

Shiloh S. Hernandez
Western Environmental Law Center
103 Reeder's Alley
Helena, MT 59601
(406) 204-4861
hernandez@westernlaw.org

Roger Sullivan
Dustin Leftridge
McGarvey Law
345 1st Avenue East
Kalispell, MT 59901
(406) 752-5566
rsullivan@mcgarveylaw.com
dlefridge@mcgarveylaw.com

Nathan Bellinger (*pro hac vice*)
Our Children's Trust
1216 Lincoln Street
Eugene, OR 97401
(413) 687-1668
nate@ourchildrenstrust.org

Attorneys for Plaintiffs

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FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

RIKKI HELD, et al., Plaintiffs, v. STATE OF MONTANA, et al., Defendants.	No. CDV-2020-307 Hon. Kathy Seeley PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY
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Youth Plaintiffs submit the Montana Supreme Court's recent decision *Park County Environmental Council v. Montana Department of Environmental Quality*, 2020 MT 303, ___

Mont. ___, ___ P.3d ___, as binding supplemental authority in opposition to Defendants' Motion to Dismiss, presently pending before the Court.

Similar to the present case, *Park County Environmental Council* addressed whether a provision of the Montana Environmental Policy Act (MEPA) violated the right to a clean and healthful environment, secured by Article II, Section 3 and Article IX, Section 1 of the Montana Constitution. *Id.*, ¶ 52. The decision is highly relevant to issues pending before this Court, including the justiciability of cases that challenge the constitutionality of statutes for allegedly interfering with the inalienable right to a clean and healthful environment (Pls. Br. at 4; Defs. Br. at 6-7); the importance of equitable relief in protecting the right to a clean and healthful environment (Pls. Br. at 10-11); and the meaning of Article II, Section 3 and Article IX, Section 1 (Pls. Br. at 8, 14; Compl. at ¶¶ 212-218, 240-251). According to the Supreme Court:

Article IX, Section 1, of the Montana Constitution describes the environmental rights of "future generations," while requiring "protection" of the environmental life support system "from degradation" and "prevent[ion of] unreasonable depletion and degradation" of the state's natural resources. This forward-looking and preventative language clearly indicates that Montanans have a right not only to reactive measures after a constitutionally-proscribed environmental harm has occurred, but to be free of its occurrence in the first place.

Montanans' right to a clean and healthful environment is complemented by an affirmative duty upon their government to take active steps to realize this right.

[E]quitable relief must play a role in the constitutional directive to ensure remedies that are adequate to prevent the potential degradation that could infringe upon the environmental rights of present and future generations.

Park Cnty. Envtl. Council, ¶¶ 62-64.

Additionally, *Park County Environmental Council* is relevant to the issue of "constitutional avoidance," and whether this Court should review the constitutionality of the two specific statutes challenged by Youth Plaintiffs, regardless of the fact that other statutes could apply to energy decisions. *See* Pls. Br. at 6-7; *contra* Defs. Br. at 8-9, 11. According to the Supreme Court:

[T]he doctrine of constitutional avoidance does not allow us to . . . avoid the constitutional question by holding that [plaintiffs] should have sought relief under another environmental statute We will not avoid our responsibility to resolve the dispute actually before us by hypothesizing about whether other disputes might arise at a future time.

Id., ¶ 56.

Finally, the decision affirms that MEPA plays an essential role in the legislature’s constitutional mandate to protect Montanans’ right to a clean and healthful environment and, even though it is procedural, MEPA is far from “unimportant.” *Id.*, ¶¶ 67-71, 74; Pls. Br. at 8-9; *contra* Def. Br. at 10. The decision affirms the need for “fully informed and considered decision making, thereby minimizing the risk of irreversible mistakes depriving Montanans of a clean and healthful environment.” *Park Cnty. Envtl. Council*, ¶¶ 70, 74; Pls. Br. at 9. *Park County Environmental Council* reaffirms and emphasizes that “blanket exemption” of certain environmental harms—like the Climate Change Exception at issue here—from environmental review impinges Montanans’ right to a clean and healthful environment. *Id.*, ¶¶ 61, 87, 88; Pls. Br. at 8-9.

