

Melissa Hornbein  
Barbara Chillcott  
Western Environmental Law Center  
103 Reeder's Alley  
Helena, MT 59601  
(406) 708-3058  
hornbein@westernlaw.org  
chillcott@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*)  
Mathew dos Santos (*pro hac vice*)  
Andrea Rodgers (*pro hac vice*)  
Our Children's Trust  
1216 Lincoln Street  
Eugene, OR 97401  
(413) 687-1668  
nate@ourchildrenstrust.org  
mat.dossantos@ourchildrenstrust.org  
andrea@ourchildrenstrust.org

Philip L. Gregory (*pro hac vice*)  
Gregory Law Group  
1250 Godetia Drive  
Redwood City, CA 94062  
(650) 278-2957  
pgregory@gregorylawgroup.com

*Attorneys for Plaintiffs*

MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

RIKKI HELD, et al.,  Plaintiffs,  v.  STATE OF MONTANA, et al.,  Defendants.	Cause No. CDV-2020-307  Hon. Kathy Seeley  <b>PLANTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' SECOND RULE 60(a) MOTION FOR CLARIFICATION OF ORDER ON STATE'S MOTION TO DISMISS</b>
--	---

**FILED**  
JUL 27 2022  
By: ANGIE SPARKS, Clerk of District Court  
Deputy Clerk

## **I. INTRODUCTION**

For a *third* time, Defendants attempt to relitigate their motion to dismiss, which was filed over two years ago, decided by this Court nearly a year ago, and clarified by this Court last month.<sup>1</sup> In its August 2021 Order on Defendants' Motion to Dismiss, this Court dismissed Youth Plaintiffs' requests for an accounting of Montana's GHG emissions (Request for Relief No. 6), a remedial plan (Request for Relief No. 7), appointment of a Special Master (Request for Relief No. 8), and an order retaining jurisdiction (Request for Relief No. 9). MTD Order at 25. The Court expressly found the requests for a remedial plan and an accounting violate the political question doctrine, but implicitly decided that no other requests for relief raised a political question. MTD Order at 21. Had the Court believed any other requests for relief implicated the political question doctrine, it would have said so.

In their first Rule 60(a) Motion for Clarification of Order on State's Motion to Dismiss, filed on May-6, 2022, Defendants did not argue "political question"; instead, they sought relief for a "clerical mistake," noting "Rule 60(a) allows this Court to '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.' Mont. R. Civ. P. 60(a)." Rule 60(a) Motion for Clarification of Order on State's Motion to Dismiss at 3. In its June 30, 2022 Order on Defendants' Rule 60(a) Motion for Clarification, this Court clarified its position: Request for Relief No. 5 remains a valid request for relief. Order on Rule 60(a) Motion for Clarification at 3.

---

<sup>1</sup> *State v. Montana First Jud. Dist. Ct.*, No. OP 22-0315, 2022 WL 2128570, at \*2 (Mont. June 14, 2022) (Denying Defendants' writ of supervisory control and noting that "[t]he State offers no explanation as to why it waited over nine months to ask the District Court to 'clarify' its Order on Motion to Dismiss as it pertained to Request for Relief 5.").

Defendants now file this Second Motion for Clarification under Rule 60(a). Rather than seeking to “correct a clerical mistake or a mistake arising from oversight or omission” as is allowed by Rule 60(a), Defendants seek additional legal analysis from this Court as to why Requests for Relief Nos. 1-5 are not political questions, repeating arguments Defendants made in support of their original Motion to Dismiss over two years ago. This Court has already disposed of these arguments twice. First, when the Court clearly held that it “possesses the authority to grant declaratory or injunctive relief, or both.” MTD Order at 22. And again, when the Court held the language in the MTD Order “indicating dismissal of all injunctive relief was a clerical error” and Request for Relief No. 5 would be within its authority to award because it “would be a logical extension and result if Montana Code Annotated § 90-4-1001[(1)](c)-(g) or § 75-1-201(2)(a) were declared unconstitutional.” Order on Rule 60(a) Motion for Clarification at 3. Notably, this Court’s explanation is in accord with the Montana Supreme Court’s recent decision in *Board of Regents of Higher Education of the State of Montana v. State of Montana*, where the Court affirmed a district court order declaring unconstitutional sections of HB 102, which revised gun laws in Montana, and “permanently enjoined enforcement of Sections 3 through 8 of HB 102 against the Board and on MUS campuses.” 2022 MT 128, ¶ 8, \_\_ Mont. \_\_, \_\_ P.3d \_\_ (emphasis added). Here too, Plaintiffs seek a court order declaring certain statutory provisions unconstitutional and enjoining their enforcement.

