos Santos, and Andrea Rogers.

<sup>3</sup> The complaint is available at: [ourchildrenstrust.org/montana](https://ourchildrenstrust.org/montana)

<sup>4</sup> See Mont. Code Ann., § 90-4-1001(c)-(g) (2011) ("State Energy Policy").

<sup>5</sup> See Mont. Code Ann. § 75-1-201(2)(a) (2011) ("Climate Change Exception"), which states: "Except as provided in subsection (2)(b), an environmental review conducted pursuant to subsection (1) may not include a review of actual or potential impacts beyond Montana's borders. It may not include actual or potential impacts that are regional, national, or global in nature."

<sup>6</sup> The State Defendants include the State of Montana, Governor Bullock (later Gianforte), Montana Department of Environmental Quality (DEQ), Montana Department of Natural Resources and Conservation (DNRC), Montana Department of Transportation (MDT), and the Montana Public Service Commission (PSC). Complaint, ¶¶ 82-105.

<sup>7</sup> 947 F.3d 1159 (9th Cir. 2020).

<sup>8</sup> Order on Motion to Dismiss (filed August 4, 2021) at p. 9.

<sup>9</sup> *Id.* at p. 17.

<sup>10</sup> *Id.* at 21.

<sup>11</sup> See Order on Rule 60(a) Motion for Clarification (dated June 30, 2022); see also Order on Second Rule 60(a) Motion for Clarification (dated September 22, 2022).

<sup>12</sup> 5 U.S. (1 Cranch) 137, 177 (1803); cited in Order on Second Rule 60(a) Motion for Clarification at p. 2.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.* at 6-7.

<sup>15</sup> Findings of Fact, Conclusions of Law, and Order (filed August 14, 2023), at p. 66.

<sup>16</sup> *Id.*, at p. 18 (Running); p. 19 (Whitlock); p. 27 (Byron); p. 28 (Van Susteren and Durglo); p. 37 (Fagre); p. 39 (Stanford); p. 65 (Hedges); p. 66 (Erickson); p.81 (Jacobson).

<sup>17</sup> Available at: <https://mtclimatecase.flatheadbeacon.com/wp-content/uploads/2023/08/Findings-of-Fact-Conclusions-of-Law-and-Order.pdf>

<sup>18</sup> *Id.* at p. 101.

<sup>19</sup> *Id.* at pp. 99-102. The August 14 Order struck down both the 2023 version of the MEPA Limitation in MCA § 75-1-201(2)(a), enacted into law by HB 971, and SB 557's corresponding limitations on challenges to insufficient MEPA reviews, codified at MCA § 75-1-201(6)(a)(ii).

<sup>20</sup> Included in Judge Seeley's Findings are citations to the trial transcript page, preceded by the initials of the witness testifying; i.e., [SR 168:17-169:7] refers to Steve Running testifying at transcript page 168, line 17 through page 169, line 7.

<sup>21</sup> See, e.g., This Changes Everything: Experts Respond to Landmark Youth Climate Ruling," by Micah Drew and Amanda Eggert, August 17, 2023, *Flathead Beacon and Montana Free Press*, available at: <https://montanafreepress.org/2023/08/17/this-changes-everything-experts-respond-to-landmark-youth-climate-ruling/>

<sup>22</sup> James Nelson, "Pound the Judge," August 19, 2023, *Missoulian*, available at [https://missoulian.com/opinion/column/james-nelson-pound-the-judge/article\\_2dcf221c-3bb2-11ee-9599-03ef6de18e9c.html](https://missoulian.com/opinion/column/james-nelson-pound-the-judge/article_2dcf221c-3bb2-11ee-9599-03ef6de18e9c.html)

<sup>23</sup> Findings of Fact, Conclusions of Law, and Order, at p. 103.



## WELCOME NEW & RETURNING MEMBERS!

Caelan Brady  
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Nate Holloway

Joshua D. Hudson  
Nathan Hulling  
Zachary Krumm

Brian Lauten  
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