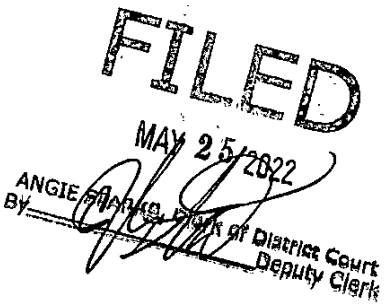
AUSTIN KNUDSEN
Montana Attorney General
DAVID M.S. DEWHIRST
Solicitor General
TIMOTHY LONGFIELD
Assistant Attorney General
P.O. Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
david.dewhirst@mt.gov
timothy.longfield@mt.gov

EMILY JONES
Special Assistant Attorney General
Jones Law Firm, PLLC
115 N. Broadway, Suite 410
Billings, MT 59101
Phone: 406-384-7990
emily@joneslawmt.com

Attorneys for Defendants



MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

RIKKI HELD, ET AL., PLAINTIFFS, V. STATE OF MONTANA, ET AL., DEFENDANTS.	Cause CDV-2020-307 Hon. Kathy Seeley **REPLY IN SUPPORT OF DEFENDANTS' RULE 60(a) MOTION FOR CLARIFICATION**

INTRODUCTION

This Court's Order on the State's Motion to Dismiss dismissed "Youth Plaintiffs' claims for injunctive relief" but allowed "Plaintiffs' claims for declaratory relief to move forward." (Doc. 46 at 22.) The State pointed out that the Order's last page, which lists the dismissed claims, appears to have omitted one of Plaintiffs' injunctive relief claims: Request for Relief # 5.

Sensing that they may have stumbled onto a windfall, Plaintiffs now try to hold onto it for dear life. They argue that the Court *actually* meant to keep Request for Relief # 5 in this case. But this argument contradicts the plain language and the logic of the Court's order.

In the alternative, Plaintiffs argue that *even if* this Court inadvertently omitted Request for Relief # 5 from the list of claims it dismissed, the Court should let the mistake lie because clarifying the Order would "prejudice" the Plaintiffs. But this argument gets it exactly backwards: it would be unfair to let a clerical oversight in the Order continue to muddle this already complicated case. Pursuant to Rule 60(a), this Court should correct its order to clarify that it dismissed all injunctive relief claims from this case.

I. Plaintiffs ignore the plain language of the Court's Order.

At the outset, Plaintiffs insist that the Court's order "unambiguously" left of one their injunctive relief claims—Request # 5—in this case. *See* (Doc. 96 at 3.) But it's not clear what order the Plaintiffs are reading. The Court expressly dismissed Plaintiff's claims for injunctive relief and allowed only declaratory relief claims to move forward. *See* (Doc. 46, at 22) ("[D]espite dismissing Youth Plaintiffs' claims for injunctive relief, the court will allow Plaintiffs' claims for declaratory relief to move forward."). This Court reasoned that Plaintiffs' broad injunctive relief claims presented nonjusticiable political questions, but that declaratory relief is different. *See* (Doc. 46, 21) ("Youth Plaintiffs also offer a second argument: the court may grant declaratory relief without imposing an injunctive remedy .... The court agrees that it

may grant declaratory relief *regardless of injunctive relief*.") (emphasis added). Plaintiffs' response to the State's Rule 60(a) Motion conspicuously avoids this language from the Court's order. *See* Pls.' Resp. Opp. To Defs.' Rule 60(a) Mot. (Doc. 96 at 2–7.) The plain language of the Court's order "dismissing Youth Plaintiffs' claims for injunctive relief" (Doc. 46 at 22) shows that the Court intended to dismiss *all* requests for injunctive relief.

II. The logic of the Court's Order shows that the Court meant to dismiss Request for Relief # 5.

The Order's logic also shows that the Court clearly intended to dismiss all of Plaintiffs' injunctive relief claims. Relying on *Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020), this Court observed that Plaintiffs' unbounded requests for *injunctive* relief presented nonjusticiable political questions better left to the political branches of Montana's government. (Doc. 46 at 20–22.) The Court explained that granting Plaintiffs' requests for injunctive relief "would require the court to exceed its authority by overseeing analysis and decision-making that should be left to 'the wisdom and discretion of the legislative or executive branches.'" (Doc. 46 at 21) (quoting *Juliana*, 947 F.3d at 1171).

Plaintiffs' Request for relief # 5 asked the Court to:

> Permanently enjoin Defendants, their agents, employees and all persons acting in concert with them, from subjecting Youth Plaintiffs to the State's Energy Policy, Mont. Code. Ann. § 90-4-1001(c)–(g), the aggregate affirmative acts, policies and conditions described herein, and the Climate Change Exception to MEPA, Mont. Code Ann. § 75-1-201(2)(a).

(Doc. 1, Prayer for Relief, ¶ 5).

Plaintiffs' request for Relief # 5 is indistinguishable—in its scope and audacity—from Plaintiffs' other requests for injunctive relief. Like Plaintiffs' outlandish requests for a court-ordered remedial plan (Request # 7), "GHG accounting" (Request # 6), and a court-appointed special master to oversee both (Request # 8), Request for Relief # 5 asked this Court to appoint itself as the de facto "climate czar" of Montana's statewide environmental policy. It requested that the Court permanently enjoin the entire State government from performing what Plaintiffs call the State's "aggregate acts"—translation: everything the State government does that touches Montana's environment in any way.

