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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 **BRIEF IN SUPPORT OF DEFENDANTS' SECOND RULE 60(a) MOTION FOR CLARIFICATION OF ORDER ON STATE'S MOTION TO DISMISS**

INTRODUCTION

"When ruling on a motion under Rule 12," a court must "specify the grounds therefor with sufficient particularity as to apprise the parties and any appellate court of the rationale underlying the ruling." Mont. R. Civ. P. 52(a)(3). This rule recognizes

that written reasoning matters. It hedges "against judicial carelessness," forces the judge to "discipline his thinking," and lets the parties track "the reasoning followed by the trial judge in reaching a decision." *Ballantyne v. Anaconda Co.* 175 Mont. 406, 409–10, 574 P.2d 582, 584 (1978) (quotations omitted). This is especially true in cases like this one involving novel legal issues of statewide importance.[1] Yet this Court has neglected to explain in writing its reasons for concluding that some of Plaintiffs' far-reaching claims are justiciable. Rule 52 requires this Court to put those reasons down on paper.[2] And Mont. R. Civ. P. 60(a) allows this court to correct a "mistake arising from oversight or omission *whenever one is found* in a judgment, order, or other part of the record." (emphasis added).

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[1] Some believe this case has national—and even international—implications. *See* Nick Ehli, "Kids want to put Montana on trial for unhealthy climate policies," MONTANA FREE PRESS, July 14, 2022, *available at* https://montanafreepress.org/2022/07/14/kids-want-to-put-montana-on-trial-for-unhealthy-climate-policies/ (last visited Jul. 18, 2022 at 12:27 P.M.) ("A win in Montana could very well have implications throughout the country and potentially even the world.") (quoting Plaintiffs' counsel).

[2] The Montana supreme court has frequently reversed and remanded district court rulings under Mont. R. Civ. P. 52(a)(3). *See Andersen v. Schenk*, 2009 MT 399, ¶¶ 28–29, 353 Mont. 424, 220 P.3d 675 (concluding that the district court's order didn't clearly explain the rationale for its ruling and remanding for more fulsome analysis); *Virginia City v. Olsen*, 2002 MT 176, ¶ 20, 310 Mont. 527, 52 P.3d 383 (same); *Ravalli Cnty. Bank v. Gasvoda*, 253 Mont. 399, 402, 833 P.2d 1042, 1044 (1992) (same); *Johnston v. Am. Reliable Ins. Co.*, 248 Mont. 227, 810 P.2d 1189 (1991) (same); *Kurth v. Great Falls Tribune Co.*, 246 Mont. 407, 413, 804 P.2d 393, 396 (1991) (same); *Cole v. Flathead Cnty.*, 236 Mont. 412, 419, 771 P.2d 97, 102 (1989) (same); *cf. Irving v. School Dist. No. 1-1A*, 248 Mont. 460, 471, 813 P.2d 417, 423 (1991) (Treweiler, J., dissenting) ("It is particularly troubling that on the basis of this inadequate record this Court would enter such an expansive decision").

This Court recently clarified that a key holding in its order on the State's Rule 12 Motion to Dismiss was a clerical error. When that Order purported to dismiss all of Plaintiffs' requests for injunctive relief, it evidently did so by accident. *See* (Doc. 154 at 3.) ("The language contained in the Order on Motion to Dismiss indicating dismissal of all injunctive relief [claims] was a clerical error.") While this partially explains why the Court didn't dismiss one injunctive relief claim—Request for Relief # 5—it also removes the only justification the Court offered for not dismissing *all* of Plaintiffs' claims as nonjusticiable political questions. The Court previously suggested that all of Plaintiffs' injunctive relief claims presented nonjusticiable political questions, while all of Plaintiffs' declaratory relief claims were justiciable. *See* (Doc. 46 at 21–22) ("The court agrees 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."). That bright-line distinction was the only time the Court's Order tried to explain why—in the Court's view—some of Plaintiffs' claims are justiciable. But that distinction has vanished after the court's recent order on the State's Motion for Clarification. (Doc. 154 at 3.) And no new reasoning has replaced it.

Why isn't Request for Relief # 5 a nonjusticiable political question? The Order doesn't say. Why didn't the Court dismiss Plaintiffs' declaratory relief claims as a nonjusticiable political question? The Order doesn't say. The Order now contains no written analysis on this critical issue. It never explains why Plaintiffs' Requests for Relief 1, 2, 3, 4, and 5 don't violate the political question doctrine.