Defendants’ Second Motion for Clarification amounts to nothing more than a thinly veiled scheme to further delay this case with an improper attempt to re-litigate issues already decided. If Defendants disagree with this Court’s political question ruling, they can raise those arguments on appeal after final judgment. This Court should not accept Defendants’ claimed “new confusion,”

which is a manufactured and disingenuous attempt to cause additional delay<sup>2</sup> and relitigate its failed motion to dismiss,<sup>3</sup> nearly a year after this Court decided the issue. Accordingly, this Court should exercise its wide discretion to deny Defendants' Second Rule 60(a) Motion for Clarification.

## II. ARGUMENT

The Montana Supreme Court has clearly held "Rule 60(a) is *only* for the purpose of correcting clerical mistakes." *In re Marriage of Schoenthal*, 2005 MT 24, ¶ 18, 326 Mont. 15, 106 P.3d 1162 (emphasis added). "The courts have not permitted it to be used to relitigate matters already decided or to change what the court has deliberately done. It simply allows the doing, at a later date, of what was originally intended but not accomplished." *In re Marriage of Cannon*, 215 Mont. 272, 275, 697 P.2d 901, 902 (1985). Here, this Court clearly decided, and later clarified with more precision, that Plaintiffs' Requests for Relief Nos. 1-5 are within the Court's authority to award, should Plaintiffs prevail, and do not implicate the political question doctrine.<sup>4</sup> Defendants' attempt to relitigate the issue should be summarily rejected by this Court as not

---

<sup>2</sup> Three weeks ago Plaintiffs provided Defendants dates between August 8 and 24 for the depositions of youth Plaintiffs, but, as of the filing of this opposition brief, Defendants have not confirmed that they will take the Plaintiffs' depositions in August, despite repeated requests by Plaintiffs to confirm the dates. Defendants' Second Motion for Clarification appears to be another attempt to delay discovery. *See* Def. Mot. for Expedited Consideration at 2 (noting that absent clarification from the Court, "the State cannot calibrate its discovery objectives with adequate precision" and that knowing the Court's rationale "is indispensable for informing the parties' discovery and further motions practice"). But Defendants provide no explanation whatsoever about *how* additional explanation from the Court would impact discovery, and Plaintiffs submit that it would not.

<sup>3</sup> *See* Def. Br. in Support of Mot. for Clarification at 7 ("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." (emphasis in original)).

<sup>4</sup> The Court's Motion to Dismiss Order explicitly discussed Plaintiffs' Requests for Relief Nos. 6-9 violated the political question doctrine but raised no such concerns with Plaintiffs' Requests for Relief Nos. 1-5. MTD Order at 21-22.

seeking to “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.” Mont. R. Civ. P. 60(a).

In both its Order on Motion to Dismiss and its Order on Rule 60(a) Motion for Clarification, the Court also adequately specified the grounds for its rulings “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). “[T]he district court need only set forth adequate findings and conclusions so that the reviewing court does not have to speculate as to the reasoning for the district court’s decision.” *In re Matter of Seizure of \$23,691.00 in U.S. Currency*, 273 Mont. 474, 483, 905 P.2d 148, 154 (1995). This Court clearly explained its reasoning to sustain Requests for Relief Nos. 1-4 as based on its “authority to grant declaratory or injunctive relief, or both” under Mont. Code Ann. § 27-8-201; and the issuance of the injunctive relief sought under Request for Relief No. 5 “would be a logical extension and result if Montana Code Annotated § 90-4-1001[(1)](c)-(g) or § 75-1-201(2)(a) were declared unconstitutional.” Order on Rule 60(a) Motion for Clarification at 3.