This Court, of course, lacks power to do so. The power of Montana's government "is divided into three distinct branches—legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted." MONT. CONST. art. III, § 1. "The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch. The Judiciary is particularly ill suited to make such decisions, as courts are fundamentally underequipped to formulate [statewide] policies of develop standards for matters not legal in nature." *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 (1986) (cleaned up).

This Court's order recognized that the Plaintiffs' staggering requests for judicial overhaul of Montana's environmental policy were nonjusticiable political questions exceeding the Court's power to grant. *See* (Doc. 46 at 20—22.) The same logic mandates dismissal of *all* Plaintiffs' injunctive relief claims. Unsurprisingly, that's exactly what the Order said it was doing: "dismissing Youth Plaintiffs' claims for injunctive relief" but "allow[ing] Plaintiffs' claims for *declaratory* relief to move forward." (Doc. 46 at 22.) In other words, the basis for the Court's holding was the Court's conclusion that Plaintiffs' injunctive relief claims presented nonjusticiable political questions, but that their declaratory relief claims did not (*Id.* at 22.) ("The Court agrees [with Plaintiffs] that it may grant declaratory relief regardless of injunctive relief...Therefore, despite dismissing Youth Plaintiffs' claims for injunctive relief, the court will allow Plaintiffs' claims for declaratory relief to move forward.")

And contrary to Plaintiffs' attempts to recast the Court's reasoning, this Court did not distinguish between "affirmative" injunctive relief and "preventative" injunctive relief. (*Id.*) The logic of the Court's order and its express language overwhelmingly suggest that the Court intended to dismiss Request for Relief # 5—which is unquestionably a request for injunctive relief. Likewise, the omission of Request for Relief # 5 from the final list of dismissed claims on page 25 must be read as *inadvertent* given the express language and logic of the Order. There's no other way to make sense of this omission, or of the Court's unqualified statement that it

was dismissing "Plaintiffs' claims for injunctive relief." (Doc. 46 at 22.)[1] As Plaintiffs concede, a "Rule 60(a) correction is appropriate to cure errors, mistakes, or omissions 'which misrepresent the court's original intention[.]'" *See* Pls.' Response (Doc. 96 at 7) (quoting *In re Marriage of Schoenthal*, 2005 MT 24, ¶ 18, 326 Mont. 15, 106 P.3d 1162). Under Rule 60(a), this Court can—and should—correct the patent inconsistency in its Order.

III. Plaintiffs' other counterarguments lack merit.

Plaintiffs raise a few other feeble arguments to try to keep their free chance at injunctive relief. These arguments fail.

Plaintiffs first claim this Court must leave its Order alone because it issued that Order nine months ago. But Rule 60(a) contains no time limit: "The court may correct a clerical mistake or a mistake arising from oversight or omission *whenever one is found* in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice." Mont. R. Civ. P. 60(a) (emphasis added). Plaintiffs also contend that the Court must allow them to proceed under their mistaken interpretation of the Court's Order because to clarify that the Order dismissed Request for Relief # 5 would "prejudice" them. *See* (Doc. 96.) This

[1] *If* the Court did not dismiss Request for Relief # 5, its order contains no analysis, reasoning, or explanation of that holding. The parties are left guessing as to why Request for Relief # 5, which asks for judicial overhaul of the entire State Energy policy, is any different from the other four requests for injunctive relief. Either way, the current Order must be clarified for the parties to be able to move forward. *See Ballantyne v. Anaconda Co.*, 175 Mont. 406, 409—10 ("The function of an opinion is to state the reason which led the court to decide the case the way it did....Opinions may be of service to the litigants and counsel in determining what their future course should be." (cleaned up).

argument gets it entirely backwards: if the Court allows the parties to continue to litigate a claim that—according to the Court's own reasoning—presents a nonjusticiable political question and that the Court's order apparently dismissed, the State will be unfairly prejudiced. The State cannot be faulted with the Plaintiffs' choice to rely on the ambiguity in the Court's order. Finally, Plaintiffs argue that if the Court were to rectify the inconsistency in its Order, it would "alter the[ir] substantive rights" nine months into the litigation. *See* (Doc. 96 at 7—8) (quoting *Marriage of Schoenthal*, ¶ 19). Wrong again. The State does not ask the Court to dismiss claims that the Court already declined to dismiss. It just asks this Court to give effect to the Order's clear holding "dismissing Youth Plaintiffs' claims for injunctive relief." (Doc. 46, 22.)

CONCLUSION

The State requests that this Court correct its Order to make clear that *all* of Plaintiffs' injunctive relief claims have been dismissed from this case. The State respectfully requests an expedited ruling on this Motion given the short time within which the State may complete discovery under the current scheduling order.

DATED this 24th day of May, 2022.

AUSTIN KNUDSEN
Montana Attorney General

DAVID M.S. DEWHIRST
Solicitor General

TIMOTHY LONGFIELD
Assistant Attorney General
P.O. Box 201401
Helena, MT 59620-1401
timothy.longfield@mt.gov

EMILY JONES
Special Assistant Attorney General
Jones Law Firm, PLLC
115 N. Broadway, Suite 410
Billings, MT 59101
emily@joneslawmt.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify a true and correct copy of the foregoing was delivered by email to the following:

Roger M. Sullivan
Dustin A. Leftridge
rsullivan@mcgarveylaw.com
dleftridge@mcgarveylaw.com

Melissa A. Hornbein
Barbara Chillcott
hornbein@westernlaw.org
chillcott@westernlaw.org

Nathan Bellinger
nate@ourchildrenstrust.org

Date: May 24, 2022

Dia C. Lang