The Montana Rules of Civil Procedure don't allow judges to force parties to litigate in the dark. Mont. R. Civ. P. 52(a)(3). This Court must amend its order to explain "with sufficient particularity as to apprise the parties and any appellate court of the rationale underlying [its] ruling[s]" that (1) a request for an injunction of statewide energy policy doesn't present a political question constitutionally committed to the Legislature; and (2) Plaintiffs' far-reaching declaratory relief claims are also justiciable. Mont. R. Civ. P. 52(a)(3); *see also* Mont. R. Civ. P. 60(a).

Plaintiffs' claims raise important and novel questions about the judiciary's role in interpreting and enforcing the constitution's clean and healthful environment provisions. *See Park Cnty. Envtl. Council v. Mont. Dep't of Envtl. Quality*, 2020 MT 303, ¶ 78, 402 Mont. 168, 477 P.3d 288 (noting the "difficult exercise of determining what attributes constitute a 'clean' or 'healthful' environment, or an 'unreasonable' amount of degradation, or what the judiciary's role should be in answering these questions.") Those questions demand thorough analysis.

I. The court must explain why Request for Relief #5 doesn't violate the political question doctrine.

In its original Order on the State's Motion to Dismiss, the Court concluded that some of Plaintiffs' requests for relief violated the political question doctrine. (Doc. 46 at 21–22.) The Court allowed other claims to proceed beyond the motion to dismiss stage. (*Id.*) At first, it seemed that the Court based its ruling on a distinction between declaratory relief and injunctive relief:

> However, 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 .... Therefore, *despite dismissing Youth Plaintiffs' claims for injunctive relief,* the court will allow Plaintiffs' claims for declaratory relief to move forward.

(Doc. 46 at 21–22) (emphasis added).

This passage—the Order's singular look at whether requests for relief 1, 2, 3, 4, and 5 violate the political question doctrine—suggests that the Court drew a bright line between Plaintiffs' declaratory relief and injunctive relief claims, deeming all of Plaintiffs' injunctive relief claims nonjusticiable and all of Plaintiffs' declaratory relief claims justiciable.

Whatever its merits, that rationale is now gone. In its recent order on the State's Rule 60(a) Motion (Doc. 154), the Court explained that Request for Relief #5 remains in this case. Even though Request for Relief #5 asks for injunctive relief, the Court stated that "[t]he language contained in the Order on Motion to Dismiss indicating dismissal of all injunctive relief was a clerical error .... This Order clarifies that requests for injunctive relief contained in the complaint were dismissed, except for Request for Relief 5." (Doc. 154 at 3.) Request for Relief # 5 asks the Court to "[p]ermanently enjoin Defendants ... 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" MEPA's Montana Limitation. (Doc. 1 at 103.)

While it's now clear the Request for Relief # 5 remains in this case, the Court's "clarification" has spawned new confusion. Namely, the Court hasn't explained—at all—why Request for Relief #5 doesn't violate the political question doctrine. *See*

(Doc. 46 at 20–22; Doc. 154.). The order on the State's Motion for Clarification stated that granting Plaintiffs' expansive Request for Relief # 5 "would be a logical extension and result" of declaring state energy policy—and two implementing statutes—unconstitutional. (Doc. 154 at 3.) While that might be true, it doesn't answer the crucial justiciability question: does the Court have power to enjoin the State's "aggregate acts, policies and conditions" touching statewide energy policy or is Montana's comprehensive energy policy a nonjusticiable political question that the Constitution commits to Montana's Legislature? *See* MONT. CONST. art. III, § 1 (delineating the respective powers belonging to the legislative, executive, and political branches); *id.*, art. IX, § 1; *Larson v. State*, 2019 MT 28, ¶ 39, 394 Mont. 167, 434 P.3d 241 (political question doctrine flows from the separation of powers). The Court's Order on Motion to Dismiss and Order on the State's Motion for Clarification simply overlooked that question. *See* Mont. R. Civ. P. 60(a) (allowing courts, at any time, to correct a mistake arising from oversight or omission in an order).

In short, this Court has implicitly concluded Request for Relief # 5 is justiciable by allowing it to move forward in this case. But it hasn't explained this far-reaching conclusion. It must amend its Motion to Dismiss Order to explain "with sufficient particularity as to apprise the parties and any appellate court of the rationale underlying [this] ruling." Mont. R. Civ. P. 52(a)(3); *see also* supra n.2 (listing cases reversed under Rule 52 for insufficient explanation of a ruling). Whether Request for Relief #5 presents a nonjusticiable political question has far-reaching implications for this case and Montana law. That question merits thorough analysis.