Youth Plaintiffs also submit to the Court the recently released *Climate Change and Human Health in Montana: A Special Report of the Montana Climate Assessment (2021)* report,¹ which is relevant to Youth Plaintiffs’ allegations that their physical and mental health is adversely impacted by climate change and the combustion of fossil fuels. Compl. at ¶¶ 18-26, 28-32, 36, 40, 42, 44-45, 47-49, 51, 53-54, 59-63, 67-68, 72-74, 77, 79; *see also* Pls. Br. at 4. The purpose of the Report was to present “science-based, Montana-specific information about the impacts of climate change on the health of Montanans.” *Climate Change and Human Health in Montana* at 1.

According to the Report:

Three aspects of projected climate change are of greatest concern for human health in Montana: 1) increased summer temperatures and periods of extreme heat, with

¹ Available at: http://www.emountainworks.com/docs/2021_C2H2inMT_final.pdf.

many days over 90°F (32°C); 2) reduced air quality from smoke, as wildfires will increase in size and frequency in the coming decades; and 3) more unexpected climate-related weather events (i.e., *climate surprises*), including rapid spring snowmelt and flooding, severe summer drought, and more extreme storms. [*high agreement, robust evidence*]

The most vulnerable individuals to the combined effects of heat, smoke, and climate surprises will be those with existing chronic physical and mental health conditions, as well as individuals who are very young, very old, or pregnant. Montana's at-risk populations include those exposed to prolonged heat and smoke, living in poverty, having limited access to health services, and/or lacking adequate health insurance. [*high agreement, robust evidence*]

Projected increased summer temperatures and wildfire occurrence will worsen heat- and smoke-related health problems such as respiratory and cardiopulmonary illness, and these potential problems are of most immediate concern. [*high agreement, robust evidence*]

Longer growing seasons, warmer temperatures and elevated carbon dioxide (CO₂) levels are leading to increased pollen levels, worsening allergies and asthma. [*high agreement, moderate evidence*]

Climate changes, acting alone or in combination, are reducing the availability of wild game, fish, and many subsistence, ceremonial, and medicinal plants, which threatens food security, community health, and cultural well-being, particularly for tribal communities. [*high agreement, moderate evidence*]

Increased stress and increased mental illness are under recognized but serious health consequences of climate change. [*high agreement, robust evidence*]

Studies have shown that early-childhood health status also influences health and socioeconomic well-being later in life.

Id. at XIX, 87. Youth Plaintiffs are already experiencing the above health impacts, among others. The Report also affirms that Youth Plaintiffs are among those most vulnerable to the impacts of climate change, which includes children, those with pre-existing medical conditions, tribal communities, and those exposed to prolonged heat and smoke. *Id.* at XIX, 71; *see also* Compl. at ¶¶ 2, 62, 73, 174, 177-184; Pls. Br. at 2.

Respectfully submitted this 28th day of December, 2020.

/s/ Shiloh Hernandez

Shiloh Hernandez
Western Environmental Law Center
103 Reeder's Alley
Helena, MT 59601
(406) 204-4861
hernandez@westernlaw.org

Roger Sullivan
Dustin Leftridge
McGarvey Law
345 1st Avenue East
Kalispell, MT 59901
(406) 752-5566
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Nathan Bellinger (*pro hac vice*)
Our Children's Trust
1216 Lincoln Street
Eugene, OR 97401
(413) 687-1668
nate@ourchildrenstrust.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered by electronic mail to
the following on December 28, 2020:

JEREMIAH LANGSTON
AISLINN W. BROWN
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Phone: (406) 444-2026
Fax: (406) 444-3549
jeremiah.langston@mt.gov
aislinn.brown@mt.gov

/s/ Shiloh Hernandez
Shiloh Hernandez