As noted above, this Court’s explanation is in accord with the Montana Supreme Court’s recent decision in *Board of Regents of Higher Education of the State of Montana v. State of Montana*, where the Court affirmed a district court order declaring unconstitutional sections of HB 102, which revised gun laws in Montana, and “permanently *enjoined* enforcement of Sections 3 through 8 of HB 102 against the Board and on MUS campuses.” 2022 MT 128, ¶ 8, \_\_\_ Mont. \_\_\_, \_\_\_ P.3d \_\_\_ (emphasis added). Here too, Plaintiffs seek a court order declaring certain statutory provisions unconstitutional and enjoining their enforcement.

Clearly, this Court’s analysis more than suffices for purposes of a motion to dismiss. The political question concerns the Court had with respect to Plaintiffs’ Requests for Relief Nos. 6-9 were simply not present as to the other forms of relief sought. Moreover, “the district court is not

required to make specific findings on every fact presented or every piece of evidence offered,” particularly given the early stages of this litigation where this Court is yet to issue a final ruling on the merits of Plaintiffs’ claims. *In re Marriage of Drake*, 2002 MT 127, ¶ 23, 310 Mont. 114, 49 P.3d 38.

Plaintiffs submit that it is neither necessary nor appropriate for this Court to reconsider Defendants’ political question arguments at this late stage, but if it feels compelled to do so, Plaintiffs refer this Court to their briefing set out in Plaintiffs’ Response to Defendants’ Motion to Dismiss. Doc. 15 at 14-18; *id.* at 15 (“Reviewing statutes and government conduct for compliance with fundamental constitutional rights is squarely within the scope of the judiciary and does not raise political question issues.”).

Finally, Plaintiffs agree with Defendants that “[t]his case raises important questions about the judiciary’s role in interpreting and enforcing the constitution’s clean and healthful environment provisions,” which is why this Court’s final decision on the issues raised should be based on a fully developed factual record after trial on the merits. All of the arguments Defendants have tried to frame as a request for “clarification” were already included in their motion to dismiss and are more properly made on appeal after trial and final judgment.

### **III. CONCLUSION**

Defendants’ Second Rule 60(a) Motion for Clarification is yet another improper attempt by Defendants to delay this litigation and relitigate their political question arguments in this case. The Court’s Order on the Motion to Dismiss, and its later Order on Defendants’ First Rule 60(a) Motion, amply explain why Plaintiffs’ Requests for Relief Nos. 1-5 are within the Court’s authority to award, should Plaintiffs prevail on the merits. Moreover, the Court’s reasoning is consistent with Montana Supreme Court jurisprudence, including the recent case *Board of Regents*

*of Higher Education of the State of Montana v. State of Montana.* Accordingly, Youth Plaintiffs respectfully request this Court deny Defendants' Second Rule 60(a) Motion for Clarification.

DATED this 27th day of July, 2022.

/s/ Melissa Hornbein

Melissa Hornbein  
Barbara Chillcott  
Western Environmental Law Center  
103 Reeder's Alley  
Helena, MT 59601  
(406) 708-3058  
hornbein@westernlaw.org  
chillcott@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*)  
Mathew dos Santos (*pro hac vice*)  
Andrea Rodgers (*pro hac vice*)  
Our Children's Trust  
1216 Lincoln Street  
Eugene, OR 97401  
(413) 687-1668  
nate@ourchildrenstrust.org  
mat.dossantos@ourchildrenstrust.org  
andrea@ourchildrenstrust.org

Philip L. Gregory (*pro hac vice*)  
Gregory Law Group  
1250 Godetia Drive  
Redwood City, CA 94062  
(650) 278-2957  
pgregory@gregorylawgroup.com

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered by email to the following on July 27, 2022:

AUSTIN KNUDSEN  
Montana Attorney General  
DAVID M.S. DEWHIRST  
*Solicitor General*  
DEREK OESTREICHER  
*General Counsel*  
TIMOTHY LONGFIELD  
MORGAN VARTY  
*Assistant Attorneys General*  
215 North Sanders  
P.O. Box 201401  
Helena, MT 59620-1401  
Phone: 406-444-2026  
Fax: 406-444-3549  
david.dewhirst@mt.gov  
derek.oestreicher@mt.gov  
timothy.longfield@mt.gov  
morgan.varty@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

/s/ Barbara Chillcott  
Barbara Chillcott