II. The court must explain why Plaintiffs' declaratory relief claims don't violate the political question doctrine.

That brings us to a more fundamental problem: the Order doesn't explain why it didn't dismiss *all* of Plaintiffs' claims as nonjusticiable political questions. *See generally* (Doc. 46.) What little analysis the Order originally contained on this issue has been eviscerated by the Court's recent clarification order.

As noted, this Court's Order on Motion to Dismiss declined to dismiss Plaintiffs' requests for declaratory relief: 1, 2, 3, and 4. (Doc. 46 at 22); *see also* (Doc. 1 at 102–103) (complaint listing Plaintiffs' claims). The original, singular, rationale for this ruling was this Court's distinction between Plaintiffs' claims that seek declaratory relief and their claims that seek injunctive relief. *See* (Doc. 46 at 22) ("The court agrees 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.") That distinction was tenuous from the beginning because claims for declaratory relief aren't subject to a lower justiciability standard than other claims.

Certainly, the Declaratory Judgments Act gives the Court authority to "declare rights, status, and other legal relations whether or not further relief is or could be claimed." MCA § 27-8-201. But this statutory grant of authority doesn't make every request for declaratory relief justiciable by default. Rather, justiciability is a threshold question that this Court must analyze for every claim, including claims for declaratory relief. *Mitchell v. Glacier Cnty.*, 2017 MT 258, ¶ 42, 389 Mont. 122, 406 P.3d 427 ("We have held that the requirement of justiciable controversy applies

to declaratory judgment actions.") (cleaned up); *see also Larson*, ¶ 45 ("Though substantively cognizable, a claim for declaratory judgment is nonetheless not justiciable if the plaintiff lacks personal standing to assert the claim."); *Marbut v. Secretary of State*, 231 Mont. 131, 135, 752 P.2d 148, 150 (1988) ("In Montana, the requirement of justiciable controversy likewise applies to declaratory judgment actions.").

Consider also *Juliana v. United States*, 734 F.3d 1159 (9th Cir. 2020), on whose justiciability analysis the Court has extensively relied. *See* (Doc. 46 at 4–5, 9, 16–17, 20–21). Like the Plaintiffs in this case, the *Juliana* plaintiffs sought broad injunctive and *declaratory* relief. *Juliana*, 947 F.3d at 1169 ("[Plaintiffs] claim ... that the government has deprived them of a substantive constitutional right to a 'climate system capable of sustaining human life,' and they seek remedial and declaratory injunctive relief."). The Ninth Circuit, however, didn't distinguish between plaintiffs' declaratory and injunctive relief claims. It dismissed all of them as nonjusticiable political questions constitutionally committed to the other branches of the federal government. *Id.* at 1175 ("We reluctantly conclude...that the plaintiffs' case must be made to the political branches or to the electorate at large, the latter of which can change the composition of the political branches through the ballot box.")

No Montana case has concluded that all declaratory relief claims are *per se* justiciable. Rather, clear precedent holds that courts must analyze the threshold question of justiciability for every claim, including claims for declaratory relief. *See Mitchell*, ¶ 42, ("We have held that the requirement of justiciable controversy applies

to declaratory judgment actions.") (cleaned up); *Larson*, ¶ 45 ("Though substantively cognizable, a claim for declaratory judgment is nonetheless not justiciable if the plaintiff lacks personal standing to assert the claim."); *Marbut*, 231 Mont. At 135, 752 P.2d at 150 ("In Montana, the requirement of justiciable controversy likewise applies to declaratory judgment actions.") Likewise, the Ninth Circuit didn't believe that the federal Declaratory Judgments Act rendered the *Juliana* plaintiffs' claims automatically justiciable. *Juliana*, 947 F.3d at 1171 (dismissing federal youth plaintiffs' claims for injunctive and declaratory relief). That the Ninth Circuit reached this conclusion in *Juliana* makes a strong *prima facie* case that the Court should reach the same conclusion here. *See Plan Helena, Inc. v. Helena Reg'l Airport Auth. Bd.*, 2010 MT 26, ¶ 6, 355 Mont. 142, 226 P.3d 567 (directing this Court to read federal article III justiciability precedents as persuasive authority for applying Montana's justiciability rules).

Yet this Court reached the opposite conclusion without ever explaining why. *Compare* (Doc. 46 at 21– 22) ("The court possesses the authority to grant declaratory or injunctive relief, or both .... Therefore, despite dismissing Youth Plaintiffs' claims for injunctive relief, the court will allow Plaintiffs' claims for declaratory relief to move forward.") *with Mitchell*, ¶ 42 (cleaned up) ("We have held that the requirement of justiciable controversy applies to declaratory judgment actions"). Bottom line: simply stating that a claim seeks declaratory relief has nothing to do with whether that claim is justiciable. This Court must explain the rationale for its conclusion that requests for relief 1, 2, 3, and 4 are not political questions "with sufficient

particularity as to apprise the parties and any appellate court of the rationale underlying [its] ruling." Mont. R. Civ. P. 52(a)(3); *see also supra* n.2 (citing line of cases). To this point, it has offered no explanation at all.

And, in any event, the Court's recent order on the State's motion to clarify has undermined the Court's already-thin rationale for keeping Requests for Relief 1,2,3,4, and 5 in this case. The Court original order explained that Plaintiffs' injunctive relief claims presented nonjusticiable political questions while the declaratory relief claims were, somehow, meaningfully different. But—the Court has recently explained—that rationale was a clerical error to begin with. *See* (Doc. 154 at 3) ("The language contained in the Order on Motion to Dismiss indicating dismissal of all injunctive relief was a clerical error.") *No* written rationale now underlies the Court's far-reaching holding that it may declare unconstitutional and enjoin the State's energy policy without encroaching on the constitutional authority of the political branches. None.[3]

This case raises important questions about the judiciary's role in interpreting and enforcing the constitution's clean and healthful environment provisions. *See Park Cnty. Envtl. Council*, ¶ 78 (noting the "difficult exercise of determining what

[3] Again: the Court's observation that the Legislature has authorized district courts to grant declaratory relief is a *non sequitur* to the question of justiciability. *Mitchell*, ¶ 42, ("We have held that the requirement of justiciable controversy applies to declaratory judgment actions.") (cleaned up); *Larson*, ¶ 45 ("Though substantively cognizable, a claim for declaratory judgment is nonetheless not justiciable if the plaintiff lacks personal standing to assert the claim."); *Marbut*, 231 Mont. At 135, 752 P.2d at 150 ("In Montana, the requirement of justiciable controversy likewise applies to declaratory judgment actions.").

attributes constitute a 'clean' or 'healthful' environment, or an 'unreasonable' amount of degradation, or what the judiciary's role should be in answering these questions.") And these questions implicate the separation of powers at the heart of our constitutional order. "Where there is a textually demonstrable constitutional commitment of the issue to a coordinate political department, or a lack of judicially discoverable and manageable standards for resolving the issue, the issue is not properly before the judiciary." *Bullock v. Fox*, 2019 MT 50, ¶ 44, 395 Mont. 35, 435 P.3d 1187 (cleaned up) (quoting *Nixon v. United States*, 506 U.S. 224, 228 (1993)); *cf.* MONT. CONST. art. IX, § 1(2) (directing the Legislature to administer and enforce the State's duty to maintain and improve a clean and healthful environment); MONT. CONST. art. III, § 1 ("The power of the government of this state 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 either of the others, except as in this constitution expressly directed or permitted.")

These important questions demand both serious contemplation and thorough, written, analysis. In far less consequential matters, the Supreme Court has frequently remanded for additional elaboration orders in which the district court proffered no explanation for its ruling. *See* supra n.2 (citing line of cases). Yet the Court's Motion to Dismiss Order simply offered only a quick observation that declaratory and injunctive relief are different before pronouncing Plaintiffs' declaratory claims justiciable. (Doc. 46 at 21–22.) And even that distinction vanished

with the Court's clarification Order. (Doc. 154 at 3.) The parties are left guessing as to the Court's thinking on why Requests for Relief 1, 2, 3, 4, and 5 don't violate the political question doctrine. This Court must correct that omission and let the parties in on its thinking. Mont. R. Civ. P. 60(a); Mont. R. Civ. P. 52(a)(3).

CONCLUSION

Pursuant to Mont. R. Civ. P. 52(a)(3) and Mont. R. Civ. P. 60(a), the State respectfully requests that this Court state its rationale for keeping Request for Relief 5, along with Requests for Relief 1, 2, 3, and 4, in this case. This analysis should explain, "with sufficient particularity as to apprise the parties and any appellate court of the rationale," Mont. R. Civ. P. 52(a)(3), why the Court believes that these novel and far-reaching claims don't ask the Court to resolve political questions: "controversies which revolve around policy choices and value determinations constitutionally committed for resolution to other branches of government." *Bullock*, ¶ 44 (quoting *Larson*, ¶ 39); *cf.* MONT. CONST. art. IX, § 1(2); *Juliana*, 947 F.3d at 1171–72 (concluding that article III courts lack power to grant similar claims for declaratory and injunctive relief).

DATED this 20th day of July, 2022.

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